

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1104 OF 2022

1. Chaitanya s/o Gangadhar Joshi
2. Gangadhar s/o Kamlakar Joshi
3. Vibha w/o Gangadhar Joshi
4. Vaishali d/o Gangadhar Joshi
5. Rupali d/o Gangadhar Joshi

.. Applicants

Versus

1. The State of Maharashtra,
Through Police Station,
Sailu, Dist. Parbhani
2. Rutuja Chaitanya Joshi

.. Respondents

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Mr. A. S. Deshmukh, Advocate for applicants.

Mr. R. D. Sanap, APP for respondent No.1 - State.

Mr. M. P. Tripathi, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : NOVEMBER 30, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the FIR bearing Crime No.384 of 2021 registered with Sailu Police Station, Dist. Parbhani on 25.12.2021 for the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") as well

as the Charge-sheet No.80 of 2022 filed before the learned Judicial Magistrate First Class, Sailu.

2. Applicant Nos.1 is the husband of respondent No.2. Applicant No.2 is the father-in-law of respondent No.2. Applicant No.3 is the mother-in-law of respondent No.2 and applicant Nos.4 and 5 are the sisters-in-law of respondent No.2.

3. Heard learned Advocate Mr. A. S. Deshmukh for the applicants, learned APP Mr. R. D. Sanap for respondent No.1 - State and learned Advocate Mr. M. P. Tripathi for respondent No.2.

4. The informant - respondent No.2 lodged report with Sailu Police Station, Dist. Parbhani on 25.12.2021 against the present applicants stating that the marriage of the informant was performed with applicant No.1 on 14.05.2019 as per Hindu rites and customs at Sailu. At the time of marriage, her parents gave 20 gm. Gold and Rs.2,00,000/- cash as dowry as well as necessary items for the house. After the marriage, she resided at her matrimonial home at village Wakad Tq. Risod for one month. Thereafter, she along with her husband went to Akola, where her husband was serving. Out of the said wedlock, she had begotten one daughter namely Dnyanda. It is further stated that after the marriage all the applicants used to harass the informant physically and mentally on one or the other

pretext. It is further stated that applicant No.1 and his family has about 28 acres of land which is of good quality. The financial condition of the father of the informant is not good. Applicant Nos.4 and 5 used to say to the informant that she should not have married to their brother as her family is not financially good as compared to their family. Thereafter, it is stated that applicants used to ask her to bring amount of Rs.5,00,000/- from her parents for construction of house at Akola and on that count, applicants used to harass her physically and mentally. They used to abuse her and starve her. Applicant No.1 always used to say that he don't like him. Whenever she used to talk to her parents about the harassment by applicants, they used to persuade the applicants. Thereafter on 16.03.2020, the informant gave birth to a girl child at Sailu. All the applicants abused the father of the informant by saying that why did she given birth to a girl child. It is further stated that the parents of the informant sent her to village Wakad to cohabit with her husband. Thereafter, for some days, she was treated properly. Then again they started harassing her. It is further stated that in November 2020, applicant No.1 taken her to cohabit, but he never treated her as wife. On 05.02.2020, applicants drove her out of the house on the ground that why she didn't bring Rs.5,00,000/- and then abused her, assaulted her and harassed her physically and mentally. She, therefore, lodged report

against the applicants.

5. It is to be noted that the respondent No.2 has filed FIR on 25.12.2021, however, if we consider the entire charge-sheet, it can be seen that she is totally silent about the fact that there was compromise between her and applicant No.1 - husband. It is to be noted from the report that was given by the Counsellor attached to Mahila Samupadeshan Kendra, Sailu that a complaint application was filed by respondent No.2 on 25.06.2021 with that Centre. Thereafter, notice was issued to the applicants herein. Sittings were taken on 14.07.2021, 28.07.2021 and 30.11.2021. Applicant No.1 then agreed for the compromise and took respondent No.2 for cohabitation, however, it is said in that report that thereafter the respondents therein started giving mental and physical harassment. It was stated that the father-in-law is intervening in the marital life and all the applicants are giving her insulting treatment and, therefore, the FIR came to be lodged. The first and the foremost fact of having compromise and resuming the cohabitation would show that the respondent No.2 - informant was ready to forego the differences. No doubt, she could not have given up her allegations, but in her FIR she ought to have mentioned that there was such a compromise and, thereafter, she had gone for cohabitation and after that what treatment was given to her would have been more

important here to attract the offences as alleged. Statements of the witnesses would also show that they have tried to intervene and efforts were made for cohabitation.

6. Independently, if we consider the contents of the FIR then it is stated that the financial condition of the applicants is better than the financial condition of the father of the informant. It is then stated that the applicants started insulting her by saying that her parents are not of the same standard as the applicants are. In fact, this position would have been inquired into by both the parties before the marriage also. It is hard to believe that, that would have been a point after the marriage.

7. The informant further states that the applicants thereafter started asking her to bring amount of Rs.5,00,000/- for building a house at Akola and thereafter they used to harass her mentally and physically. Here, it is to be noted that admittedly, applicant No.1 is residing at Akola in connection with his service. The other applicants are residing at Wakad, Tq. Risod, Dist. Washim. That means after the marriage, when applicant No.1 would have taken the informant at the place of his service, the other applicants would not have been in daily physical contact with applicant No.1 and informant. The daughter is born to the informant on 16.03.2020. It is then stated that thereafter the applicants started saying as to

why the girl has been born and it is said that on that count her parents were abused. It cannot be covered under Section 498-A of IPC. It is then stated that after daughter became six months old, she had stated that she should be taken to Akola, but the husband refused by saying that since son has not been born, he will not take her. But then she says that she was taken to Wakad and then she says that the applicants had given her good treatment, but thereafter husband started saying that informant's brother is mentally challenged and, therefore, her father should sell out his property and come to stay at Akola. Thus, it can be seen from the entire FIR that periodically she has changed the nature of allegations. Except the family members i.e. parents, the allegations of the informant have not been supported by any other witnesses.

8. Reliance can be placed on the decision in ***Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors., Criminal Appeal No.195 of 2022*** decided by the Hon'ble Supreme Court on 08.02.2022, wherein the decisions in ***Rajesh Sharma and Ors. Vs. State of U.P. and Anr., [(2018) 10 SCC 472]***, ***Arnesh Kumar Vs. State of Bihar and Anr., [(2014) 8 SCC 273]***, ***Preeti Gupta and Anr. Vs. State of Jharkhand and Anr., [(2010) 7 SCC 667]***, ***Geeta Mehrotra and Anr. Vs. State of UP and Anr., [(2012) 10 SCC 741]*** and ***K. Subba Rao Vs.***

The State of Telangana, [(2018) 14 SCC 452] have been considered and it has been observed thus :-

"18. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them."

9. Therefore, taking into consideration the above noted decisions and the allegations made in the FIR, we are of the opinion that the ingredients of offence punishable under Section 498-A of IPC are not attracted as against the applicants. Here, we are including the husband also for the reason that there is suppression of the settlement that had taken place through the intervention of Counsellor and the FIR does not say how was the behaviour of the husband after the settlement. Therefore, in our view, this is a fit

case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash and set aside the the FIR and the proceedings arising therefrom as against the applicants. Hence, the following order :-

ORDER

I) Application stands allowed.

II) The FIR bearing Crime No.384 of 2021 dated 25.12.2021 registered with Sailu Police Station, Dist. Parbhani for the offences punishable under Sections 323, 498-A, 504, 506 read with Section 34 of IPC as well as the Charge-sheet No.80 of 2022 filed before the learned Judicial Magistrate First Class, Sailu, stand quashed and set aside.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm