

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**901 CRIMINAL APPLICATION NO.1359 OF 2019**

**SAYYED JAFFAR SAYYED GAFOOR AND OTHERS  
VERSUS  
SAYYED SHIRIN SAYYED JAFAR AND ANR**

Mr.V.V. Bhavthankar, Advocate for the applicants.  
Mr.S.S. Shaikh, Advocate for respondent No.1.  
Mr.R.B. Bagul, APP for respondent No.2/State.

**CORAM       :     ANIL L. PANSARE, J.  
DATED       :     26.07.2022**

**PC :-**

01.           By present application under section 482 of the Code of Criminal Procedure, the applicant has assailed the order dated 24.01.2019 passed below Exh.1 by the Judicial Magistrate, First Class, Ambajogai, in RCC No.224 of 2017. By the impugned order the learned Magistrate has issued process against the applicants herein, who were accused before the learned Trial Court. The process has been issued after having perused the complaint, verification of complaint and after hearing the learned Advocate for the applicant therein. The statement of the complainant on oath was also taken into account. Accordingly, the process has been issued under section 498 of the Indian Penal Code.

02. Prior to passing the impugned order on 24.01.2019, the learned Magistrate on 22.05.2018 passed the following order :-

*“1) The present matter be sent to Family Welfare Committee, Ambajogai through District Legal Services Authority for further necessary action as per Para 19 of the judgment of Hon’ble Supreme Court in Criminal Appeal No.1265 of 2017.*

*2) The complainant is directed to remain present before Hon’ble Family Welfare Committee, Ambajogai as and when directed by it.*

*3) The complainant is directed to furnish detail address, contact number of herself as well as accused for the purpose of effective communication before Hon’ble Family Welfare Committee, Ambajogai.*

*4) The next date in the matter be fixed on 04/07/2018 for receipt of the Report of Hon’ble Family Welfare Committee, Ambajogai.*

*5) The complainant and Advocate to take note of this order.”*

03. As could be seen, the learned Magistrate has, in view of the guidelines of the Hon’ble Supreme Court in the judgment referred to in the order, forwarded the complaint to the Family Welfare Committee.

04. The argument of the learned Advocate for the applicants is that

without waiting for the report of the Family Welfare Committee, the learned Magistrate has passed the impugned order.

05. The matter was heard for sometime yesterday i.e. on 25.07.2022. Both the advocates were instructed to find out whether the order passed by the Hon'ble Supreme Court has been modified subsequently. Today, the learned Advocate for the applicant submitted that he could not find any modification in the order and accordingly pressed for order by this Court on the sole ground that the learned Magistrate has passed the impugned order without waiting for the report of the Welfare Committee. Both the advocates were again instructed to verify whether the order passed by the Hon'ble Supreme Court has been modified and accordingly the matter was kept at 02.30 p.m. today. In the meantime, the Shirastedar was instructed to pass on a message to the Librarian to verify whether the judgment and order of the Supreme Court has been subsequently modified.

06. At 02.30 p.m. the Shirastedar, so also the learned Advocate for the non-applicants have placed on record the judgment dated 14.09.2018 passed by the Supreme Court in the case of Social Action Forum FOR Manav

Adhikar & Anr. Vs. Union of India, Ministry of Law and Justice & Ors. in Writ Petition (Civil) No.73 of 2005. The Three Judges Bench has dealt with in detail the law laid down by the various Courts in respect of offence punishable under section 498-A of the IPC. One of the judgments that was considered was the judgment that has been repeatedly pressed in service by the learned Advocate, the judgment in the case of Rajesh Sharma & Ors. Vs. State of U.P. & Anr. in Criminal Appeal No.1265 of 2017. The Three Judges Bench has held in para 39 that the directions contained in para 19(i) of the judgment in Rajesh Sharma's case (supra) as a whole is not in accord with the statutory framework and the directions issued in paragraph No.19(ii) shall be read in conjunction with the directions given in the judgment by the Supreme Court. There are other directions as well, however, the point that requires consideration is that inspite of subsequent modification of the order, when the directions contained in para No.19(i) were said to be not in accord with the statutory framework, the learned Advocate has yesterday so also today sought orders from this Court by relying upon the directions in para 19(i) issued by the Supreme Court in the case of Rajesh Sharma (supra).

07. Unfortunately, such insistence continued inspite of repeated

queries by this Court as to whether the directions have been subsequently modified. The learned Advocate for the applicant ought to have discharged his duty towards the Court, if the noble profession of Advocacy is to stand to its expectations.

08. In view of the modification to the directions in para No.19(i) of the Rajesh Sharma's case (supra), nothing remains in the present writ petition. The sole challenge fails on the ground that the said directions have been said to be not in accord with the statutory provisions, meaning thereby that the learned Magistrate need not send the complaint to the Welfare Committee nor the report of the committee was required before issuance of the process. As stated earlier, the impugned order is passed taking into consideration all attending circumstances required for issuance of process.

09. There is, thus, no substance in the application. It is liable to be rejected and is rejected accordingly.

**[ANIL L. PANSARE,J.]**