

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CRIMINAL APPLICATION NO.1384 OF 2021

DHARMARAJ RAJARAM SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicant : Mr. N. E. Deshmukh
APP for Respondent-State: Mr. S. S. Dande
Advocate for Respondent No.2 : Mr. Ujwal S. Patil
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 31st MARCH, 2022**

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The applicant accused is seeking quashing of F.I.R. No. 116 of 2021 registered with Chalisgaon police station, District Jalgaon for the offence punishable under Sections 498-A, 323 and 504 of I.P.C. and also seeking quashing of proceeding bearing R.C.C. No. 166 of 2021 pending before the J.M.F.C. Chalisgaon.
3. Learned counsel for the applicant submits that the applicant is lawyer by profession and on 18.11.2020 he has issued legal notice to respondent No.2 on the basis of instructions given to him by co-accused i.e. husband of respondent No.2. Learned counsel submits that in terms of provisions of Section 498-A of I.P.C. the prosecution can be launched only against the husband or his relatives. The

applicant herein is legal adviser and as per the allegations made in the complaint, in addition to that, he is neighbour and also friend of co-accused husband. Learned counsel submits that so far as the charge under Section 498-A of I.P.C. is concerned, the persons other than relatives cannot be prosecuted for the offence punishable under Section 498-A of I.P.C. So far as the other allegations for the offence under Sections 323 and 504 r.w. 34 of I.P.C. are concerned, those have been made against co-accused persons and not against the applicant.

Learned counsel for the applicant, in order to substantiate his submissions, placed reliance on the judgment of this Court in the case of ***Shaikh Mushraf Pasha s/o Shaikh Mushtakh Pasha and others vs. The State of Maharashtra and another***, reported in ***2021 (2) Bom.C.R. (Cri.) 368***.

4. Learned counsel for respondent No.2 submits that there are specific allegations against the applicant that he used to visit the matrimonial house of respondent No.2 and prejudice her husband (co-accused) against her. In consequence thereof, her husband used to suspect about her character. Learned counsel for respondent No.2 submits that the investigating officer has not recorded complaint of respondent No.2 as per her narration. Learned counsel submits that respondent No.2 has initiated proceeding under Section 9 of Hindu Marriage Act for restitution of conjugal rights by

filing Marriage Petition No. 100 of 2021 wherein in para 3 of the said petition, it has been specifically alleged that the present applicant has ill-eye on her and respondent No.2 informant has not complained about it for the reason that her husband may unnecessary suspect about her if she discloses the same.

5. We have also heard learned A.P.P. for the respondent State.

6. We have carefully gone through the allegations made in the complaint. It has been merely alleged in the complaint that the applicant used to visit the matrimonial house of respondent No.2 and prejudiced her husband against her. The applicant has placed before us a copy of legal notice issued by the applicant on behalf of co-accused husband to respondent No.2 prior to filing of complaint. The provisions of section 498-A of I.P.C. reads as under:-

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means

—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

7. It is thus clear that Section 498-A of I.P.C. speaks about cruelty against a woman by husband or his relatives. Admittedly, the applicant is not relative of co-accused i.e. husband of respondent No.2. Consequently, the charge under Section 498-A of I.P.C. is not attracted. Even though learned counsel for respondent No.2 has vehemently submitted about the allegations made by respondent No.2 in her petition filed under Section 9 of Hindu Marriage Act seeking restitution of conjugal rights, however, some 5/6 years after the marriage of the year 2012, the said incident allegedly had taken place. However, respondent No.2 informant has not stated anything about the said incident in the present complaint filed in the year 2021. At present the charge sheet is submitted and no other charge has been levelled against the applicant except charge under Section 498-A of I.P.C.

8. In the case of ***Shaikh Mushraf Pasha s/o Shaikh Mushtakh Pasha and others vs. The State of Maharashtra and another*** (supra), relied upon by learned counsel for the applicant, in para 11 of the judgment, this Court has made following observations:-

“11. This case is also not an exception to what the Hon'ble Supreme Court has observed. Not only all the near and distant relatives have been roped, applicant no.7 has also been implicated in this case, though, she is not related to the applicant no.1 by marriage, blood or by adoption. She is a Mediator. A stranger to the family does not come within the sphere of Section 498-A of the I.P.C. In order to be covered under Section 498-A of the I.P.C., one has to be a relative of the husband by blood, marriage or adoption. The Hon'ble Supreme Court in the case of Vijeta Gajra V/s. State (NCT of Delhi); (2010) 11 SCC 618, it has been held that for bringing a person under the scope of Section 498-A of the I.P.C. one has to be a relative of the husband by blood, marriage or adoption. It is not alleged that the applicant no.7 is related by blood, marriage or adoption. Even otherwise, no specific role is attributed to applicant no.7. General and vague allegations are made against her. Therefore, applicant no.7 cannot be made to face the trial. Therefore, no cognizable offence can be disclosed against these applicants. Having regard to this, it cannot be said that there is possibility of conviction being recorded against these applicants. The case of these applicants is, thus, squarely covered by condition nos. 1 and 3 as laid down by the Hon'ble Supreme Court in the case of State of Haryana and Ors. V/s. Bhajan Lal and Ors.; AIR 1992 SUPREME COURT 604. In view of this, we are inclined to quash the proceedings to the extent of applicant nos.2, 3, 5, 6 and 7.”

9. It is held by the Supreme Court in the case of **Vijeta Gajra V/s. State (NCT of Delhi); (2010) 11 SCC 618** that for bringing a person under the scope of Section 498-A of the I.P.C. one has to be a relative of the husband by blood, marriage or adoption. Further, in the instant case no specific role is attributed to the present applicant

and the allegations as against them are absurd in nature. Even though said allegations are accepted as it is and held to be proved, no case is made out. In view of the above and in terms of the ratio laid down in the above cited case, we proceed to pass the following order:-

O R D E R

- I. Criminal application is allowed in terms of prayer clauses "A" and "D".
- II. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

rlj/