

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2168 OF 2022

1. Salim Gafoor Sheikh
2. Gafoor Sheikh Kadar Sheikh
3. Fatema Bi Gafoor Sheikh
4. Najma Gafoor Sheikh
5. Tabrej Jabbar Sheikh
6. Jawed Gafoor Sheikh

.. Applicants

Versus

1. State of Maharashtra
Through Chalisgaon Road,
Police Station, Chalisgaon Road,
Dhule.
2. Shirin Bano Salim Sheikh

.. Respondents

...

Mr. Deshpande Niranjana Milind, Advocate for the applicants.
Mr. S. D. Ghayal, APP for respondent No.1 - State.
Mr. V. P. Narwade, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : NOVEMBER 25, 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 First Information Report (for short "FIR") bearing Crime No.237 of 2019 dated 04.12.2019 registered with Chalisgaon Road Police Station, Dist. Dhule for the offences

punishable under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") as well as the further proceedings in R.C.C. No.736 of 2020 pending before the learned Judicial Magistrate First Class, Dhule.

2. Applicant No.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. Applicant No.4 is the sister-in-law of respondent No.2. Applicant No.5 is the husband of sister-in-law of respondent No.2 and applicant No.6 is the brother-in-law of respondent No.2.

3. Heard learned Advocate Mr. N. M. Deshpande for the applicants, learned APP Mr. S. D. Ghayal for respondent No.1 - State and learned Advocate Mr. V. P. Narwade for respondent No.2.

4. After hearing learned Advocate for the applicants for some time, when this Court expressed its disinclination to grant any relief in favour of applicant Nos.1 to 3 and 6, learned Advocate for the applicants seeks withdrawal of the application in respect of applicant Nos.1 to 3 and 6. Hence, the application stands disposed of as withdrawn as against applicant Nos.1 to 3 and 6. Now, the matter to proceed only for the reliefs claimed by applicant Nos.4 and 5.

5. The informant - respondent No.2 lodged report with Chalisgaon Road Police Station, Dist. Dhule on 04.12.2019 against the present applicants. It is stated that the marriage of the informant was performed with applicant No.1 on 10.07.2017 at Dhule as per Muslim rituals. The informant states that her parents had borne all the marriage expenses to the tune of Rs.2,50,000/- so also they had given gold ornaments in the marriage. The informant started residing with the applicants at Dargah Galli, Behind Jama Masjid, Maulana Baba Line, Bandra (West), Mumbai. Thereafter, the applicants started harassing her mentally and physically. They used to assault her. They started demanding amount of Rs.5,00,000/- for the purpose of business. She further states that when she went to her parental home at Dhule she told this fact to her parents. Her parents persuaded her and thereafter, left her to matrimonial home at Mumbai. Thereafter, again the applicants started harassing her. The applicants used to abuse her, assault her and starve her on the ground that she didn't brought amount of Rs.5,00,000/-. Applicant Nos.1 to 3 assaulted her by fist and kick blows as well as threats were given. The applicant Nos.2 and 3 used to instigate applicant No.1 against the informant. They are keeping her away from the love of the husband. On 24.05.2019, applicants assaulted her and drove her out of the house. Thereafter, it is further stated that she went to her maternal uncle

at Mumbra. Her maternal uncle called her parents and told them that their daughter was driven out of the house by the applicants. Thereafter, her parents took her to Dhule. It is further stated that on 07.10.2019 she made an application with Women's Grievance Redressal Center against the applicants. Applicants remained absent on all the given dates and, therefore, the informant lodged report against the present applicants with Chalisgaon Road Police Station, Dist. Dhule.

6. Perusal of the contents of the FIR would show that applicant No.4 is the sister-in-law of respondent No.2 and applicant No.5 is the husband of sister-in-law of respondent No.2. They both are residing at a different place. The allegations against them are omnibus and no specific act is attributed. Why the sister-in-law was residing along with the informant and other accused persons in spite of her marriage has not been stated by the informant. It shows that respondent No.2 intended to rope all the family members of the husband. Under such circumstance, it would be a futile exercise to ask them to face the trial.

7. 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."

8. Taking into consideration the above noted decisions, we are of the opinion that the ingredients of offence punishable under Section 498-A of IPC are not attracted as against the applicant Nos.4 and 5.

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 applicant Nos.4 and 5. Hence, the following order :-

ORDER

I) Application stands allowed in respect of applicant Nos.4 and 5.

II) Application stands disposed of as withdrawn in respect of applicant Nos.1 to 3 and 6.

III) The FIR bearing Crime No.237 of 2019 dated 04.12.2019 registered with Chalisgaon Police Station, Dist. Dhule for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of IPC as well as the further proceedings in R.C.C. No.736 of 2020 pending before the learned Judicial Magistrate First Class, (Court No.6), Dhule, stand quashed and set aside, as against applicant Nos.4 and 5.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm