

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2009 OF 2021

1. Kamalbai w/o Vishwanath Jagtap
2. Sudhir Sahadeo Salunke
3. Vidya w/o Sudhir Salunke
4. Ujwala w/o Nitin Bhosle
5. Ramesh s/o Onkar Rohe
6. Sunanda d/o Onkar Rohe

.. Applicants

Versus

1. The State of Maharashtra
Through Begampura Police
Station, Aurangabad
2. Rupali Vinay Jagtap

.. Respondents

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Mr. K. A. Ingle, Advocate for applicants.
Mr. S. J. Salgare, APP for respondent No.1 - State.
Mr. Y. H. Jadhav, Advocate for respondent No.2 (Appointed)

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

DATE : 24-11-2022

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.382 of 2021 registered with Begampura Police Station, Dist. Aurangabad 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.1287 of 2022 pending before the learned 6th Judicial Magistrate, Aurangabad.

2. Applicant No.1 is the mother-in-law of respondent No.2. Applicant Nos.2, 3 and 4 are the sisters-in-law of respondent No.2. Applicant No.5 is the maternal uncle of the husband of respondent No.2 and applicant No.6 is the maternal aunt of the husband of respondent No.2.

3. Heard learned Advocate Mr. K. A. Ingle for the applicants, learned APP Mr. S. J. Salgare for respondent No.1 - State and learned Advocate Mr. Y. H. Jadhav for respondent No.2 (Appointed).

4. After hearing learned Advocate for the applicants for sometime, when this Court expressed its disinclination to grant any relief in favour of applicant No.1, learned Advocate for the applicants seeks withdrawal of the application in respect of applicant No.1. Accordingly, the application stands disposed of as withdrawn as against applicant No.1. Now, the matter to proceed only for the reliefs claimed by applicant Nos.2 to 6.

5. The informant - respondent No.2 lodged FIR with Begampura Police Station, Dist. Aurangabad on 18.08.2021 against the present

applicants. It is stated that the marriage of the informant was performed with one Vinay Jagtap on 20.05.2013 at Shrirampur as per Hindu Rituals. It is stated that her parents have given one golden ring of 5 gram and golden chain of 1 Tola in the marriage. After the marriage, the informant resided with her husband at Vasant Vihar, Pahadsinghpura, Hanuman Tekdi, Aurangabad with her mother-in-law and father-in-law in joint family. Out of the said wedlock, she has a daughter aged 7. It is further stated that after the marriage, she was treated properly for about two months by her husband and mother-in-law. Thereafter, they started harassing the informant mentally and physically. It is further stated that the sister-in-law and her husband also torture her whenever they came at her matrimonial house. Further, the maternal uncle of the husband of the informant used to say against the informant. It is further stated that she used to tell her parents in respect of torture when she visit at her parents house. On 03.09.2015, the informant was assaulted by her husband, mother-in-law and demanded money from her. Thereafter, her husband gave phone call to her father and asked to take their daughter at their house. Then the father of the informant came to Aurangabad and took her to Shrirampur. It is further stated that on 03.11.2015, the husband of the informant and the applicants have brought all the utensils at Shrirampur in a Tempo and said that they don't want her and they

will not cohabit with her. Therefore, the father of the informant got a shock and since then he is sick. Thereafter, after some days, relatives of the informant and relatives of the husband of the informant sat together and sent informant for cohabitation. It is further stated that on 07.02.2020, again the husband of the informant and her mother-in-law assaulted her on the count that she is not giving money to them. It is further stated that on 02.07.2021, when she got up late, her husband had assaulted her and drove her out of the house. She therefore lodged report with Begampura Police Station.

6. It can be seen from the contents of the FIR as well as the other documents on record that applicant Nos.2 to 6 are not residing with the husband of respondent No.2. Though applicant Nos.5 and 6 are also resident of Aurangabad, they are residing at a different place. Even the informant in FIR states that she was residing with her husband, mother-in-law, father-in-law at her matrimonial home. For day to day quarrels, applicant Nos.2 to 6 cannot be held in any way responsible. The married sisters-in-law would be busy in their own marital obligations and, therefore, it is hard to believe that on day to day basis they would have been in any way instigated the husband of respondent No.2. Even if for the sake of arguments it is accepted that they would have used some

instigating words, the husband cannot be said to be such a person who would be carried away with those instigating words. The allegations against applicant Nos.2 to 6 appear to be omnibus. It has been contended that on 03.09.2015, after the demand was made by the husband and mother-in-law, they had assaulted her and drove her out of the house by calling the father of respondent No.2. Thereupon, she came to reside at her parental house in Shrirampur. Then on 03.11.2015, it is stated that all the accused persons brought the utensils which were given at the time of marriage to respondent No.2 and told that they don't want these utensils and they are not ready to allow her to cohabit with the husband. Even if that incident is taken as it is, it does not say any overt act. Just leaving those utensils in front of the house of respondent No.2's father, they had left. Why immediately no FIR was lodged is a question, which has been left unanswered. Then directly incident dated 07.02.2020 have been stated in which allegations are against the husband and mother-in-law. She again states that on 02.07.2021, when she was at matrimonial home, she got up late and then the husband had assaulted her. In fact when she went back to matrimonial home, who had persuaded her etc. appears to have been suppressed. Therefore, taking into consideration the relationship of applicant Nos.2 to 6 and the omnibus allegations against them, 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 that :-

"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 applicant Nos.2 to 6. 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 applicant Nos.2 to 6. Hence, the following order :-

ORDER

- I) Application stands allowed in respect of applicant Nos.2 to 6.
- II) Application stands disposed of as withdrawn in respect of applicant No.1.
- III) The FIR bearing Crime No.382 of 2021 dated 18.08.2021 registered with Begampura Police Station, Dist. Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code as well as the further proceedings in R.C.C. No.1287 of 2022 pending before the learned 6th Judicial

Magistrate First Class, Aurangabad, stand quashed and set aside, as against applicant Nos.2 to 6.

- IV) Fees of the learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Service Sub Committee, Aurangabad.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm