

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2174 OF 2021

1] Ashok s/o. Valmik Badoge
Age 61 years, Occ. Pensionier.

2] Sunanda w/o. Ashok Badoge,
Age 61 years, Occ. Pensioner,

Both R/o. "Ashoka", Behind Kalantri Bunglow,
Soygaon, Malegaon, Tq. Malegaon,
Dist. Nashik.

3] Swati D/o. Ashok Badoge
@ Swati Umesh Mahale
Age 37 years, Occ. Teacher,
R/o. Chandwad, Tq. Chandwad,
Dist. Nasik.

4] Supriya D/o. Sunil Chandolkar
Age 24 years, Occ. Business,
R/o. B/104, Shree Kalpavruksha Gruh Nirman
Sanstha, New M H B Colony, Opposite Sai Plaza,
Party Hall, Gorai Road, Boriwali West,
Mumbai – 400 092.

.... Applicants
[Ori. Accused]

Versus

.... Respondents

1] The State of Maharashtra,
For Ashti Police Station, Ashti
Tq. Ashti, Dist. Beed.

2] Sunita w/o./ Vijay Palve,
Age 52 years, Occ. Service,
R/o. Murshadpur, Ashti,
Taluka Ashti, Dist. Beed.

[Original respondent No.2 died Hence,

as per order dt. 28.2.2022 mother of
Respondent No.2 is arrayed as R-2]

Advocate for Applicant : Mr. Amol S. Gandhi
APP for Respondent No. 1 : Mr. A.M. Phule

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

DATE : 3rd August, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant Nos. 1 to 4 are praying for quashing and setting aside the FIR No. 212 of 2021 and resultant R.C.C. No. 154 of 2021 registered 498-A, 323, 494, 504, 506 r/w. 34 of IPC, which is pending before the learned Judicial Magistrate First Class, Ashti, Taluka Ashti, District Beed.

FACTS :

2] Before mentioning the disputed facts, which gave rise to filing the present Criminal Application we are herewith referring to the undisputed facts :-

3] That the applicant No.1 and 2 are father in law and mother in law of the original respondent No.2 (informant). The applicant Nos. 1 and 2 are retired as Teacher and are now residing at Malegaon, Dist. Nasik. The original respondent No.2 and son of the present applicant Nos. 1 and 2, namely, Sagar Badoge got married as per the Hindu customs on 8th June, 2013. Out of the said wedlock, they were blessed

with a son on 9th May, 2016. After marriage, for few months, respondent No.2 and her husband Sagar lived happily.

4] The applicants have stated in the criminal application that the applicant Nos. 1, 2 and 3 are the father-in-law, mother-in-law and sister-in-law of the original respondent No.2, respectively. The applicant Nos. 1 and 2 have retired as teachers. The applicant No.3, who is a divorcee, is working as a teacher. The applicant No.4 is not related to the applicants and she has been dragged in the criminal proceeding by the original respondent No.2 on the allegations that she is the second wife of her husband – Sagar Badoge.

5] The applicants have further stated that after marriage of original respondent No.2 with Sagar Badoge; as Sagar Badoge was working in Pune, the couple shifted to Pune and thereafter to Mumbai in the year 2019. A copy of leave and licence agreement dated 14/2/2020 for the period 1st December, 2019 to 30th November, 2020 is also annexed to the criminal application. The said leave and licence agreement is for a flat at Kalyan, Dist. Thane, wherein Sagar Badoge is shown as a Licensee.

6] It is stated in the criminal application that, in the year 2019, more particularly, on 5th June, 2019, the original respondent No.2 was unfortunately detected with “Breast Cancer”. The husband of original respondent No.2 took utmost care and gave her the best possible treatment at Dhule and Mumbai. All such expenses were borne by the husband of original respondent No.2 and his parents, i.e. applicants No. 1 and 2.

7] It is further stated in the criminal application that after some time, there were quarrels between the respondent No.2 and her husband Sagar Badoge. It is further stated in the criminal application that the original respondent No.2 being annoyed, prepared and lodged a false and concocted story before the Ashti Police Station. Pursuant to which, on 8.7.2021, The Ashti Police station lodged FIR bearing FIR No. 0212/2021 under Sections 498A, 323, 494, 504, 506 r/w. 34 of IPC against the husband of original respondent No.2 (Sagar) and all the 4 applicants.

8] The original respondent No.2 in her complaint stated that the applicants have ill-treated her. So also, the original respondent No.2 has stated that her husband Sagar Badoge was having illicit relations with applicant No.4 and he was staying illegally with applicant No.4 at Mumbai. This behaviour of Sagar Badoge and applicant No.4 has caused physical and mental pain to her. The applicants being aggrieved by FIR, filed Criminal Application No. 2174 of 2021. During the pendency of the present criminal application, the original respondent No.2 died due to prolonged illness of cancer and her mother was brought on record as per the order dated 28.2.2022.

9] Subsequently, charge sheet bearing No. 75 of 2021 dated 21.10.2021 was filed before the JMFC, Ashti and the same has further culminated in RCC No. 154 of 2021.

SUBMISSIONS :-

10] Heard Mr. Amol S. Gandhi for the applicant and Mr. A.M. Phule, APP for the respondent State.

11] The learned counsel for the applicants submitted that the original respondent No.2 and her husband Sagar (original accused No.1) were staying separately at Pune and thereafter at Mumbai. As the health of the original respondent No.2 deteriorated due to cancer, all the requisite care; both physical and financial, was taken by Sagar Bodge and by applicant Nos. 1 and 2. However, even then, respondent No.2 lodged an FIR under the various sections against all the applicants and her husband Sagar Bodge. On the basis of the allegations made in the criminal complaint no cognizable offence can be said to be made out.

12] Learned APP, Mr. A.M. Phule, on the other hand, submitted that specific allegations have been made against all the applicants and hence, there is no question of quashing the RCC No. 154 of 2021.

13] After hearing the parties for some time and after showing dis-inclination to entertain the application in respect of applicant Nos. 1 to 3 Mr. Amol Gandhi, Advocate appearing for the applicants sought leave to withdraw the application as far as applicant Nos. 1 to 3 are concerned, who are father in law, mother in law and sister in law of original respondent No.2, respectively. Hence, criminal application, so far as applicant Nos. 1 to 3 are concerned, stands disposed of as withdrawn.

ANALYSIS :-

14] The application is considered now only as regards the Applicant No.4 who is alleged to be the second wife of accused No.1 Sagar Badoge and who is residing at Mumbai.

15] Mr. Gandhi, learned counsel for the applicant submitted that applicant No.4 is not related to the applicant Nos. 1 to 3 and she does not reside in the Taluka and District where the applicant Nos. 1 and 2 or the original respondent No.2 were residing. It is alleged in the FIR lodged by the original respondent No.2 that the applicant No.4 is the second wife of original accused (Sagar). The counsel for applicants pointed out that perusal of the criminal complaint filed by original respondent No.2 (wife) which is converted into RCC No. 154 of 2022, there are no specific allegations against the applicant No.4. The criminal complaint is lodged only with an intention to pressurize the applicant Nos. 1 to 3 and original accused No.1. The learned counsel, therefore, prayed that the application be quashed and set aside against the applicant No.4.

16] Learned counsel for the applicant submitted that the original respondent No.2 has alleged that applicant No.4 is the second wife of Sagar Badole (original accused No.1). In the criminal complaint, the only allegation against applicant No.4, which is translated, reads thus :-

“My husband is staying with accused No.5 (present applicant No.4) in Mumbai, due to which I suffer physical and mental pain. I have doubt that my husband has married for the second time. When I was in Mumbai, accused No.5 came to our house and abused and slapped me and also threatened to kill me.”

17] Admittedly the applicant No.4 stays in a different city than that of original respondent No.2. At this juncture, it is necessary to consider the relevant provisions of Section 498-A of I.P.C., which reads

thus :-

“[498A. 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.]

Therefore, the section contemplates that there has to be “cruelty” committed to a woman by her husband or the relatives of the husband, only then the offence stands proved.

In the present case, admittedly, the applicant No.4 is not related to the applicant Nos. 1 to 3. The statements made in the FIR are general and do not amount to an offence either under Section 498-A, or under Sections 323, 494, 504 and 506 r/w. 34 of IPC.

18] The learned counsel for applicant has placed reliance on 3 judgments. On the powers of this Court to entertain a petition under Section 482 of Cr.PC. , the counsel for applicants relied upon the judgment of the Apex Court in the matter of State of Haryana Vs. Bhajanlal 1992 AIR (SC) 604 and Geeta Mehrotra Vs. State of Uttar Pradesh 2013 AIR (SC) 181. So also, the learned counsel for

the applicants relied upon two judgments of the Division Bench of this Court passed in Criminal Application No. 3724 of 2019 and Criminal Writ Petition No. 479 of 2019. In both these judgments, which arose from a proceeding under Section 498-A, this Court was of the view that criminal proceeding filed against the aged parents should be quashed and set aside at the initial stage to avoid abuse of process of law.

19] We have, recently in Criminal Application No. 2230 of 2020 (Narayan S/o. Eknath Devkar and others Vs. State of Maharashtra and others) decided on 25.7.2022; after considering the various judgments in para. Nos. 22 to 24, held in para. No. 27 as under :-

“Thus, we are of the considered view that the respondent No.2 only with an intention to harass the applicant No.1, with ulterior motive, has filed the complaint also against far off relatives i.e. respondent Nos. 4 to 15. Continuation of prosecution against Applicant Nos. 4 to 15, who are far off relatives of husband and who stay separately in their own house, in our opinion, would amount to abuse of process of law.”

19] Taking into consideration the ratio laid down in the cases of Gian Singh, Bhajanlal and Geeta Mehrotra(supra), we are of the considered view that so far as applicant No.4 is concerned, there are no specific allegations against her and only with a view to harass the husband; the applicant No.4 (who is not a relative) is arrayed as accused No.5 in the FIR. 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 the criminal proceeding as against applicant No.4.

ORDER

- i. The application in so far as applicants Nos. 1 to 3 are concerned, stands disposed of as withdrawn.
- ii. The application, in so far as applicant No.4 – Supriya Sunil Chandolkar is concerned, is allowed in terms of prayer clauses (D).
- iii. Criminal Application stands disposed of, accordingly.

[RAJESH S. PATIL]
JUDGE

grt/-

[SMT. VIBHA KANKANWADI]
JUDGE