

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3839 OF 2019

1. Ashok Sonyabapu Darade
2. Asraji Dattatraya Avhad
3. Swati Bhagwat Karkhile
4. Bhagwat Sambhaji Karkhile
5. Suvarna Vitthal Golhar
6. Vitthal Pralhad Golhar
7. Varha Anant Andhale

.. Applicants

Versus

1. The State of Maharashtra
Through P.I.,
Tophkhana Police Station, Ahmednagar
2. Shilpa Dnyaneshwar Avhad

.. Respondents

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Ms. Sakshi Kale h/f Mr. D. M. Pingale, Advocate for applicants.

Mr. S. J. Salgare, APP for respondent No.1 - State.

Mr. Z. H. Farooqui h/f Mr. N. V. Gaware, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 22-11-2022

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.1474 of 2019 registered with Tophkhana

Police Station, Dist. Ahmednagar for the offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") as well as the charge-sheet bearing R.C.C. No.374 of 2020 pending before the learned Chief Judicial Magistrate, Ahmednagar.

2. Applicant No.1 is the maternal cousin brother of husband of respondent No.2. Applicant No.2 is the father-in-law of respondent No.2. Applicant Nos.3 and 5 are sisters-in-law of respondent No.2. Applicant Nos.4 and 6 are the husbands of sister-in-law of respondent No.2 and applicant No.7 is also the sister-in-law of respondent No.2.

3. Heard learned Advocate Ms. Sakshi Kale holding for learned Advocate Mr. D. M. Pingale for the applicants, learned APP Mr. S. J. Salgare for respondent No.1 and learned Advocate Mr. Z. H. Farooqui holding for learned Advocate Mr. N. V. Gaware for respondent No.2.

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.2, learned Advocate for the applicants seeks withdrawal of the application in respect of applicant No.2. Accordingly, the application stands disposed of as

withdrawn as against applicant No.2. Now, the matter to proceed only for the reliefs claimed by applicant Nos.1 and 3 to 7.

5. Perusal of the FIR as well as charge-sheet would show that the father of the informant had given amount of Rs.2,00,000/- by R.T.G.S. at the time of marriage i.e. on 12.05.2018 and thereafter, she says that she was given ornaments worth Rs.1,50,000/- at the time of marriage. She has stated that after the marriage, she resided at Majle Chinchole, Taluka and District Ahmednagar for some days, which is the matrimonial home and then they went to Mumbai to reside with her husband at Andheri Marol, Mumbai. Her husband is serving in Mantralaya, Mumbai as Assistant Section Officer. According to her, her husband started demanding amount of Rs.10,00,000/- for purchase of house at Mumbai. It is to be noted that the informant and her husband were the only persons residing at Mumbai and, therefore, whatever the acts of harassment at Mumbai are concerned, they will have to be attributed to the husband only. It has been further stated that after three and half months, the husband had forced her to leave the job and then from Andheri, they shifted to Kopar Khairane. She then states that at the time of Diwali, a year prior to the FIR, the applicants had come to Majle Chincholi, where she had gone along with her husband. According to her, all the applicants started saying as to why she is

not bringing money from her father. When she told that her father has no money, then all of them started saying to the husband that the wife is not listening to him and, therefore, he should see that she listens to him. Then her husband had assaulted her in presence of all. Thus, she is attributing instigation to the husband for harassment. It is then also stated that applicant No.1 had gone to Majle Chincholi on the next day and he had also abused her. That means applicant Nos.3 to 7 had allegedly instigated on one day and applicant No.1 on the next day. It cannot then attract common intention amongst them. It is also then stated that some insulting treatment was given to her by applicant No.1. The entire FIR as well as the charges-sheet would show that such incident is stated to have taken place on one occasion. Whether it can be stretched to the extent that it would have led to cruelty, is a question. When all the relatives are involved, it gives a different picture and it can be said that all have been roped with some *mala fide* intention. Respondent No.2 has also stated that she had ran away from the matrimonial home, as she could not bear the ill-treatment. Still, she is not explaining as to why she do not go to the police immediately. She then states that she stayed with parents for about three and half months and then she was left to her husband on 05.02.2019. Further, the allegations are against the husband and the present applicants are not in picture at that time. Therefore,

those allegations cannot be said to be attracting the ingredients of offence under Section 498-A of IPC.

6. Learned Advocate appearing for the applicants has relied 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."

7. 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 applicants. 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.1, 3 to 7. Hence, the following order :-

ORDER

- I) Application stands allowed in respect of applicant Nos.1, 3 to 7.
- II) Application stands disposed of as withdrawn in respect of applicant No.2.
- III) The FIR bearing Crime No.1474 of 2019 dated 28.10.2019 registered with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 498-A, 406, 323, 504, 506 read with Section 34 of Indian Penal Code as well as the further proceedings in R.C.C.

No.374 of 2020 pending before the learned Chief Judicial Magistrate, Ahmednagar, stands quashed and set aside, as against applicant Nos.1 and 3 to 7.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm