

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5067 OF 2019**

Shafi Liyakat Kazi & Ors. .. Petitioners

v/s.

The State of Maharashtra & Anr. .. Respondents

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Mr. Feroz A. Shaikh, for the Petitioners.

Mr. J.P. Yagnik, APP, for State.

Mr. A.A. Maniyar, i/b. M.G. Ansari, for Respondent No.2.

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CORAM: NITIN JAMDAR &

N.R. BORKAR, JJ.

DATE : 15 JULY 2022.

P.C:-

Heard the learned Counsel for the parties.

2. By this petition, the Petitioners have sought to quash the FIR No.164 of 2019 dated 4 April 2019 registered at Parksite Police Station, Vikhroli and proceeding taken further thereto. Petitioner No.1 was the husband of Respondent No.2. Petitioner No.2 is the mother-in-law, Petitioner No.3 is the father-in-law, Petitioner No.4 is the brother-in-law of Respondent No.2. Petitioner No.5 is the sister-in-

law and Petitioner No.6 is the wife of brother-in-law, i.e. Petitioner No.4.

3. Respondent No.2 filed the FIR stating that she was married with Petitioner No.1 in the year 2010 and she was staying with Petitioner No.1 and her in-laws. Her brother-in-law was working in Dubai and also her sister-in-law. It was alleged that though these in-laws were staying at Dubai, there was a dispute over property and they instigated the husband of Respondent No.2 against her. Thereafter, the mother-in-law sent her to her maternal house. When she had gone to her maternal house due to illness, she was admitted. The expenses were borne by her parents and when it was asked to pay the amount of medical expenses, Respondent No.2 was directed to get the same from her parents. Even after delivering a child, when the expenses were Rs.1 lakh, they were not borne by her in-laws and husband but directed to be taken from her parents. It was stated that when Respondent No.2 had gone for delivering the child to her parents, gold ornaments were taken from her and never returned. It was stated that her husband sent three notices for divorce and assumed that he was divorced. On these allegations of mis-appropriation of the property, demands of dowry and mental cruelty, the FIR was lodged under Section 498, 406 read with Section 34.

4. The learned Counsel for the Petitioners submitted that the

divorce has taken place between the parties and settlement is already done. It was contended that the FIR does not disclose any ingredients of Section 498A and Section 406 and the entire family is needlessly roped in. The Petitioners sought to contend that the proceedings are nothing but abuse of process of law, as no ingredients of Section 498A are made out. The learned Counsel relied upon the decision of the Supreme Court in the case of *Neelu Chopra and Anr. vs. Bharti*¹ and decision of Division Bench of this Court in the case of *Kamlesh Ghanshyam Lohia & Ors. vs. The State of Maharashtra & Ors.*². The learned Counsel for the Respondents submitted that the divorce has taken place between the parties from 24 March 2019 and the allegations in the FIR are for the period prior to the divorce. He submitted that ingredients of both Section 498A and Section 406 of the Indian Penal Code are made out.

5. It is a settled position of law that quashing an FIR in respect of cognizable offence, is not to be resorted to including that of Section 498A and Section 406 of the IPC in a routine manner but in exceptional cases. It is not permissible to hold a mini trial to render findings on evidence while quashing the FIR but it has to be seen whether FIR as it is discloses any offence.

6. In the decision of *Neelu Chopra* rendered by the Hon'ble

1 Criminal Appeal No. 949 of 2003 dated 7 October 2009.

2 Criminal Writ Petition 3540 of 2019 dated 23 August 2019.

Supreme Court, the Supreme Court analysed the complaint and found that the allegations pertaining to Section 406 of Indian Penal Code were not against the appellant before the Supreme Court. As regards allegations under Section 498A, the Supreme Court found that the complaint was bereft of any particulars. In the case of *Manju Ram Kalita vs. State of Assam*³, the Supreme Court analyses the purport and ambit of Section 498 of the Indian Penal Code. However, the case arose before the Supreme Court on appeal from conviction after full-fledged trial. In the decision of the Division Bench in the case of *Kamlesh Lohia*, the Division Bench found that the dispute was between husband and wife and the other relatives were needlessly roped in. The Court also found from the FIR itself that other relatives were staying separately and the allegations of cruelty and harassment were vague.

7. In the present case, a common petition is filed on behalf of all those who have been named in the FIR. The FIR though states that Petitioner Nos. 4, 5 and 6 were staying in Dubai, they were instigating the Respondent's husband through regular phone calls and it is because of this instigation, Respondent No.2 was harassed by Petitioner No.1, her husband, and Petitioner Nos. 2 and 3 – her in-laws. There is reference of travelling between Mumbai and Dubai. It is stated that resultantly Respondent No.2 was forced to take financial

3 Criminal Appeal No.299 of 2003 dated 29 May 2009.

assistance from her parents for medical expenses and she was told to bring the said money from her parents. FIR narrates physical and mental cruelty. As regards the ornaments, there are specific details given in the FIR giving value thereof and particulars. It has been asserted in the FIR that the bangles, which were given to Petitioner Nos. 2 and 3 for entrustment, were not returned. Though no date is given, the event of entrustment occurred when Respondent No.2 went for delivering a child and, therefore, these details had available.

8. By reading of the FIR it cannot be said that ingredients of Section 498A are absent. No absolute position of law is shown that if the relatives do not stay in the same house, or in the proximity, Section 498A of the Code is not attracted. This FIR is not a case of a vague general statement of only naming all relatives. The FIR assigns specific role to each of the Petitioners and how their action indirectly and collectively reflected mental cruelty. In this case, there are specific assertions that cruelty was meted out even by Petitioner Nos. 4, 5 and 6 by instigating the other Petitioners to meet out cruelty to Respondent No.2 but from time to time calling them on telephone. FIR, as is held in various decisions, is not an encyclopedia. We, therefore, find that this cannot be considered as an exceptional case for quashing the FIR. In light of the above discussion, these aspects will have to be considered at the time of trial, or if the Petitioners apply for discharge.

9. No case is made out for exercise of the extra ordinary jurisdiction. The writ petition is rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)