

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.4473 OF 2017

1. Mohammad Rizwan Memon,
Age 35 years, Occ: Business,
Residing at :803, Mariam Manjil,
Behind Pandawa Chapple, Aquem
Margoa, Salcete, Goa.

2. Nida Riazwan Memon,
Age 32 Years, Occupation :
Home-maker, Residing at:803,
Mariam Manjil, Behind Pandawa
Chapple, Aquem Margoa,
Salcete, Goa.

3. Nausheen Hasan Memon,
Age 36 years, Occupation:
Home-maker, Residing At:
Door No.91, 4th Main, Subhash
Nagar, Mysore, Karnataka.

... Petitioners.

Versus

1. State of Maharashtra
(Through Khadak Police
Station being CR No.33/2016)

2. Afreen Faizan Memon
Residing at 94 Shankarseth Road,
Apna Ghar CHS, Pune 411042.

... Respondents.

Mr Ashok P. Mundargi, Senior Advocate i/b Mr Tapan Thatte, for the Petitioners.

Mrs P.P. Shinde, APP for the State.

Mr. C.G. Gavnekar a/w Mr. Ashutosh Gavnekar and Mr Shreyas S. Adhyanthaya Respondent No.2.

...

**CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.**

DATE : 22 NOVEMBER 2022.

JUDGMENT (Per R. N. Laddha, J.)

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. By this writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the Petitioners, who are relatives of the husband of the married woman-Respondent No.2, have prayed for, *inter alia*, quashing the prosecution initiated on the strength of the First Information Report No.33 of 2016 registered at Khadak Police Station, Pune for the offences punishable under Sections 313, 406, 325, 498-A, 323, 504, 506 120-B read with Section 34 of the Indian Penal Code.

4. It revealed from the record that the marriage of Afreen-Respondent No.2 (hereinafter referred to as "the first informant") was solemnised on 24.10.2008 at Pune, with Mohd.Faizan Razzak Memon. After marriage, the first informant came to reside in Margao, Goa. They were blessed with three children.

5. Petitioner No.1-Mohd. Rizwan is the brother of Mohd. Faizan-husband of Respondent No.2. Petitioner No.2 Nida is the wife of Mohd. Rizwan-Petitioner No.1, and Petitioner No.3-Nausheen is the sister of Mohd.Faizan and Petitioner No.1 Mohd. Rizwan.

6. Further, it revealed from the record that the first informant had lodged the FIR on 30.1.2016 with Khadak Police Station, Pune, against the accused persons. It is alleged in the FIR that all the accused, including the Petitioners, ill-treated and harassed her. It is alleged that her husband even used to subject her to severe beating on several occasions. It is alleged that her husband had caused her miscarriage without her consent. As alleged by the first informant, all the accused even raised illegal demands of dowry, and upon her failure to meet that demand, she was harassed.

7. On completion of the investigation, a charge sheet was filed against the accused persons, including the present petitioners, being Sessions Case No.368 of 2016, pending

before the Additional Sessions Judge at Pune.

8. Mr Ashok Mundargi, learned Senior Counsel appearing on behalf of the Petitioners, took us through the F.I.R. as also the statement of the witnesses. It is submitted that the marriage had taken place way back in the year 2008, while the impugned FIR was lodged in the year 2016, i.e. after more than seven years of the marriage. It is submitted that no allegations whatsoever have been made against the Petitioners by the first informant. The consequential investigation, too, does not impute any criminal act to the Petitioners.

9. It is submitted that based on the general and omnibus allegations, the petitioners were roped in the crime. It is submitted that no specific instances of the involvement of the Petitioners are found either in the First Information Report or in the statement of the witnesses. It is submitted that even if the allegations in the FIR are taken as gospel truth, no offence can be said to have been made against the Petitioners to warrant their prosecution.

10. It is submitted that from the overall nature of the matter, it is evident that the Petitioners being close relatives of the husband of the first informant have been implicated only to satiate the victim's ego and wreak vengeance against them. It is submitted that besides general and omnibus allegations, the FIR and the statements of the witnesses are

vague and silent as regards the allegations against the Petitioners.

11. It is submitted that in the present case, the police report nowhere mentions any offence under the Dowry Prohibition Act, 1961. It is submitted that Section 7 of the Dowry Prohibition Act, 1961, *inter alia* forbids the Court from taking cognizance of any offence under the Act unless it receives a police report.

12. It is submitted that by no stretch of the imagination, it can be stated that the allegations against the Petitioners had the propensity to drive the first informant to commit suicide or cause harm to herself.

13. Disagreeing with the aforestated contentions of the learned Senior Counsel for the Petitioners, Mr C.G. Gavnekar, learned Counsel for Respondent No.2 and Mrs P.P. Shinde, the learned Additional Public Prosecutor, submitted that the allegations are not general, that they are very specific and that the first informant has not lodged FIR against all the Petitioners with some hidden motive. According to them, the instant case cannot be said to be a fit case to exercise extraordinary jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973.

14. Further, they submitted that the petition for

quashing of FIR is untenable since the proceedings have gone past the stage of FIR and have resulted in a charge sheet.

15. We have given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

16. By a catena of decisions of the Hon'ble Supreme Court, it is clarified that the ordinary quarrels, differences of views, and wear and tear of life, which every home has witnessed, do not come within the expression '*cruelty*' in Section 498-A. To fetch a person within the tentacles of Section 498-A, the married woman must have been subjected to cruelty which would drive the woman to commit suicide or cause grave injury or danger to life or harassment to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not come within the purview of Section 498-A, IPC.

17. It is settled position of law that while exercising the powers under Section 482 of the Code of Criminal Procedure, 1973, the allegations made by the witnesses against the accused persons are to be scrutinised on their face value, taking them to be true and it is not permissible for the Court to go into the aspect of reliability or credibility or trustworthiness of the witnesses.

18. In **Kahkashan Kausar @ Sonam Vs. The State of Bihar and others**,¹ it was held that -

"The above mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A 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."

19. Similarly, in **K. Subbarao Vs. The State of Telangana**,² the Hon'ble Supreme Court observed that,

"The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

20. In **Nilu Chopra & Anr. Vs. Bharati**,³ the Hon'ble Supreme Court held that,

1 2022 SCC OnLine SC 162

2 2018(14)SCC 452.

3 (2009)10 SCC 184

"In order to lodge a proper complaint, mere mention of the Sections and the language of those sections is not the be all and end all the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence".

21. Bearing in mind the principles of law, let us now scrutinise and examine the First Information Report and witnesses' statements. The first informant alleged that her husband used to abuse her with filthy language. She alleged that her husband used to subject her to severe beating on several occasions. It is alleged that her husband caused her miscarriage without her consent. These allegations were followed by general allegations that she was compelled to do household work, the accused used to pass taunts, made her demand money from her parents and had ill-treatment and harassment at the hands of the accused.

22. If we take the allegations in the FIR as it is, qua the Petitioners, the following three allegations can be attributed to the Petitioners. i) that the petitioners, with all other accused, compelled the first informant to do household work; ii) that the Petitioners, with all other accused, ill-treated the first informant; iii) that the Petitioners, with all other accused, used to pass taunts; and iv) that the Petitioners, with all other accused, made the first informant for demanding money from her parents.

23. As noted above, the crucial aspect in this matter is whether allegations against the Petitioners are like general omnibus allegations. Upon careful perusal of the FIR and also the statements of the witnesses, we find that the allegations against the Petitioners with all other accused persons are that they compelled the first informant to do household work, used to pass taunts, used to ill-treat and harass the first informant and were asking to bring money from her father.

24. On the anvil of the above-noted legal position, when we weigh these allegations, it becomes apparent that these allegations against the Petitioners are general omnibus. The charge sheet did not show which petitioner had committed what offence and their exact role in the commission of offence/s. No specific and distinct allegations have been made against any of the Petitioners. None of the Petitioners has been attributed any specific role in the furtherance of the offence. Based on such allegations, by no stretch of the imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or cause harm to herself.

25. As regards the contention of the learned Counsel for Respondent No.2 and learned APP that since a charge sheet has been filed, the Petitioners have an alternate remedy before the trial Court and that this Court may not exercise its jurisdiction under Section 482 of the Criminal

Procedure, 1973, is concerned, it is a settled position of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court.

26. In **Anand Kumar Mohatta Vs. State (Government of NCT of Delhi)**,⁴ it was held in para 17 that-

"There is nothing in words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialised into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any Court."

27. In view of this, even if the alternative remedy is available to the Petitioners, they are entitled to invoke the powers of this Court under Section 482 of the Cr.P.C. 1973.

⁴ (2019)11 SCC 706

28. Given the above, we are of the considered view that the continuation of the prosecution against the Petitioners would be an abuse of the process of law and compelling them to undergo the trial would cause grave injustice. Considering these facts and circumstances, the petition deserves to be allowed. Hence, the present criminal writ petition is allowed in terms of prayer clauses (A) and (B), which read thus:

"(A) The FIR at C.R.No.33/2016 dated 30th of January 2016 registered at the Khadak Police Station along with the consequential charge sheet filed before the Chief Judicial Magistrate at Pune be quashed and set aside, as regards the Petitioners.

(B) The Sessions Case No.368/2017 pending before the Additional Sessions Judge at Pune be quashed, as regards the Petitioners."

29. It is made clear that we have not examined the merits of the prosecution versus the rest of the accused, nor shall the observations be pressed into service in any proceedings between the parties.

30. All concerned are to act on the authenticated copy of this order.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.