

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.621/2022

1. Kishor s/o Kamlakar Pohanekar,
aged about 45 years, Occ. Service.
2. Smt. Padmabai wd/o Kamlakar Pohanekar,
aged about 72 years, Occ. Nil.
3. Dheeraj s/o Kamlakar Pohanekar,
aged about 41 years, Occ. Private.
All r/o Galli No.5, Near Hanuman Mandir,
Kiran Nagar No.1, Rukhmini Nagar, Amravati.
4. Archana Mahendra Bhawasar,
aged about 47 years, Occ. Housewife,
r/o Flt No. 9, Sangam Apartment,
Near Sangmeshwar, Saswad, Pune.
5. Sau. Yogita w/o Anil Chavan,
aged about 43 years, Occ. Housewife,
r/o House No.116, Ward No.6,
Housing Board Colony, Sant Vinoba
Bhawe Nagar, Khandwa, Tq. Dist.
Khandwa (MP)

.....APPLICANTS

...V E R S U S...

1. State of Maharashtra through
Police Station Officer, P.S.
Dabki Road, Akola, Tq. Dsit. Akola.
2. Sau. Shubhangini w/o Kishor Pohanekar,
aged about 34 years, Occ. Housewife,
r/o c/o Kirshnasa Harisa Jungade, Gayatri
Nagar, Balapur Road, Old Akola City,
Dabki Roadk, Akola, Tq. Dist. Akola.

...NON APPLICANTS

 Mr. R. R. Prajapati, Advocate for applicants.
 Mr. T. A. Mirza, A.P.P. for non applicant no.1-State.
 Mr. A. B. Patil, Advocate for non applicant no.2

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.

DATED :- 30.09.2022

ORAL JUDGMENT (Per:Anil L. Pansare, J.)

1. At the outset, learned counsel for the applicants seeks permission to withdraw the present application qua applicant nos. 1 to 3.

Accordingly, the application is dismissed as withdrawn for applicant nos.1 to 3.

2. Heard learned counsel for applicant nos. 4 and 5. **Admit.** Heard finally by consent of learned counsel for the parties.

3. Applicant nos. 4 and 5 are real sisters of applicant no.1 who married with non applicant no.2 on 29.05.2010. Non applicant no.2 on 26.03.2020 has lodged FIR against the applicants, vide Crime No.146/2022 under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. The applicants are seeking to quash the FIR on the ground that even if the allegations are taken at its face value, no offence is made out against the applicant nos. 4 and 5.

4. Section 498A of the IPC is attracted in two contingencies; the first being where the husband or relative of the

husband of a woman, subjects such woman to cruelty. The cruelty has been explained so as to mean any willful 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. The second being where the husband or the relatives subject such a woman to harassment whether 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.

5. The allegations in the FIR against the husband and in-laws are that initially non applicant no.1 was treated well but after six months they started harassing her. They used to abuse her on the count that she should get Rs.2,00,000/- from her parents. She could not meet the demand and therefore she was driven out of the house. She was warned that she will be allowed to enter the house only if she gets Rs.2,00,000/- from her parents. So far as the allegations against the applicant nos. 4 and 5 are concerned, the only allegation made is that they were residing at Khandwa, Madhya Pradesh but used to call the in-laws of non applicant no.2 and used to instigate them to harass the non applicant no.2.

6. Mr. Prajapati, learned counsel for the applicant nos. 4 and 5 is correct in contending that the allegations, if tested on the touchstone of ingredients of offence punishable under Section 498-A IPC, by no stretch of imagination could it be said to be subjecting non applicant no.1 to cruelty or harassment as defined under Section 498-A. In other words, even if the contents of the FIR are taken on its face value, no offence is made out against the present applicants. What is alleged against applicant nos. 4 and 5 is that they used to instigate the in-laws through phone call. This allegation cannot be said to be a cruelty or harassment as defined under Section 498-A of the IPC. In the circumstances, continuation of the proceedings will be an abuse of process of law. Thus, we are of the view that this is a fit case wherein the FIR should be quashed. Accordingly we pass the following order.

ORDER

- (i) The application is allowed.
- (ii) First Information Report vide Crime No.146/2022 dated 26.03.2022 registered with Police Station, Dabki Road, Akola for an offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the IPC is quashed and set aside qua applicant no.4-Archana w/o Mahendra Bhawasar and applicant no.5-Sau. Yogita w/o Anil Chavan.

(Anil L. Pansare, J.)

kahale

(Rohit B. Deo, J.)
Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 10.10.2022
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