

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

CRIMINAL APPLICATION [APL] No. 676/2019.

1.Satish Vakil Bagade,
Aged about 42 years, Occupation
Labour;

2.Vakil Ganpat Bagade,
Aged about 68 years, Occupation
Labour;

3.Sau.Panchfula Vakil Bagade,
Aged about 62 years, Occupation
Household;

4.Deepa Milind Bagade,
Aged about 27 years, Occupation
Household;

resident of Bhimnagar, Borgaon
Manju, Tahsil and District Akola.

...

APPLICANTS.

VERSUS

1.The State of Maharashtra,
Police Station Officer,
Borgaon Manju, Tq. Murtizapur,
District Akola.

2.Sau. Sujata Satish Bagade,
Aged about 33 years, Occupation
Household, resident of C/o.

Pandurang Pundlik Gavai,
Bhim Nagar, Borgaon Manju,
Tq. and District Akola.

... **NON-APPLICANTS.**

Mr. U.J. Deshpande, Advocate for Applicants.
Ms. M.S. Deshmukh, A.P.P. for Non-applicant No.1.
Mr.M.R. Deshmukh, Advocate h/f. Mr.S.K. Wankhede,
Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI, J.

DATE : JULY 19, 2022.

ORAL JUDGMENT :

Heard finally by consent of the learned Counsel for the parties at the stage of admission. **Admit.**

2. Applicants have invoked inherent powers of this Court for setting aside the order dated 06.11.2017 passed by the Judicial Magistrate First Class, Akola in Regular Criminal Case No.659/2014 and consequential order dated 03.04.2019 passed by the Additional Sessions Judge-3, Akola in Criminal Revision No.34/2018, confirming the rejection of discharge as regards applicants.

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3. At the instance of a report dated 23.05.2014, lodged by the non-applicant no.2 lady, a crime was registered with Borgaon Manju Police Station vide crime No.54/2014 for the offence punishable under Sections 498-A, 506 read with Section 34 of the Indian Penal Code. Initially crime was registered against in all 9 accused for the aforesaid offences. After completion of the investigation, charge sheet has been filed. All the accused have applied for discharge, however, the learned Magistrate has declined to discharge them. Being aggrieved by the said order all the accused have filed Criminal Revision seeking discharge, in which the Sessions Judge has discharged accused nos. 5 to 9, however, declined to discharge accused nos. 1 to 4, who are applicants in the present application.

4. The learned Counsel for applicants would submit that perusal of entire police papers does not disclose to constitute an offence punishable under Section 498-A of the Indian Penal Code. It is submitted that the allegations leveled in the police report are quite

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vague from which an inference about matrimonial cruelty cannot be drawn. The learned Magistrate, as well as the learned Sessions Judge felt in error in holding that the prosecution has made out a case to proceed further as regards the present applicants are concerned. It is argued that the allegations in the police papers does not disclose that there was a demand relating to dowry, nor the allegations are sufficient to constitute the offence of cruelty. In support of said contention reliance has been placed on the decisions of the Supreme Court in cases of **(2002) 5 SCC 177 – Girdhar Shankar Tawade .vrs. State of Maharashtra** and **(2009) 10 SCC 604 – Bhaskarlal Sharma and another .vrs. Monica.**

5. On the other hand the learned A.P.P. has supported the impugned order by stating that it is a matter of trial to find out whether the allegations are sufficient to convict the accused. According to the learned A.P.P., the police report and various statements are sufficient to hold that the trial can be proceeded against applicants.

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6. Briefly stated, non-applicant no.2 [informant], stated that she got married with applicant no.1 on 20.11.1995, and has two issues from the said wedlock. In the year 2010, her son as well as brother-in-law met with an accidental death. Thereafter, applicant no.1 i.e. her husband has developed illicit relations with applicant no.4, who is widow of brother of applicant no.1. It is her contention that all the time applicants have pressurized her to give divorce, as they were intending to perform marriage of applicant no.1 with applicant no.4. She stated that on 14.03.2021, applicant no.1/husband tried to smother her as well as made effort to kill her by way of hanging. After said incident, she left her matrimonial house and started to reside with her parents. It is stated that thereafter also applicants used to harass her at the instance of pressurizing her for divorce.

7. Contextually statement of parents, brother and sister of informant were gone into. None of the statement speaks about the matrimonial harassment of such nature which could be termed as cruelty within the meaning of Section 498-A of the Code. The

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informant in her supplementary statement has leveled general allegations like the police report. The report specially states the role of applicant no.1 / husband, that he was harassing her and on specific date tried to kill her. Thus, at this juncture it cannot be said that there is no material to proceed against applicant no.1 / husband.

8. As regards other applicants, the entire police papers are on the line that they have harassed the informant for giving divorce. The police report makes a general grievance against all of them without specifying any incidence. In order to constitute an offence of cruelty, the conduct of accused must be willful of such a nature that as is likely to drive the woman to commit suicide or to cause injury to her life. Moreover, there shall be a reasonable nexus with the alleged occurrence with the report. Mere general statement regarding wear and tear in the family would not suffice the purpose.

9. The law is fairly well settled that at the time of framing charge there must be sufficient material to proceed further. The

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entire police papers are based on vague allegations against rest of the applicants. Continuation of such prosecution against them would be an abuse of the process of law. Though at this stage, deeper evaluation of material is not necessary, however, the Court can sift the material to find out the sufficiency for proceedings with the case. Since there are vague allegations against rest of the applicants, it is not in the interest of justice to continue the trial against them. In the result, applicant nos. 2 to 4 have made out a case for discharge.

10. In view of above, Criminal Application is partly allowed to the extent of applicant nos. 2 to 4. The impugned order dated 06.11.2017 passed by the Magistrate and order of Sessions Judge dated 03.04.2019, is hereby quashed and set aside to the extent of applicant nos. 2 to 4 only, and they are discharged. The trial shall proceed against applicant no.1 Satish Vakil Bagade.

11. Criminal Writ Petition stands disposed of in above terms.

JUDGE