

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

CRIMINAL APPLICATION (APL) NO. 1254/2022

1. Prabha Vijay Dhoke,
aged 57 years, Occ. Household,
2. Karan Rahul Dhoke,
aged 28 years, Occ. Service,
Both R/o Rama Saur, Walgaon
Tq. & Dist. Amravati.
3. Jayashree Rohit Tadiwale,
aged 34 years, Occ. Household,
R/o Ulhasnagar, Dist. Thane,
Mumbai, New Mumbai.
4. Pinki @ Priya Pradip Shirke,
Aged 32 years, Occ. Household,
5. Pradip Maroti Shirke,
aged 41 years, Occ. Service,

No. 4 & 5 R/o Bhivandi, Thane,
Mumbai, New Mumbai.

..... APPLICANT(S)

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station Walgaon,
Tq. & Dist. Amravati.
2. Mrs. Sadhana Dharam Dhoke,
aged 30 years, Occ. Household,
R/o C/o Ambadas Wankhede,
Behind Buddha Vihar, Savarkhed,
Tq. Morshi, Dist. Amravati.

.... NON-APPLICANT(S)

Mr. R.G. Kavimandan, Advocate for the applicants
Mr. I.J. Damale, APP for non-applicant no. 1
Smt. S.W. Deshpande, Advocate for non-applicant no. 2

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, J.J.**

DATED : 08/12/2022

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

Rule. Rule made returnable forthwith. Heard finally by consent.

2. We have gone through the First Information Report (FIR) filed by non-applicant no. 2 against the applicants. Our prima facie impression is that the allegations made in the FIR do prima facie make out the offences registered against each of the applicants. The offence which is prima facie made out against each of the applicants is of cruelty punishable under Section 498-A of the Indian Penal Code, 1860 (for short the “IPC”). As regards the other offences, like offences punishable under Sections 323, 504 and 506 of the IPC, there might be some or the other deficiencies regarding their being made out against each of the applicants. But, when the main offence of cruelty is prima facie made out against each of the applicants, it would not be necessary for this Court to go into the aspect as to whether or not the other offences which are the offences under Sections 323, 504 and 506 of the IPC are also

prima facie made out. That would be something which would have to be considered by the trial Court at the time of framing of charge and at that time, the applicants can make an attempt to convince the trial Court that not only the other offences but, even the offence punishable under Section 498-A of the IPC is not made out against all of them or any of them. After all, the object of invocation of inherent power of this Court under Section 482 of the Criminal Procedure Code, 1973 is to prevent the abuse of process of law or miscarriage of justice, and so we find that by leaving the matter to the discretion of the trial Court, there is not going to occur any miscarriage of justice nor is there going to be any abuse of process of law.

3. The learned Counsel for the applicants has invited our attention to Notes taken and order passed by Mahila Assistance Cell, Amravati (page 85) in order to support his argument that whole dispute arises only because non-applicant no. 2's unreasonably demanding to her husband to take her straight way to Mumbai and not to village Rama Saur and then to Mumbai. The notes so taken do indicate that there was an attempt made by Mahila Assistance Cell for resolution of matrimonial differences between the husband and wife but, those differences could not be sorted out for the reasons noted therein. One of the reasons was of difference of opinion between two regarding the place where wife

should be first taken. According to the husband, the wife should be taken by him to his village Rama Saur and according to wife, it was duty of the husband to take her to Mumbai, which was the place of ordinary residence of the husband and not to his parents' village Rama Saur. The reasons for such differences, of course, have not come out in the open but, that would be something which would have to be considered and appreciated only at the time of trial of the applicants by the trial Court, if any. Only because of those differences of opinion existing between the husband and wife, it cannot be inferred by this Court that the criminal complaint filed by the wife i.e. non-applicant no. 2 is a result of refusal of her husband to take her directly to Mumbai and not to the parents' place of the husband at village Rama Saur.

4. The learned Counsel for the applicants also submits that notice under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights has been issued by the husband to non-applicant no. 2 and this fact is also indicative of the good intention of the husband.

5. We are of the view that only because the notice under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights is sent by husband to his wife, it would not necessarily mean that the allegations made against the husband by the wife in a specific manner do not constitute any offence of cruelty. In fact, physical and mental

harassment of the wife, which prima facie amounts to cruelty within the meaning of Section 498-A IPC, itself could be a good ground for the wife to refuse to join the company of her husband till the time, he improves his behaviour and learns to treat his wife with respect and love. But, again this is a matter to be considered at the time of trial on the basis of evidence available on record.

6. It is also submitted by the learned Counsel for the applicants that there are no specific allegations made against any of the applicants as the dates or the specific instances have not been mentioned in the FIR in question.

7. We beg to differ with the submission of the learned Counsel for the applicants. A careful perusal of FIR would show that specific instances have been cited and the period when the harassment was meted out to non-applicant no. 2 has also been referred to. After all, an FIR is not an encyclopedia of the criminal incident and that an oral report becomes the First Information Report only when it discloses the commission of cognizable offence and only requirement is that it should disclose the commission of cognizable offence and nothing more, and this requirement of the report is more than fulfilled in the present case. Details of the incident can be sought and are generally sought during the

course of investigation, provided the accused allows the police to carry out investigation and do not do anything to stall the investigation.

8. The learned Counsel for the applicants relies on the case of *Kahkashan Kausar Alias Sonam and Ors. Vs. State of Bihar and ors. [(2022) 6 SCC 599]*, wherein the allegations levelled against the appellants were of general nature. But, this is not so in the present case. This could be seen from the allegations made in the complaint. They show that since the time when non-applicant no. 2 started cohabiting with her husband at Mumbai, she was being subjected to mental harassment by Jayashree Tadiwale and Pinki Pradip Shirke (Applicant nos. 3 and 4) when they used to visit intermittently their Mumbai home and taunt her by saying that she was not a woman who deserved her residence in Mumbai and that they used to say to her husband that she should be taken back to her maternal home. Then, it is also alleged that one day, applicant no. 5, Pradip Maroti Shirke, beat the non-applicant no. 2 in the presence of her husband and sister-in-law. She has also specifically referred to a series of incidents that took place in December 2020. They show that during that period of time, her husband used to pick up quarrels on petty matters with her and used to subject her to beating and during those episodes of beatings, her mother-in-law i.e. applicant no. 1 used to encourage and instigate her husband in

continuing with his cruel acts. She has also stated that her mother-in-law i.e. applicant no. 1 also used to taunt her by saying that she possessed no worth to continue to cohabit with her husband and that applicant no. 1 used to instigate her husband by saying that she should be dropped in her maternal home which in fact, was done by her husband. There are many such instances which are specifically narrated in the FIR, we, therefore, find it too difficult to agree with the submission of learned Counsel for the applicants when he says that there are no specific instances of cruelty or any specific allegations made against each of the applicants.

9. Thus, we find no substance in the submissions of learned Counsel for the applicants. This is not a fit case for making any interference in the matter. The criminal application stands dismissed. No costs.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

**SANDIP
MAHADEV
GATE**

Personal Assistant to the
Hon'ble Judge
Digitally signed by
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