

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

CRIMINAL APPLICATION (APL) NO.20/2022

1. Sunil s/o Pralhadrao Thakare,
aged about 49 years, Occ. Private,
2. Smt. Shobha w/o Sunil Thakare,
aged 44 years, Occ. Household.
3. Ku. Chaitali d/o Sunil Thakare,
Aged 22 years, Occ. Student.

All are resident at Waghud,
Tq. Malkapur, Dist. Buldhana.

.....APPLICANTS

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

1. State of Maharashtra through
Police Station Officer, Dabaki Road
Police Station, Akola, Tq. Dist. Akola.
2. Smt. Manisha w/o Gajanan Dane,
aged 27 years, Occu. Private,
r/o at Bharati Plot, Dabaki Road,
P.S. Dabaki Road, Tq. Akola,
Dist. Akola.

...NON APPLICANTS

Mr. S. N. Nandeshwar, Advocate for applicants.
Mr. M. J. Khan, A.P.P. for non applicant no.1

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 13.09.2022

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

The applicants have put forth the following substantive prayer:

“(I) Quash and set aside the charge-sheet bearing no.69/2021 dated 12/08/2021 bearing out of F.I.R. No.196/2021, registered by P.S. Dabaki Road, Akola, Tq. Dsit. Akola dated 06/04/2021 for the offence punishable u/s 498-A, 323 r/w section 34 of Indian Penal Code and Criminal Proceeding bearing R.C.C. No.1070/2021, pending before learned 3rd Jt. J.M.F.C., Akola against the present applicants.”

2. The charge-sheet has been filed at the instance of non applicant no.2 who is wife of accused no.1 before the trial Court. There are, in all seven accused. The present applicants have been arrayed as accused nos. 5, 6, and 7 before the trial Court. The applicant no.1 is brother in law, applicant no.2 is sister and applicant no.3 is niece of accused no.1 (husband).

3. We have gone through the material placed before us. We have considered the rival submissions. The informant non applicant no.2 and accused no.1 got married in the year

2012. The relations between the informant and the accused no.1 and his family members were cordial for about eight years. The couple has two children, a son aged 7 years and a daughter aged about 5 years.

4. On 12.11.2020, the non applicant no.2-wife filed complaint against husband-accused no.1 before Women Grievance Redressal Forum for ill-treatment so also mental and physical harassment. The grievance redressal forum thought it proper to refer the case to the Police Station, Dabaki Road, Akola. The FIR came to be registered on 06.04.2021 against the husband-accused no.1, mother in law-accused no.2, sisters in law-accused nos.3, 4 and 5, brother in law-accused no.6 and niece-accused no.7. Out of these, accused nos.3, 6 and 7, the present applicants, have filed the instant application for quashing the charge-sheet filed against them for an offence punishable Sections 498-A, 323 read with Section 34 of the Indian Penal Code.

5. We have read the FIR and oral statement of the non applicant no.2. The main grievance appears to be against

her husband-accused no.1. According to the non applicant no.2, her husband is habitual drunkard and gambler. He used to beat her after consuming liquor for petty reasons. He asked her to bring Rs.50,000/- from her father. She showed inability owing to poor financial condition of her father, upon which the accused no.1 beat her. She continued relationship with the hope that accused no.1 will reform. However, on 12.11.2020, accused no.1 drew her out of the house. Since then the informant is residing at her paternal house. Thereafter vague allegations have been made against the applicants and other accused that they used to abuse her on account of her character. Except for above allegations, there is nothing against the present applicants.

6. We have gone through the charge-sheet. We have perused the statements of father and mother of informant and their neighbours. All of them have primarily blamed accused no.1-husband that too on account of his habitual drinking and gambling and then by quoting an incident that he had demanded Rs.50,000/- for agricultural work.

7. Here, it is necessary to look into the provisions of Section 498-A of the IPC, which reads thus:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

- (a) any wilful 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; or
- (b) harassment of the woman where 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.

Thus, the relatives of husband could be said to subject a woman (wife) to cruelty if the conduct of the relative is wilful and is of such a nature which has potential to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. In the

present case, there appears no such cruelty at the hands of the applicants to the non applicant no.2. So far as element of harassment is concerned, we have already noted that vague allegations have been made against the applicants that they used to abuse non applicant no.2 on account of her character. Such an abuse by itself cannot be said to be harassment of non applicant no.2 with a view to coerce her or any person related to her to meet any unlawful demand of money.

8. Thus, even if the allegations in the FIR and charge-sheet are taken on its face value, there is absolutely nothing against the present applicants to show complicity of the applicants with the offence punishable under Sections 498-A, 323 and Section 34 of the IPC.

9. The learned A.P.P. made an attempt to make out a case on the basis of vague statements that there are allegations against the applicants. However, mere statement that the applicants used to harass non applicant no.2 mentally and physically that too on telephone, by itself will not amount to cruelty or harassment for dowry.

10. It appears to us that the applicants have been roped in to pressurize the entire family. We are saying so because there is absolutely nothing against the applicants to even remotely suggest their complicity with the crime alleged especially when they are not even residing with the non applicant no.2 or her husband.

11. Normally, we would have directed the applicants to seek discharge but looking at the nature of allegations, we are of the considered opinion that this is a case of abuse of process of law. The investigating officer himself ought not to have filed charge-sheet against the present applicants. The approach of investigating officer is erroneous and therefore requires correction.

12. Accordingly, the present application is allowed in terms of prayer clause (I).

The application is disposed of.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 23.09.2022
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