

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

CRIMINAL APPLICATION (APL) NO.1114 OF 2019

{Swapnil S/o Dnyaneshwar Banubakode and Ors. **..Vrs..** State of
Maharashtra and Anr.}

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S. B. Gandhe, Advocate for the Applicants.
Shri S. M. Ghodeswar, APP for the Respondent no.1/State.
Shri A. A. Dhawas, Advocate for the Respondent no.2.

**CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, J.J.**

DATE : 11th AUGUST, 2022.

. Heard learned counsel appearing for the parties.

2. By this application, the applicant is seeking quashing of FIR No.572 of 2019 dated 10.07.2019, registered with Police Station, Chandrapur City District Chandrapur for offences under Sections 498-A and 323 read with Section 34 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961, as also charge-sheet filed in pursuance of the said investigation.

3. The First Information Report (FIR) stood registered against the applicants at the behest of respondent no.2. The applicant no.1 is the husband of respondent no.2, while applicant no.2 is her mother-in-law. Applicant nos.3 to 8

are the relatives of applicant no.1 (husband).

4. Shri Gandhe, learned counsel appearing for the applicants submitted that in the present case, the FIR stood registered on the basis of an oral report dated 10.07.2019, submitted by the respondent no.2 before the concerned police station. It was submitted that a perusal of the said oral report would demonstrate that allegations have been levelled against the applicant no.1 (husband). Thereafter, certain allegations have been levelled against the applicant nos.2 to 8 in the context of alleged demand of dowry and physical and mental harassment at the behest of the applicants to the respondent no.2. Thereafter, the learned counsel appearing for the applicants invited attention of this Court to an oral report dated 08.05.2019 submitted by the respondent no.2 before another police station i.e. Police Station Rajapeth, Amravati. By reading the contents in the said oral report, it was submitted that the grievance of the respondent no.2, therein was only against the applicant no.1 i.e. the husband and a vague allegation was made against the applicant no.2 i.e. the mother-in-law, while

there was no reference to any allegations against the applicant nos.3 to 8. In the said oral report dated 08.05.2019, reference was made to specific incident of the same date.

5. The learned counsel for the applicants also invited attention of this Court to the statement dated 11.07.2019 of the respondent no.2, recorded during the course of investigation. It was submitted that further improvement was sought to be made in the statement and more importantly, reference was indeed made to the said oral report submitted prior in point of time before the Police Station at Rajapeth, Amravati. On this basis, it was submitted that the oral report dated 10.07.2019, leading to registration of the FIR was a clear improvement at the behest of respondent no.2, only with a view to rope in relatives of applicant no.1 i.e. applicant nos.3 to 8. Insofar as applicant no.2 i.e. the mother-in-law is concerned, it was submitted that in both the reports, only vague allegations were made and in-fact, it was conceded that the respondent no.2 after marriage resided with the applicant no.2/

mother-in-law only on few occasions. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of *Kahkashan Kausar alias Sonam and others ..Vrs.. State of Bihar and others, 2022 (6) SCC 599.*

6. Shri Ghodeswar, learned Assistant Public Prosecutor appeared on behalf of the respondent no.1/State and relied upon the documents that have come on record, upon completion of investigation and filing of charge-sheet.

7. Shri Dhawas, learned counsel appearing for the respondent no.2 submitted that the oral report dated 08.05.2019, allegedly submitted before the Police Station Rajapeth, Amravati, could be a defence for the applicants, but at this stage, the same could not be relied upon, while seeking quashing of the FIR and charge-sheet. It was submitted that if the oral report dated 10.07.2019, leading to registration of the FIR was to be perused, specific allegations were made against each of the applicants before this Court. On this basis, it was submitted that the matter deserved to go to trial and that the present application deserved to be dismissed.

8. We have heard learned counsel appearing for the parties and perused the material on record. We find that insofar as oral report dated 08.05.2019 is concerned, there is indeed signature and seal of the Senior Police Inspector of the Police Station Rajapeth, Amravati, demonstrating that the said oral report was indeed submitted by the respondent no.2 before the concerned police station. This is further fortified by the statement of the respondent no.2 herself dated 11.07.2019, recorded during the course of investigation and which is a part of the charge-sheet placed before this Court. The respondent no.2 herself has stated that she had indeed approached the Police Station Rajapeth, Amravati on 08.05.2019, raising grievance as regards the harassment allegedly meted out to her. Therefore, we are taking into consideration the said oral report dated 08.05.2019, which was submitted prior in point of time, while considering the contentions raised on behalf of the applicants.

9. There is no doubt about the fact that in the oral report dated 10.07.2019, leading to registration of the FIR,

the respondent no.2 has indeed given some details about the alleged role of the applicants in harassing her in the context of dowry demand. It is alleged that she suffered physical and mental harassment, not only at the hands of her husband i.e. applicant no.1, but also the other applicants named as accused persons.

10. But, a perusal of the oral report dated 08.05.2019 submitted at police Station Rajapeth, Amravati, which was prior in point of time shows that the respondent no.2 raised grievance only against the applicant no.1 i.e. her husband as regards mental and physical torture meted out to her after marriage. There is reference made to alleged role of the applicant no.2 i.e. mother-in-law pertaining to an incident dated 08.05.2019. Otherwise, there are only vague allegations made against the applicant no.2 i.e. mother-in-law. When the said report is compared with the subsequent report dated 10.07.2019, it is found that there are material improvements made by the respondent no.2, clearly indicating that the intention appeared to be to rope in as many relatives of applicant no.1 (husband) as possible.

11. Report dated 10.07.2019, refers to an incident of 07.05.2019, wherein applicant nos.3 to 8 allegedly visited the matrimonial house and caused physical and mental harassment to the respondent no.2, in the backdrop of demand of Rs.5,00,000/- (Five Lakhs Only) from the family of respondent no.2. If the respondent no. 2 indeed had a genuine grievance about such an incident dated 07.05.2019, nothing prevented her from stating the same in the aforesaid oral report dated 08.05.2019, submitted prior in point of time before the Police Station Rajapeth, Amravati.

12. In this backdrop, we are convinced that the Respondent no.2 has made an attempt to rope in the relatives of applicant no.1 (husband), while submitting the subsequent oral report dated 10.07.2019, which led to registration of FIR.

13. Although the learned counsel appearing for the respondent no.2 sought to rely upon statements given by the other witnesses, such statements are all in the nature of *heresay* material, because such statements necessarily rely

upon the version of the respondent no.2 herself.

14. In this backdrop, the learned counsel appearing for the applicants is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of **Kahkashan Kausar alias Sonam and others ..Vrs.. State of Bihar and others** (supra). After referring to a series of judgments, including land mark judgment in the case of **Arnesh Kumar ..Vrs.. State of Bihar, 2014 (8) SCC 273**, the Hon'ble Supreme Court has observed as follows :

“17. The abovementioned 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.”

15. Applying the said position of law to the facts of the present case, we are convinced that other than the applicant no.1 i.e. the husband of respondent no.2, the applicant nos.2 to 8 have been roped in by the respondent no.2 as an after thought. We are informed that after filing of the present application, the applicant no. 4 expired on 13.12.2020.

16. In view of the above, we are inclined to partly allow the present application. Accordingly, the criminal application is partly **allowed**. The FIR and charge-sheet quoted above are quashed insofar as the applicant nos.2, 3 and 5 to 8 are concerned. The application is **dismissed** insofar as applicant no.1 (husband) of the respondent no.2 is concerned.

17. The criminal application stands disposed of in the above terms.

(VALMIKI SA MENEZES, J.) (MANISH PITALE, J.)

TAMBE