

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.279 OF 2023

- 1) Ishan S/o Manojkumar Shah
- 2) Manojkumar S/o Kanhaiyalal Shah
- 3) Sunita W/o Manojkumar Shah
- 4) Ami d/o Manojkumar Shah,
- 5) Mahendra S/o Kanhaiyalal Shah
- 6) Deepesh Dhansukhlal Shroff

..Applicants

VERSUS

1. The State of Maharashtra
Through Police Inspector
Muktainagar Police Station,
Tq. Muktainagar, Dist. Jalgaon.
2. Manisha w/o Ishan Shah
Age : 28 years, Occu : Dentist,
R/o Surana Nagar, Muktainagar,
Tq. Muktainagar, Dist. Jalgaon.

..Respondents

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Mr. Ruchir S. Wani, Advocate for Applicants
Mr. V.S. Badakh, APP for Respondent No.1
Mr. K.N. Shermale, Advocate for Respondent No.2

...

**CORAM : MANGESH S. PATIL &
M.M. SATHAYE, JJ.**

DATE : 16 March 2023

ORDER (M.M. SATHAYE, J.) :-

. This is an application under section 482 of the
Criminal Procedure Code ("CrPC" for short) for quashment of

F.I.R. bearing Crime No.0350 of 2022 registered with Muktainagar Police Station, Dist. Jalgaon, for the offenses punishable under sections 377, 498-A, 504 and 506 of the Indian Penal Code ("IPC" for short). This application is filed by the husband, father-in-law, mother-in-law, sister-in-law of respondent no.2 - informant wife and also by paternal and maternal uncles (*kaka and mama*) of husband of respondent no.2.

2. After hearing the matter for some time, at the outset when we expressed our disinclination to grant any relief on merits to husband and parents-in-law (applicant nos.1 to 3), learned counsel for the applicants, on instructions, seeks permission to withdraw the application to their extent. Application is accordingly dismissed to the extent of applicant nos.1 to 3.

3. The application is now being pressed by the sister-in-law of respondent no.2 and paternal and maternal uncles of husband of respondent no.2.

4. Heard both the sides.

5. Learned advocate for the applicants submitted that the averments in the FIR, so far as applicant nos.4 to 6 are concerned, are absolutely vague and do not attribute any specific role in alleged cruelty to respondent no.2. He submitted that this is a case where respondent no.2 wife has left the matrimonial house within a short period of two months from the date of marriage and as such, in such a short period of time, it cannot be believed that applicant nos.4 to 6, who are working sister-in-law and distant relatives, such as paternal and maternal uncles, could have inflicted cruelty on respondent no.2. He further submitted that applicant no.6 - maternal uncle of husband of respondent no.2 is admittedly resident of Indira Colony, Burhanpur, Madhya Pradesh and applicant no.5, who is paternal uncle of husband of respondent no.2 is actually working in Qatar, who has left India on 20.12.2020 itself, which is within two weeks of the date of marriage and as such, their interaction is extremely short. He invited our attention to the copy of VISA stamping on the passport of applicant no.5 showing that he had left India on 20.12.2020. He further invited our attention to a letter issued by HDFC Life to applicant no.4 - sister-in-law of respondent no.2, showing that she is working with the said company since prior to marriage and further submitted that at the relevant time, she was 'working from

home' and as such, it is unbelievable that she was actively involved in the alleged cruelty.

6. Learned advocate for the applicants further invited our attention to the receipt of Vaccination done for respondent no.2 as well as doctor's prescription giving medicines to respondent no.2 and pointed out that in the short span of two months, when respondent no.2 was residing in matrimonial house, she was being taken care of medically also. On these grounds, it is urged that in the teeth of vague allegations and documents on record, even *prima facie*, no specific role can be said to be attributed to applicant nos.4 to 6 in the alleged crime. He further urged that therefore, the said FIR needs to be quashed and applicant nos.4 to 6 should not be prosecuted further.

7. Per contra, learned APP appearing for respondent no.1 State submitted that the allegations in the FIR are sufficient to prosecute applicant nos.4 to 6 further.

8. Learned advocate for respondent no.2 - informant wife vehemently opposed grant of any relief in favour of applicant nos.4 to 6. He submitted that the cruelty as

contemplated under section 498-A of the Indian Penal Code, is not just physical cruelty but even the behaviour of in-laws whether near relatives or distant relatives or taunts given to newly wedded daughter-in-law, constitutes cruelty. He invited our attention to reply given by the parents-in-law of respondent no.2 in Domestic Violence Case No.18 of 2021 filed by respondent no.2 and submitted that Dr. Sunil Shah, who has allegedly issued medical prescription to respondent no.2, is a close relative of the applicants' family. He further submitted that over all reading of FIR clearly shows that mental cruelty was meted out to respondent no.2, and therefore, no indulgence can be shown to applicant nos.4 to 6 at this stage.

9. We have carefully considered the rival submissions and perused the record.

10. Perusal of the FIR dt. 21.10.2022 shows that marriage took place on 08.12.2020 and respondent no. 2 (informant wife) left matrimonial house on 12.02.2021. So the wife has left the matrimonial house within a short period of two months from the date of marriage. Serious allegations about unnatural sex (sec. 377 of IPC) is only against the husband and allegation of complacent attitude alleged to have been shown

about it, is against the mother-in-law. They are not before us and application for them is already dismissed. The allegations about demand of money is absolutely vague and no specific role is attributed to any of applicant nos.4 to 6. So far as allegations against applicant nos.5 and 6 are concerned, who are paternal and maternal uncles of husband of respondent no.2, it is vaguely stated that when they came to the matrimonial house, they would taunt respondent no.2 about she being from a small village. Further allegation about applicant no.6 that he threatened respondent no.2 and her father about withdrawal of court case, is devoid of any material particulars. It will not be out of place to mention that applicant no.6 is admittedly a resident of Barhanpur, Madhya Pradesh (even according to FIR) and as such, it is difficult to believe that during the time when he came for attending the marriage, he indulged in such threatening. About applicant no.5, who is paternal uncle of husband of respondent no.2 working at Qatar and who has left India on 20.12.2020 itself, which is within two weeks of the date of marriage, allegations are as vague as could be.

11. Learned counsel for respondent no.2 (informant wife) has relied upon many judgments in support of his case, as listed below :

- (i) Rupali Devi Vs. State of Uttar Pradesh and ors in Criminal Appeal No.71 of 2012 dated 09.04.2019.
- (ii) Bhaskar Lal Sharma and another Vs. Monica and others (2014) 3 SCC 383
- (iii) Taramani Parakh Vs. State of M.P. and others in Criminal Appeal No.456 of 2015 dated 16.03.2015.
- (iv) Jitul Jentilal Kotecha Vs. State of Gujarat and others etc in Criminal Appeal Nos. 1328-1333 of 2021 dated 12.11.2021
- (v) Sunita Kumari W/o. Ram Sevak and others Vs. State of Maharashtra and another in Criminal Application (APL) No.1660 of 2022 dated 22.12.2022.
- (vi) Shri Rajesh Himmat Pundkar and others Vs. State of Maharashtra and another in Criminal Application (APL) No.233 of 2022 dated 08.06.2022.
- (vii) Shri M. Ganapathy and others Vs. Mrs. M. Madhavi Latha and others in Criminal Writ Petition No.663 of 2020 dated 27.07.2021
- (viii) Shantaben Bhurabhai Bhuriya Vs. Anand Athabhai Chaudhari and others (2021)AIR (SC) 5368.

12. Let us consider the said judgments one by one.

Perusal of the judgment in **Rupali Devi (supra)** shows that the Apex Court was considering the issue of territorial jurisdiction when a woman is forced to leave her matrimonial home on account of cruelty and forced to take shelter in parental home, then can she initiate legal process in the Court in whose jurisdiction the parental house is situated ? In this context, the Apex Court has considered the facts of that case. In the case at hand, no such jurisdictional issue is involved, and therefore, said case does not advance the case of respondent no.2.

13. So far as the judgment of **Bhaskar Lal Sharma (supra)** is concerned, careful reading of the judgment shows that the Apex court was considering offence under section 406 alongwith 498A of the IPC and in that context, it was held that from the averments in the complaint it is seen that the appellants therein (husband and his relatives) were entrusted or had exercised dominion over the property belonging to respondent and they have unlawfully retained the same. There were statements in the complaint about alleged retention of cash and other gifts received at the time of the marriage and in that context, the Apex court had held that it cannot be said that the complaint of the respondent-wife is shorn of the necessary allegations to *prima facie* sustain the case of commission of the

offence under section 406. In the case at hand, there are no such allegations of retention of property of respondent no.2 against applicant nos. 4 to 6 and therefore, this judgment also does not advance the case of respondent no.2.

14. So far as case of **Taramani Parakh (supra)** is concerned, the facts therein are that the wife was keen to continue in the matrimonial home, however she was being forced to leave and the accused had refused to take her back. In that case, there were allegations about taunting by husband and parents-in-laws and it was found to be amounting to cruelty. In the present case at hand, the allegations about so called taunting, even if taken at its face value as per the FIR, are too vague to amount to commission of crime under section 498-A to mean cruelty, and therefore, this judgment also does not advance the case of respondent no.2.

15. The proposition relied upon by learned counsel for respondent no.2 in paragraph no.21 of the case of **Jitul Jentilal Kotecha (supra)** is clearly misplaced in as much as, in the said paragraph, the Apex court had clarified that when the High Court is hearing proceedings under section 482 of CrPC, if the charge-sheet is filed during the pendency of such proceedings,

then High Court must take into consideration the material collected during the investigation. However, High Court cannot place reliance upon draft charge-sheet, which is yet to be placed before the Magistrate. In the present case, admittedly the charge-sheet is not yet filed, therefore, there is no question of its consideration at this stage, and hence, this judgment also does not advance the case of respondent no.2.

16. The next judgment relied upon by respondent no.2 in the case of **Sunita Kumari (supra)** decided by co-ordinate bench of this Court, deals with subjecting the wife to humiliation and harassment through taunting and its commission from a distant place such as telephone etc. In the facts of that case, there were allegations by the wife that one of the husband's relative used to insist that wife should accept obnoxious behavior of the husband, failing which the said relative, who was working in police force, would use her influence to scuttle the criminal proceeding. In such peculiar facts, this Court has taken a view that such accused must face trial and the FIR and the subsequent criminal case cannot be quashed. In the present case at hand, there are not even remotely close facts existing, and therefore, it is clearly distinguishable case and does not advance the case of

respondent no.2.

17. So far as case of **Rajesh Himmat Pundkar (supra)** is concerned, a co-ordinate bench of this Court, had considered the allegations about cruelty in the form of extra marital affairs of the husband and severe beating of wife and in such set of facts, had refused to quash the crime. In that judgment, it is observed that just because some of the applicants are not residing along with husband or in-laws, it cannot be said that the allegations made against them do not disclose the offence and it is also held in that judgment that there is no presumption that a relative living at a distance is always innocent. In the facts situation of the present case, even if the allegations in the FIR are taken at their face value, the allegations about the cruelty by the distant relatives i.e. uncles of husband, are too vague to continue the prosecution, and therefore, in our view, this judgment also does not advance the case of respondent no.2.

18. In the next case relied upon by respondent no.2 in the matter of **Shri M.Ganapathy (supra)**, a co-ordinate bench of this Court was dealing with facts of that case, where the husband had left the matrimonial place with all the ornaments

of wife, locking her out of home and when wife tried to reach the place (Chennai) where the husband had gone, the husband and in-laws did not allow her to enter the home. In such fact situation, this Court had refused to quash the crime. In the facts of the present case at hand, not even remotely close facts exist and therefore, in our view, the said judgment also does not advance the case of respondent no.2.

19. So far as the last judgment relied upon by respondent no.2 in the matter of **Shantaben Bhurabhai Bhuriya (supra)** is concerned, in the said judgment, the Apex court has considered the aspect of delay in lodging the complaint and it is held that on the ground of delay in lodging the FIR, criminal case cannot be quashed in exercise of powers under section 482 of CrPC. The reliance on this case by respondent no.2 is clearly misplaced. In the case at hand, this Court is not proceeding on the ground of delay in filing the FIR. However the allegations in the FIR are found to be vague and omnibus, so far as applicant nos.4 to 6 are concerned.

20. The law regarding prosecution of the husband's relatives in such cases is crystallized and summarized by Hon'ble Apex Court in ***Preeti Gupta and another Vs. State of Jharkhand and another AIR 2010 SC 3363, Geeta***

Mehrotra & another Vs. State of U.P. 2021 SCC OnLine SC 1251 and latest in the case of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599***. Learned counsel for the applicants have already relied upon some of the above judgments. In our considered view, the allegations in the present matter about applicant nos. 4 to 6 are vague and omnibus and are not sufficient to allow their prosecution any further. Their inclusion in FIR shows clear tendency to rope in as many relatives of husband as possible to mount pressure. It will be abuse of process of Court, if the applicant nos. 4 to 6 are permitted to be prosecuted any further. According to us, this case squarely falls in one of the categories provided under the case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604***. We therefore pass the following order.

21. The application is partly allowed and the FIR bearing Crime No.0350 of 2022 registered with Muktainagar Police Station, Dist Jalgaon for the offences punishable under sections 377, 498-A, 504 and 506 of the Indian Penal Code, is quashed and set aside to the extent of applicant nos.4 to 6 only.

(**M.M. SATHAYE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE