

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

CRIMINAL APPLICATION NO. 359 OF 2020

1. Parag Shirish Ambulgekar
Age: 38 years, Occu.: Business,
2. Shilpa Shirish Ambulgekar
Age: 63 years, Occu.: Household,
3. Shirish Shankar Ambulgekar
Age: 65 years, Occu.: Retired,
4. Pornima Aditya Girdhari
Age: 31 years, Occu.: Household,
All R/o Plot No.037/308, Vrundavan Shrushti,
Vaitabhva Chowk, Naregaon,
Tq. & Dist. Pune

..APPLICANTS

VERSUS

1. State of Maharashtra
2. Shradha Parag Ambulgekar
Age: 32 years, Occu.: Household,
R/o Hatte Nagar, Latur,
Tq. & Dist. Latur

..RESPONDENTS

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Mr. V.A. Bagadiya, Advocate for applicants
Mr. A.R. Kale, A.PP for respondent no.1 – State
Mr. A.A. Phad, Advocate for respondent no.2

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**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 13th FEBRUARY, 2023

PER COURT :

1. Heard finally at admission stage with consent of learned counsel
for the respective parties.

2. This is an application under Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. 642 of 2019 registered with Gandhi Chowk Police Station, Dist. Latur and consequent criminal proceeding bearing R.C.C. No. 237 of 2020 pending on the file of Chief Judicial Magistrate, Latur for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code.

3. The marriage of Applicant No.1 and Respondent No.2 was solemnized on 24th February, 2016. Applicant Nos. 2 and 3 are the parents and Applicant No.4 is the married sister of the Applicant No.1. The Respondent No.2 has lodged the F.I.R. dated 19th December, 2019 alleging that since the date of her marriage, her “in-laws” have been harassing her and expecting her to do the household work and further asking her to contribute Rs.28,000/- per month towards household expenditure. It is alleged that she had informed her parents that her in-laws used to constantly quarrel with her. The Respondent No.2 has alleged that all the applicants abused and assaulted her for informing her parents about the quarrels. She claims that the applicants were also insisting that she should leave the job.

4. The Respondent No.2 gave birth to a girl child on 09th January, 2017. She has stated that the applicants were expecting a boy and that they told her that she should not return to the matrimonial home since she gave

birth to a girl child. Respondent No.2 claims that her father thereafter brought her to the matrimonial home. On the first birthday of her daughter, the applicants asked the son of the Applicant No.4 to cut the cake instead of allowing her one year old daughter to cut the cake. She has stated that she has been constantly abused and assaulted by the applicants. She claims that the applicants have kept her gold ornaments in the locker.

5. Respondent No.2 claims that her grand-father had expired in January 2019 at Hyderabad. Her husband did not accompany her to Hyderabad and sent her alone. On the next day he warned her to return to the matrimonial home and threatened to sever marital ties in the event she did not return home. Since then she stayed at her parental home. She has further alleged that though she was ready to cohabit, the Applicant No.1 issued a notice to resume cohabitation. She claims that all her in-laws have demanded money and have subjected her to physical and mental cruelty. Based on these allegations, said crime has been registered against the applicants for committing aforesaid offences.

6. Learned counsel for the applicants states that the Applicant No.1 had already issued a notice to the Respondent No.2 calling upon Respondent No.2 to resume cohabitation. He states that the Applicant No.1 thereafter filed a suit under Section 9 of the Hindu Marriage Act, 1955 for restitution of

conjugal rights. It is only on the receipt of notice in the said suit that the Respondent No.2 has lodged the F.I.R. alleging physical and mental cruelty. He submits that the allegations made against the applicants are omnibus and do not constitute cruelty within the meaning of Section 498-A I.P.C. He submits that the F.I.R. as well as the other material on record does not constitute offences as alleged. Hence, this is a fit case to exercise discretion under Section 482 Cr.P.C. to prevent an abuse of the process of Court.

7. Learned counsel for the Respondent No.2 submits that the Respondent No.2 has made specific allegations against all the applicants. He further submits that the Respondent No.2 had also replied to the notice issued by the Applicant No.1, wherein she had given reasons for not resuming cohabitation. He submits that the F.I.R. discloses commission of cognizable offence and as such this is not a fit case to exercise discretion under Section 482 Cr.P.C.

8. We have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the allegations levelled in the F.I.R. as well as the other material collected during the course of investigation discloses the offence under Section 498-A I.P.C., 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 willful 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."

9. In order to constitute the offence under Section 498-A I.P.C. there must be a prima facie material on record that the applicants by their willful conduct of such a nature had driven the Respondent No.2 to commit suicide or caused grave injury or danger to life, limb or health or that they had harassed her with a view to coercing her to satisfy unlawful demand of dowry. In the instant case, the F.I.R. as well as the material on record indicates that the marriage of Applicant No.1 and the Respondent No.2 was solemnized on 24th February, 2016. At the time of marriage she was employed with Infosys, Pune. She gave birth to a girl child in the year 2017. She had left the matrimonial home in January 2019 and she lodged the F.I.R. in December 2019 alleging that (1) immediately after her marriage, the

applicants herein had insisted that she should do the household work and contribute to household expenditures; (2) that the applicants abused and assaulted her for informing her parents that they ill-treated her; (3) the applicants were expecting a boy instead of a girl child and did not allow her to return to her matrimonial home for giving birth to a girl child; (4) the applicants did not allow her one year old daughter to cut the cake and instead had asked the son of Respondent No.4 to cut the cake; and (5) the Applicant No.1 did not accompany her to Hyderabad in January 2019 when she had gone to Hyderabad on demise of her grand-father. These allegations made against the applicants do not constitute cruelty within the meaning of Section 498-A I.P.C.

10. The other allegations of abuse, assault and demand of money are also omnibus, made against all the family members. Such omnibus allegations, without attributing specific role would not be sufficient to bring home the offence of cruelty under Section 498-A I.P.C. The normal wear and tear of married life, trivial instances and marital discord does not constitute cruelty. In *Manju Ram Kalita Vs. State of Assam*, (2009) 13 SCC 330 the Apex Court while considering the meaning of cruelty held thus-

“21. In Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078; this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

22. *"Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.*

In the instant case, the F.I.R. and the other material does not disclose essential ingredient of cruelty within the statutory meaning of Section 498-A I.P.C.

11. The records reveal that the Applicant No.1 had instituted proceeding under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. It is only after institution of these proceedings, that the Respondent No.2 has filed the F.I.R. wherein she has roped in not only her husband but also his aged parents and married sister. The Hon'ble Apex Court in case of ***Kahkashan Kausar alias Sonam and Others Vs. State of Bihar and Others, (2022) 6 SCC 599*** has observed that *"there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A I.P.C. was introduced with*

avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A I.P.C. is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.” In paragraph no.17 of the said judgment it is observed thus :-

“... 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.”

12. Having gone through the records, in our considered view, the allegations made in the F.I.R. as well as the other material collected during the course of investigation even if accepted in their entirety do not disclose offence under Section 498-A I.P.C. or other cognizable offence. In such circumstances, compelling the applicants to face the criminal trial will be an abuse of the process of law. Hence, in our considered view, the case is covered by Illustration (1) in the case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., 1992 AIR 604***. Consequently, this is a fit case to exercise

discretion under Section 482 Cr.P.C. to prevent the abuse of the process of law.

13. In the result, criminal application is allowed in terms of prayer clauses (B) and (B-1). Consequently, the F.I.R. bearing C.R. No. 642 of 2019 registered with Gandhi Chowk Police Station, Dist. Latur and consequent criminal proceeding bearing R.C.C. No. 237 of 2020 pending on the file of Chief Judicial Magistrate, Latur for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code stand quashed qua the applicants.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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