

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

955 CRIMINAL APPLICATION NO.546 OF 2022

AZAM DADABHAI SHAIKH AND 7 OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr H.I. Pathan
APP for Respondent 1 : Mr. K.S. Patil
Advocate for Respondent 2 : Mr. S.B. Choudhari

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: September 05, 2023

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PER COURT :-

1. By this application, the applicants seek to quash the proceedings in RCC no.93 of 2021 pending before the J.M.F.C., at Washi for the offence punishable under sections 498-A, 323, 504, 506 (2), r/w 34 of the IPC.

2. The respondent no.2/original complainant married with the accused no.1 Arif Azam Shaikh in the year 2017. It is alleged that there were disputes between the complainant and in-laws. They used to harass the complainant. On 13.7.2020 she filed her grievance with Women Grievance Redressal Center at Osmanabad wherein she levelled certain allegations against her in-laws. Thereafter, there was amicable settlement of the dispute. A bond dated 5.7.2021 has been executed between the complainant and her husband. It was agreed by husband that the complainant would be treated well in future and she shall stay with him in separate accommodation at Pune, where he is presently

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residing. However, this arrangement between them failed. In this background, the respondent no.2 filed private complaint before J.M.F.C., Washi. It is alleged that initially respondent no.2 had started co-habitation at matrimonial house, however, the accused persons ill-treated her. It is further alleged that on 25.2.2021 accused nos.1 to 9 abused her and drove away out of house. Since then, she is residing alongwith her parents. It is further alleged that, on 1.8.2021 the accused persons arrived at her father's house at village Pargaon and persuaded her to accord for divorce. On refusal, the accused persons assaulted her so also threatened her of dire consequences, if any complaint lodged against them. It is accordingly alleged that all the accused persons are guilty of the offence punishable u/s 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code.

3. It appears that the complainant recorded her verification statement dated 25.8.2021. Pertinently, omnibus allegations are reiterated against all the accused persons. The learned Magistrate initially issued the directions under section 202 of the Cr.P.C. vide order dated 25.8.2021. Consequently, report of the investigation has been submitted by the police. Thereafter, learned J.M.F.C. issued process against all the accused for the offences punishable under sections 498-A, 323, 504, 506 (2), r/w 34 of the IPC.

4. Mr. Pathan, learned advocate appearing for the applicant would submit that previously the Respondent no.2 had filed a complaint with the Women's Grievance Redressal

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Center. Thereafter, she had entered into a compromise dated 5.7.2021 with the husband and agreed to reside with him at Pune. However, because of misunderstanding between the Respondent no.2 and her husband, she filed private complaint reiterating omnibus allegations against all relatives. He would point out from the text of complaint that no specific overt act is attributed against any of the accused. Accused nos.4 to 9 are residing at Pune and they had never common residence with the complainant. He would submit that the accused nos.2 and 3 are old aged persons. No specific allegations are made against them. Therefore, he submits that no offence can be made out against the applicants. Only because of the dispute between the respondent no.2 and husband, all family members are falsely implicated. Hence, the complaint is liable to be quashed and set aside as against the applicants.

5. Per contra, Mr. Choudhary, learned advocate appearing for respondent no.2 opposes the prayers. He would submit that there are specific allegations against all accused persons regarding common act of ill-treatment against the respondent no.2. He would submit that the complaint is not encyclopaedia and during the trial, role of each accused person can be elaborated. Therefore, he submits that there is no merit in the application.

6. Having considered the submissions advanced, apparently, on reading of the complaint, it can be gathered that accused nos.3 to 9 are residing at Pune. They are married sisters of accused no.1 and their husbands, who do not have
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concern with the family of the Respondent no.2. However, allegations are incorporated in the complaint that all the accused nos.1 to 9 have driven the complainant out of home. It is further alleged that on 1.8.2021 all accused had been to the maternal home of the complainant at village Pargaon Tq. Washi, where all of them have assaulted her. Apparently, no specific attributions are made against the applicants. Omnibus statements are made in the entire complaint. Apparently, grievance of the complainant appears to be against her husband. However, all the family members and relatives are sought to be implicated. The Supreme Court of India in various pronouncements have highlighted the misuse of provisions of section 498-A of the IPC so also tendency to implicate all family members of the husband in such complaints. At this stage, reference can be given to the observations of the Supreme Court of India in the matter of **Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others reported in (2022) 6 Supreme Court Cases 599.** Paragraph no.17 of the judgment reads as under :-

“17. The above-mentioned 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.”

7. Considering the aforesaid observations and fact that accused nos.4 to 9 are residing at Pune and no specific attributions are made against the accused nos.2 and 3, there is no reason to continue criminal proceedings against them.

8. Although, the learned Magistrate has issued process relying upon the contents of the complaint and investigation report of the police under section 202 of the Criminal Procedure Code, the order issuing process is silent as regards to the role of each and every applicant herein. Apparently, on the basis of omnibus statements, process has been issued. In that view of the matter, entire complaint and proceeding in R.C.C. No.93 of 2021 is liable to be quashed and set aside against the applicants herein. Hence, the order.

ORDER

- i. Criminal application is allowed.
- ii. The complaint in the R.C.C. No.93 of 2021 pending before the Judicial Magistrate First Class, Washi for the offence punishable under sections 498-A, 323, 324, 504, 506 (2) r/w 34 of the I.P.C. is hereby quashed and set aside against the present applicants.
- iii. Criminal application is disposed off.

(S. G. CHAPALGAONKAR, J.)

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