

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

954 CRIMINAL APPLICATION NO.1509 OF 2022

1. AASIF JAFAR SHAIKH
2. JAFAR SARDAR SHAIKH
3. SHAHENAJ JAFAR SHAIKH
4. ALTAF JAFAR SHAIKH
5. GAFUR SARDAR SHAIKH
6. TASLIM GAFUR SHAIKH
7. VAHIDODDIN RUKMODDIN SHAIKH
8. SAHEBLAL BASHUMIYA TAMBOLI .. Applicants

VERSUS

ROMAN AASIF SHAIKH .. Respondent

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Advocate for Applicants : Mr. Ravibhushan P. Adgaonkar

Advocate for Respondent : Mr. S.B. Choudhari

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CORAM : R. M. JOSHI, J.

DATE : AUGUST 1, 2023

PER COURT :

1. By consent of both the sides, heard finally.

2. When this Court has shown disinclination to grant relief in favour of applicants no.1 to 4, learned counsel for the applicants on instructions seeks leave to withdraw the application for these applicants.

3. Leave granted. The application stands dismissed as withdrawn to the extent of applicants no.1 to 4 only.

4. This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for quashment of private complaint being R.C.C. No.29 of 2022 for the offences punishable under Sections 498-A, 323, 504 and 506 r/w. 34 of the Indian Penal Code (hereinafter referred to as the 'IPC').

5. The complaint shows that the complainant married to applicant no.1 on 26.06.2020 and she started residing in the matrimonial home with applicants no.1 to 4. There are allegations against these applicants that they demanded Rs.One Crore and for not meeting the said demand she was physically and mentally harassed. Other allegations are with regard to keeping her on starvation and about removal of gold ornaments belonging to her by these applicants. As far as applicants no.5 to 8 are concerned, there are no specific allegations against them of demanding dowry and causing mental or physical harassment to her for non fulfillment of the same. There is allegation made against applicants no.5 and 6 that they used to beat her, however there are no particulars provided as to when

such incident has ever occurred.

6. Learned counsel for applicants states that as far as the applicants no.5 to 8 are concerned, for want of any specific allegations against them the complaint is not tenable.

7. The learned counsel for respondent supported the order of issuance of process by the learned Judicial Magistrate First Class.

8. In order to appreciate submissions, it is necessary to consider Section 498A of Indian Penal Code, 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.

9. This provision makes it clear that in order to constitute an offence punishable under Section 498-A of the IPC, the husband or relative of the husband of the woman must subject her to cruelty. The explanation to this section shows that the cruelty is 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, there has to be averment in complaint against accused about there being demand of dowry by him and physical or mental harassment for non-compliance of the same. Perusal of complaint shows that the allegations are essentially made against co-accused. As far as the applicants no.5 to 8 are concerned, the allegations against them at the most show that they instigated the other accused persons more particularly husband of complainant to cause harassment to her. There is nothing on record to show that these applicants demanded any money for them by way of dowry.

10. At this stage, it would be relevant to take note of judgments of Hon'ble Apex Court in the case of **K. Subba Rao vs. The**

State of Telangana, (2012) 10 SCC 741, wherein it has been held that ‘the relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.’ Similarly, in the case of **Kahkashan Kausar @ Sonam vs. State of Bihar, 2022 SCC OnLine SC 162**, it is observed that husband’s relatives cannot be forced to undergo trial in absence of specific allegations of dowry demand.

11. Here in this case also it can be apparently seen that only with a view to cause harassment to the relatives of husband, complaint is made against them. When no offence is made out against such persons, continuance of such proceedings will be sheer abuse of process of court. While laying down guiding principles for quashment of FIR or Complaint, Hon’ble Apex Court in the case of **State Of Haryana and Ors vs Ch. Bhajan Lal, 1992 AIR 604**, held as under:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused;
- (b)
- (c) where the uncontroverted allegations made in the FIR or

'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) to (g)”

12. These illustrations (a) and (c) noted above are squarely applicable to the present case. Hence, complaint which does not disclose / make out any offence against applicants no.5 to 8 under Sections 498A, 323, 504, 506 of the IPC, R.C.C. No. 29 of 2022 deserves to be quashed *qua* these applicants. Hence, order.

ORDER

[i] Application is partly allowed.

[ii] R.C.C. No.29 of 2022 stands quashed *qua* applicant nos. 5 to 8.

[R. M. JOSHI]
JUDGE

GGP