

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

CRIMINAL WRIT PETITION NO.604 OF 2022

1. Vishwajeet Shivaji Kamble,
2. Shruti @ Alka Vishwajeet Kamble,
3. Sunita Shivaji Kamble,
4. Shivaji Shetiba Kamble

..Petitioners

Vs.

1. State of Maharashtra,
2. Smt. Jyoti Vishal Kamble

..Respondents

Mr.A.D.Sonkawade, Advocate h/f. Mr.R.H.Mewara, Advocate for
petitioners

Mr.P.N.Kutti, APP for respondent no.1

Mr.S.B.Satkar, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : AUGUST 25, 2023

ORDER :-

This Writ Petition under Article 226 of the Constitution of India, takes exception to the FIR, being Crime No.482 of 2021, registered with Udgir Rural Police Station, Udgir, Dist. Latur, for the offences punishable under Sections 498-A, 323 and 504 read with Section 34 of Indian Penal Code, the consequential charge sheet and the proceedings in R.C.C. No.252 of 2022, pending before learned Judicial Magistrate, First Class, Udgir.

2. What can be gathered from the FIR and the police papers, is that the respondent-wife (informant) married the co-accused Vishal on 17.08.2018. On marriage, she started residing at her matrimonial home at Udgir, Dist.Latur. In the marriage, her mother gave T.V., fridge, washing machine, gold ornaments, etc. The expenditure of marriage was incurred by the parents of Vishal.

3. The petitioners before us are brother-in-law, his wife and parents-in-law of the respondent-wife. For the initial period of four-five months of the marriage, the respondent-wife was treated well. The co-accused - Vishal was told to have been serving in Indian Army, but it was turned out that he was doing a private job at Pune. When the respondent-wife inquired about the same, he started harassing and illtreating her. It has been alleged that the co-accused Vishal had extra-marital relationship with the wife of brother-in-law, who is in Army. Two-three paragraphs of the FIR have been spent over the relationship between the two.

4. It has further been averred that on 08.01.2019, respondent-wife gave birth to a baby boy at her parental house. At that time, all the petitioners had visited her parental house to see her well-being and that of the new born and assured that they will

not illtreat her. Since she did not return to the matrimonial home, Advocate's notices were also issued calling her to resume the matrimonial relationship. The respondent, therefore, returned back to her matrimonial home. Thereafter, they shifted to Shirdi, whereat, the father-in-law (petitioner no.4) was serving as a Watchman with the Shirdi Sansthan. It has further been averred that in June, 2021, the co-accused – Vishal asked her to fetch Rs.4 Lakhs from her mother for purchase of four-wheeler. When she expressed inability, he made a phone call to her mother and told that he would not maintain her unless the demand was met. Since the demand was not met, the parents-in-law started beating and abusing her. It is further averred that on 24.07.2021, she was relieved of her ornaments and the child as well, and driven out of the matrimonial home. She, therefore, went back to her parental home in Thane District. On 01.08.2021, she again came to her matrimonial home to have custody of her child. That time, all the in-laws abused and turned her out of the matrimonial home. The statements of the relations of the respondent-wife are consistent with the averments in the FIR.

5. Learned counsel for the petitioners submits that the allegations are mainly against the co-accused – Vishal. He is not before the Court. Petitioner no.1 (brother-in-law) has been serving in Indian Army. Our attention has been invited to a communication dated 14.04.2022 made by the Major, informing that both petitioner nos.1 and 2 have been residing at petitioner no.1's work-place, far away from the native place. According to learned counsel, the allegations against the petitioners herein are general, vague and omnibus. No specific incident of illtreatment has been highlighted. There is no injury certificate. Even Advocate's notices were issued, asking her to resume the matrimonial relationship. She did not return to her matrimonial home. Learned counsel, therefore, urged for allowing the petition.

6. Learned APP and learned counsel for respondent no.2, would, on the other hand, submit that the Court has to go by the averments in the FIR. No mini-trial can be conducted in this proceedings. The statements of the relations of the respondent-wife would reinforce the averments in the FIR. Learned counsel for the respondent – wife relies on the judgment of Rajasthan High Court, Bench at Jodhpur, in the case of **Jitendra Vs. State of Rajasthan**,

2023/RJJD/016685, wherein it has been observed that when offence is made out from the averments in the FIR, powers under Section 482 of the Code of Criminal Procedure shall not be exercised. It was also submitted by learned counsel that the petitioners were given notice under Section 41(A) of the Code of Criminal Procedure. They did not respond. The same shows their involvement in the crime in question. According to him, the affidavit-in-reply also needs to be gone into, wherein the respondent-wife has disclosed her mind to suggest, in what way the petitioners had illtreated her. Learned counsel for respondent no.2 also referred to the judgment of the Apex Court in the Case of **Pratibha Vs. Rameshwari Devi and ors., JT 2007(11)122**. It was also submitted that the respondent-wife moved an application for custody of the child. The same is pending in the Court at Thane. Rejection of the present petition with heavy cost has been urged for.

7. We have considered the submissions advanced. Perused the FIR and the related police papers.

8. The statements of the relations of the respondent-wife, though consistent with the FIR, need to be stated to be hearsay, i.e.

based on what was told to them by the respondent-wife. We have, therefore, to first advert to the FIR itself.

9. The allegations in the FIR regarding the demand of Rs.4 Lakhs have been made against the husband - Vishal, who is not before us. Petitioner no.1 – Vishwjeet has been serving in Indian Army. No specific dates have been given as to when he along with his wife used to visit the respondent no.2's matrimonial home. No specific overt-act of illtreatment, constituting offence under Section 498-A of Indian Penal Code, has been attributed to the parents-in-law (petitioner nos.3 and 4). The allegations as regards illicit relationship of the husband and wife of his brother, in our view, do not constitute the offence under Section 498-A of Indian Penal Code. As such, it is the case of vague, general and omnibus allegations against the petitioners herein. It appears that the respondent-wife, after delivery of child, did not return to the matrimonial home. Advocate's notices were required to be issued asking her to resume the matrimonial relationship. Be that as it may.

10. The fact remains that there are general, vague and omnibus allegations made against the petitioners. If the petitioners

are made to stand trial on the basis of such allegations, it would be sheer abuse of the process of court. We, therefore, allow the petition in terms of prayer clauses (A), (D) and (E).

11. The trial court is expected to conclude the trial against the husband (Vishal), within a time frame of eight months from the date of receipt of a copy of this order.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP