

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1699 OF 2022

- 1] Harish Vasant Patil
- 2] Kiran Vasant Patil
- 3] Vasant Shriram Patil
- 4] Shubhangini Amol Saner
- 5] Amol Balasaheb Saner
- 6] Rajkishor Laxman Pawar
- 7] Yogesh Rajkishor Pawar

.. Applicants
(Orig. Accused No.1 to 7)

Versus

- 1] The State of Maharashtra
Through Deopur Police Station,
Taluka and District Dhule
- 2] Vijaya Harish Patil

.. Respondents

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Advocate for applicants : Mr. Amol S. Sawant
Addl. PP for the respondent – State : Mrs. M.A. Deshapande
Advocate for the respondent no. 2 : Mr. Kiran Pandurang Rathod (appointed)

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 29 MARCH 2023

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides.

2. Perused the record and the papers.

3. The applicants are seeking quashment of crime no. 0029 of 2022 registered with Deopur Police Station, Dhule for the offences punishable under section 498A, 323, 504, 506 r/w. 34 of the Indian Penal Code and the consequent chargesheet and the criminal case bearing R.C.C. no. 194 of 2022 pending before the 3rd Joint Judicial Magistrate First Class, Dhule, District – Dhule .

4. After hearing the arguments when we express disinclination to grant any relief to the applicants no. 1 to 3 who happen to be the husband and his parents, the learned advocate, on instructions, seeks leave to withdraw the application to their extent.

5. The applicant nos. 4 to 7 are the sister of the husband and her husband and the paternal uncle of the husband and cousin of the husband respectively.

6. In the matter of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others; (2022) 6 SCC 599***, the Supreme Court by taking a roving enquiry into the consistent view expressed in catena of judgments rendered by it earlier, has pointedly remarked about the usual tendency of a wife to rope in as many as relatives of the husband as possible when she registers a crime for the offences punishable under section 498A, 341, 323, 379 and 354 r/w. 34 of the Indian Penal Code.

It has been specifically observed that the Courts have to be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths and must keep in mind that 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.

A reference was made to the decisions in the matters of *Rajesh Sharma V. State of U.P.* (2018) 10 SCC 472, *Arnesh Kumar V. State of Bihar*; (2014) 8 SCC 273, *Preeti Gupta V. State of Jharkhand*; (2010) 7 SCC 667, *Geeta Mehrotra and another Vs. State of U.P.*; (2012) 10 SCC 741, *K. Subba Rao V. State of Telangana*; (2018) 14 SCC 452.

The observations in paragraph no. 17 and 18 are important which read 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.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the

appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

7. Taking a blame for appearing to be predetermined, we only feel it important to point out these observations in obedience to the observations of the Supreme Court.

8. The FIR is not supposed to be an encyclopedia. Whatever at that particular moment the informant feels like important to narrate, is generally incorporated in the FIR. In a given case, the Investigating Officer may collect further information pursuant to such FIR if he comes across the other circumstances substantiating the basic allegations levelled in the FIR. This could be in the form of additional evidence not spoken about in the FIR or additional witnesses not named in the FIR. Similarly, it is also possible that even the involvement of some persons who have not been expressly named in the FIR could be revealed.

9. But then, in the matter of the offences arising out of the matrimonial dispute like the present one, where the informant is a woman who complains about having been subjected to cruelty by the husband and his relatives, the scope for Investigating Officer to collect,

some additional information during the course of investigation is limited. The woman must have spent some time in the matrimonial home and must be knowing the names of the in-laws which she would refer to in the FIR.

10. Similarly having faced cruelty for some time, in all probability, she would from time to time narrate her plight to her near and dear ones like parents, brothers and even friends. The Investigating Officer gets an opportunity to seek corroboration from all these sources to lend support to the allegations being levelled in the FIR.

11. Bearing in mind the above situation, no importance can be attached *ipso facto* to the fact that names of all the applicants are appearing in the FIR or to the fact that their names are similarly appearing in the statements of the parental side witnesses of the respondent no. 2. It is a common experience that if a man and woman are leading a marital life, they would get involved in some kind of bickering. It is only when such a bickering constitutes cruelty that has been made punishable under section 498A of the Indian Penal Code. Therefore, it becomes imperative to ascertain if all the relatives of the husband can be allowed to face the prosecution unless there is material revealing their complicity in the crime as has been laid down in the matter of **Kahkashan Kausar @ Sonam** (supra).

12. Similar to the situation that was obtaining before the Supreme Court in the matter of ***Kahkashan Kausar*** (supra), the FIR as also the statements of the witnesses jointly name all the applicants as having raised demand for money and having subjected the respondent no. 2 to cruelty on that count. These statements are clearly omnibus and one cannot make out any specific role attributable to the applicants no. 4 to 7. Applicant no. 4 is the married sister-in-law of the respondent no. 2, applicant no. 5 is her husband and obviously this couple must have been staying separately and not in her matrimonial home. Similarly, the applicant no. 6 is the paternal uncle of the husband and applicant no. 7 is the cousin brother of the husband and have been residing in a different town than where the matrimonial home of the respondent no. 2 situate.

13. In view of the absence of specific allegation revealing exact role played by the applicants no. 4 to 7 in subjecting the respondent no. 2 to cruelty, in our considered view, this case presents a similar circumstance as was obtaining before the Supreme Court in the matter of ***Kahkashan Kausar*** (supra) and should result in a similar consequence.

14. The application is partly allowed.

15. The application to the extent of the applicants no. 4 to 7 is partly allowed. Crime no. 0029 of 2022 registered with Deopur Police Station, Dhule for the offences punishable under section 498A, 323, 504, 506 r/w. 34 of the Indian Penal Code and the consequent chargesheet and the criminal case bearing R.C.C. no. 194 of 2022 pending before the 3rd Joint Judicial Magistrate First Class, Dhule, District - Dhule to their extent stands quashed and set aside.

16. Application to the extent of applicants no. 1 to 3 is dismissed as withdrawn.

17. Since Shri Kiran P. Rathod, Advocate is appointed by this Court to represent respondent no. 2 vide order dated 20 January 2023, we quantify his fees at Rs.3000/- (Rs. Three Thousand).

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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