

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

975 CRIMINAL APPLICATION NO.2084 OF 2022

1. Sagar Santosh Shivnekar.
2. Santosh Lalchand Shivnekar.
3. Mangala W/o Santosh Shivnekar.
4. Yogesh Santosh Shivnekar.
5. Vijay Shivlal Bramhane.
6. Dipti W/o Vijay Bramhane.
7. Shivlal Puna Bramhane.
8. Radhabai Shivlal Bramhane. ... Applicants

Versus

1. The State of Maharashtra.
2. Sau. Seema W/o Sagar Shivnekar. ... Respondents

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Mr. Surendra V. Suryawanshi, Advocate for Applicants.
Mr. R. V. Dasalkar, APP for Respondent No.1 / State.
Mr. Angad L. Kanade, Advocate for Respondent No.2.

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CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

DATE : 02nd August, 2023.

Per Court:

1 Heard.

2 This application has been filed for quashment of FIR and consequential charge-sheet in Regular Criminal Case No.198 of 2022, for the offences punishable under Sections 498-A, 406, 504, 506, 420 read with 34 of the Indian Penal Code.

3 What can be gathered from the FIR and the police papers is that respondent No.2 married applicant/Sagar on 25th June, 2020. On marriage, she started residing at her matrimonial home at Pachora, District Jalgaon. Applicant Nos.2 to 8 are the relations (in-laws) of applicant No.1. It is a case of the respondent/wife that before the marriage, a demand of Rs.12,00,000/- was made towards dowry. Her parents paid the applicant/husband and his parents a sum of Rs.4,00,000/- in cash. They spent a lot for the marriage. Even a sum of Rs.30,000/- was paid through PhonePe in the account of applicant No.1. Thereafter, the marriage took place as agreed upon.

It has further been averred that within 7-8 days of the marriage, the respondent/wife realized applicant/Sagar to have been taking some medicines (pills) before going to bed. When she inquired about the same with him and his mother, he picked up quarrel with her. They even threatened her of sending her back to her parents' house permanently. She, therefore, after having inspected the covers of those pills, found on google that those medicines were meant for the persons psychologically challenged. As such, it is the case of the respondent/wife that her consent for marriage was obtained without disclosing mental illness of applicant No.1. Section 420 of IPC gets invoked. It has further been averred that on 20th January, 2021, she was taken to Lilawati Hospital, Pachora and made to undergo medical

termination of her pregnancy. It was against her wish. It is also her case that some documents were obtained from her parents by her husband and his parents. Those documents were executed, since the parents of the respondent/wife wanted to see her to have happy married life. Her parents were not made aware of the contents of those documents. Attention of this Court was also adverted to some statements of the so-called independent witnesses, namely Manohar Jonwal and Hiralal Jadhav, to submit that the applicant/husband and his parents were reluctant to get back the respondent/wife to her matrimonial home. It has also been averred in the FIR that the respondent/wife was all along ill-treated physically, mentally as well. She was also assaulted over her failure to meet their demand of balance amount of Rs.7,70,000/-.

4 The learned counsel for the applicants adverted our attention to certain documents and WhatsApp message sent by the respondent/wife to applicant/Sagar, to ultimately urge for grant of relief.

5 The learned counsel for respondent/wife and the learned APP would, on the other hand, submit that no mini-trial can be conducted here. The FIR is replete with allegations suggesting the manner in which the present applicants have committed various offences such as offences punishable under Sections 420, 406, 313

read with 34 of the Indian Penal Code, besides the offence punishable under Section 498-A of IPC. The doctor, who runs the Lilawati Hospital at Pachora was hand-in-glove with the applicants. Based on his statement, Section 313 of IPC came to be dropped. It was also submitted that applicant/Sagar has now contracted second marriage and he is leading happy married life. As such, all the applicants have first duped the respondent/wife and her parents and then committed various offences. Filing of the charge-sheet itself suggests that there is *prima-facie* material to frame the charge and proceed against the applicants herein. They, therefore, ultimately urged for rejection of the application.

6 Considered the submissions advanced. Perused the FIR and the related papers. It is true that there is some substance in the submissions made by the learned counsel for respondent/wife. There is also material to indicate applicant/Sagar is somewhat mentally challenged. Percentage thereof is, however, not before us. It is not shown to us that he was unable to discharge his matrimonial obligations. On the contrary, it is the case of respondent/wife that he has contracted second marriage and is leading happy married life with his second wife.

On the contrary, there is WhatsApp message admittedly sent by the respondent/wife to applicant/Sagar informing him that her

marriage was performed against her wish. She wanted to have her marriage dissolved. She even requested him not to make efforts to get her back to matrimonial home. There are two documents; one dated 15th July, 2020 and another one dated 15th October, 2020. Those documents have been executed by the respondent/wife and her parents. Admittedly, the father of the respondent/wife is a Police Head Constable, serving with the very police station with which the crime came to be registered and even investigated as well. It is difficult to assume that he signed the said documents without getting himself conversant with the contents thereof. Those documents and the WhatsApp message suggest the respondent/wife was emotionally involved with one boy. His name also figured therein. It is also disclosed therefrom that she continued to have relationships with him post marriage.

7 In the given circumstances, we are of the view that the interest of justice demands the application to be granted. We, therefore, allow the application in terms of prayer clauses (B) and (CC).

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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