

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2882 OF 2022

Aarti Mahendra Jain (Bhansali) ...Applicant

Versus

The State of Maharashtra & Anr ...Respondents

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Mr. G.D. Jain, Advocate for the Applicant.

Mr. M. M. Nerlikar, APP, for the Respondent – State.

Mr. R.N. Jain, Advocate for the Respondent No. 2.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : JANUARY 27, 2023

PER COURT :

1. With consent, heard finally at the stage of admission.

2. This is an application under Section 482 of the Code of Criminal Procedure to quash the FIR No. 79/2022 dated 08.04.2022 registered with Upnagar Police Station, Dist. Nandurbar and R.C.C. No. 236/2022 pending on the file of Learned 21 – Chief Judicial Magistrate, Nandurbar for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. We have perused the records and considered the submissions advanced by learned Counsel appearing for respective parties.

4. The marriage of the Respondent No. 2 and Tushar Jain, the brother of the Applicant herein, was solemnized on 24.06.2012. They have two children from the said wedlock. The Respondent No. 2 lodged the report on 08.04.2022 alleging that on 05.01.2013 when she had told her husband that she was going to her paternal home, he assaulted her with kicks and fist blows and in a fit of anger told her to leave the matrimonial home. She has stated that her husband used to taunt her over her complexion and culinary skills. She has stated that her husband had told her to recover Rs. 2 lacs from her cousin which he had lend in the year 2019. When she refused to do so, her husband assaulted her by giving kicks and fist blows and told her father to take her to home. She claims that since then she is residing with her father.

5. Respondent No. 2 claims that on 05.04.2021 her husband and his family members came to her parental home and once again taunted her on her complexion and

complained about her cooking. They argued with her father and assaulted her by giving kicks and fist blows and threatened that they would not allow her to return to her matrimonial home. On the basis of these allegations, the first information report has been registered.

6. Learned Counsel for the Applicant states that the allegations in the first information report, even if taken at their face value, do not disclose the offence under Section 498-A IPC. He states that the applicant is the married sister and is not involved in committing any offence. He further stated that this is a fit case to exercise powers under Section 482 of the Code of Criminal Procedure to prevent abuse of the process of Court.

7. *Per contra*, learned APP and learned Counsel appearing for Respondent No. 2 submit that the Respondent No. 2 has been subjected to cruelty. She has been assaulted and constantly taunted over her dark complexion. They contend that the FIR *prima facie* discloses offences under Section 498-A IPC.

8. We have perused the records and considered the submissions advanced by the learned Counsel appearing for respective parties.

9. At the outset, it may be mentioned that Section 482 of Cr.P.C confers powers on the High Court, *inter alia*, to prevent the abuse of the process of Court and to secure the ends of justice. It is well settled that these powers can be exercised to quash the first information report as well as criminal proceedings when un-controverted allegations in the first information report and other material collected in the course of investigation do not disclose any cognizable offence. Reliance is placed on the judgment of the Supreme Court in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and Others reported in 1992 AIR 604.

10. In the circumstances, the only question for our consideration is whether the first information report and other material accompanying the FIR discloses the offence as against the present applicant.

11. The applicant is alleged to have committed

offence under Section 498-A IPC, which reads thus:

498-A. 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.

12. It is well settled that in order to attract offence under Section 498-A IPC there has to be material to show that the accused has committed any such willful conduct of the nature specified in clause a or b of explanation to Section 498-A. Furthermore,

the willful act or conduct ought to be proximate cause to bring home the guilt under Section 498-A.

13. In the instant case, the marriage of Respondent No. 2 and the brother of the applicant was solemnized in the year 2012 and the report of harassment is lodged in the year 2022. The only allegation against the applicant, who is the married sister-in-law of Respondent No, 2, is that she had visited her parental home and had taunted her being of dark complexion and criticized her for her cooking ability. Omnibus allegations are made against the husband and all his family members that they had insulted and assaulted her by fist and kick blows. The allegations, in the first information report, accepted in their entirety, would not constitute cruelty within the meaning of clause (a) or (b) to explanation Section 498-A of IPC. In such circumstances, compelling the applicant to face criminal trial would be abuse of the process of Court. Consequently, this is a fit case to exercise powers under Section 482 of Cr.P.C.

14. In the result, the application is allowed in

terms of prayer clause 'B'. Consequently, the FIR No. 79/2022 dated 08.04.2022 registered with Upnagar Police Station, Dist. Nandurbar and R.C.C. No. 236/2022 pending on the file of Learned 21 – Chief Judicial Magistrate, Nandurbar for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code is hereby quashed *qua* applicant.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)