

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

**CRIMINAL WRIT PETITION NO.1078 OF 2021
WITH WP/486/2022**

**MANISHA W/O. VIJAY SAPKALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. D. R. Jethliya, Advocate for the petitioners
Mr. A. R. Kale, APP for the respondent/State
Mr. V. B. Patil, Advocate for respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 20th JANUARY, 2023

PER COURT :-

1. With consent, heard finally at the stage of admission.
2. Order dated 6th November, 2022 in Writ Petition No. 486 of 2022 records that learned counsel Shri. Patil had accepted notice on behalf of respondent No.2. He was directed to file Vakalatnama within two weeks. The office note indicates that Vakalatnama has not been filed. Learned counsel Mr. Patil for respondent No.2 states that he was unable to contact the respondent No.2. Since he is already representing the respondent No.2 in Criminal Writ Petition No. 1078 of 2021 which is in respect of the same FIR, he has been heard in both the petitions on behalf of respondent No. 2.
3. These petitions are filed under Article 226 of the Constitution

of India and under Section 482 of Cr.P.C. to quash the first information report No. 341 of 2019 registered with Jalgaon Taluka Police Station, Jalgaon and R.C.C. No. 148 of 2020 pending before the JMFC, Jalgaon for the offences punishable under Sections 498A, 506 read with Section 34 of the Indian Penal Code.

4. The aforesaid crime was registered pursuant to the first information report lodged by the respondent No.2. The petitioner No.1 in Criminal Writ Petition No. 1078 of 2021 is her married sister-in-law, petitioner No.2 who is 74 years of age is the father-in-law and petitioner No.3 is the brother-in-law of petitioner No.1. The petitioner Nos. 2 and 4 in Criminal Writ Petition No. 486 of 2022 are the maternal aunts of the husband of respondent No.2, petitioner Nos. 1 and 3 are their spouses, petitioner Nos. 5, 7 and 6 are the daughters and son-in-law of petitioner Nos. 3 and 4.

5. The marriage of respondent No.2 was solemnized on 17th June, 2017. She claims that within a couple of days i.e. on 19th June, 2017 her husband told her that he wanted to purchase a flat at Pune and told her to get Rs.10 lakhs from her father. She has further stated that her husband took her gold ring and earrings and that his parents and sister told her to arrange the money and to mend her ways. Similar allegations are made against the other petitioners i.e. maternal aunts of

her husband and their family members.

6. Respondent No.2 claims that on 25th June, 2017 her husband dropped her to her parental home at Badlapur and told her to arrange money for the flat. Respondent No.2 states that on 5th August, 2017, when she had accompanied her husband to the house of her sister-in-law Manisha for a birthday party, she told her to bring a gold pendant of three tolas from her father. The respondent No.2 claims that her husband and his family members had made unlawful demand of money. She, therefore, filed the first information report against her husband and 12 members of his family for committing offence under Section 482 of Cr.P.C.

7. Learned counsel for the petitioners submits that respondent No.2 had left her matrimonial home within 7 days of the marriage. She lodged the FIR more than two years later wherein she has made allegations not only against her husband and his family members but has also roped in the family members of the married sister-in-law and maternal aunts of her husband without any rhyme or reason. He contends that the first information report and the other material on record does not make out a case under Section 498A of the IPC or any other cognizable offence as against these petitioners. In such circumstances continuation of the proceedings would be abuse of the

process of Court.

8. Per contra learned APP and learned counsel for respondent No.2 submit that there are specific and categorical allegations against the petitioners for having made unlawful demand of dowry, which according to them constitutes offence under Section 498A of IPC. Hence, it is sought to be contended that this is not a fit case to invoke writ jurisdiction under Article 226 to exercise inherent powers under Section 482 of Cr.P.C.

9. We have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the allegations made in the first information report and other material on record collected in the course of investigation even if accepted in their entirety discloses offence under Section 498A of IPC as against these petitioners.

10. The records reveal that the marriage of respondent No.2 and Dinesh Sonawane was solemnized on 17th June, 2017. The respondent No.2 has alleged that her husband had dropped her to her parental home on 25th June, 2017. The first information report does not indicate that she had returned to the matrimonial home thereafter. The respondent No.2 lodged first information report in the year 2019 alleging that her

husband and his family members made unlawful demand for dowry. It was on the basis of these allegations crime has been registered against the husband and his relatives for committing offence under Section 498A of the I.P.C., 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."

11. The basic ingredient of Section 498A of IPC is cruelty which as envisaged in the explanation means (a) wilful conduct 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 or (b) harassment of the woman with a view to coerce her to meet an unlawful demand of property or valuable security.

12. Adverting to the facts, the allegations leveled in the first information report do not indicate that these petitioners had subjected

the respondent No.2 to cruelty within the meaning of Clause (a) of explanation to 498A of the IPC. The only accusation against the petitioner No. 1 is that she had told respondent No. 2 to get a gold pendant of three tolas from her father. She has also made general and sweeping statement that the other petitioners had told her to get Rs.10 lakhs from her father. The Apex Court has in several cases and recently in the case of ***Kahkashan Kausar Alias Sonam and Others Vs. State of Bihar and others*** reported in **(2022) 6 SCC 599** expressed concern over the misuse of Section 498-A of IPC and growing tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complaint as well as the accused. The Apex Court has reiterated that false implication by way of omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law and has cautioned the Courts from proceeding against the relatives and in-laws when no prima face case is made out against them.

13. The case in hand is one of such category where the respondent No.2 has dragged even the distant relatives of her husband in matrimonial dispute without making specific or distinct allegations against them. Furthermore, the first information report does not indicate that the petitioners had subjected respondent No.2 to harassment to coerce her to meet the unlawful demand on account of failure to meet

such demand. Suffice it to say that mere demand of dowry unaccompanied by cruelty, would not constitute offence under Section 498A of IPC. Hence the FIR does not disclose the essential ingredients of 498A of the IPC. Even if the contents of the FIR and other material are accepted as true and correct, in our considered view the same does not disclose offence under Section 498A of the IPC. In such circumstances, compelling these petitioners to face trial on the basis of unfounded allegations would be sheer of abuse of the process of law. Hence in our view this is fit case to exercise to quash the first information report as well as the criminal proceedings qua these petitioners. In the result these petitions are allowed. The first information report No. 341 of 2019 registered with Jalgaon Taluka Police Station, Jalgaon and R.C.C. No. 148 of 2020 pending before the JMFC, Jalgaon for the offences punishable under Sections 498A, 506 read with Section 34 of the IPC are quashed qua these petitioners

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp