

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

966 CRIMINAL APPLICATION NO.3387 OF 2022

1. Saurabh S/o Shantilal Saklecha.
2. Priyanka W/o Saurabh Saklecha.
3. Shantilal S/o Lalchandji Saklecha. ... Applicants

Versus

1. The State of Maharashtra.
2. Jyoti W/o Shantilal Saklecha. ... Respondents

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Mr. Sachin S. Deshmukh, Advocate for Applicants.

Mr. A. R. Kale, APP for Respondent No.1 / State.

Mr. Pramod Fulchand Patni, Advocate for Respondent No.2.

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

DATE : 01st September, 2023.

Per Court:

. Heard.

2 This application has been filed for quashment of FIR and consequential charge-sheet bearing No.364 of 2023, pending in the Court of the learned Chief Judicial Magistrate, Jalna, for the offences punishable under Sections 498-A, 504 and 506 of the Indian Penal Code.

3 What can be gathered from the FIR and the police papers, is that the respondent/informant married applicant Shantilal way back in 2011. Shantilal's first wife had died in an accident. Shantilal has a son and two daughters from his first marriage. The respondent / informant was a divorcee. She has a daughter from her first marriage, by name Janvi.

4 It has been alleged that in February, 2011, the informant conceived. After having realized the same, Saurabh, son of Shantilal from his first marriage, started picking up quarrel. He even gave a fist blow on her stomach and asked her to undergo abortion. She, therefore, went to a hospital in Jalna and underwent abortion. By that time, the marriage between the informant and Shantilal had not been registered. On 4th February, 2011, both of them, therefore, performed registered marriage. The informant's daughter from her first marriage was residing with her. Her presence in the family was not liked by the applicants. It was in 2013, applicant Saurabh asked the informant to fetch Rs.5,00,000/- for purchase of a sports bike. In 2014, applicant Shantilal adopted Janvi. A deed of adoption was executed. Applicant Saurabh thereby got annoyed as he thought his sharer in the property would now be reduced. He, thereafter, started abusing the informant and her daughter. In 2015, applicant Saurabh obtained immovable property in gift from his father. A gift-deed was executed. The

informant was made to sign the gift-deed as a consenting party thereto. For obtaining such consent, she was put under threat to her life.

5 It has further been alleged that applicant Saurabh filed a civil suit in 2016 for cancellation of deed of adoption. The ill-treatment became unbearable. It was in 2017, Shantilal and Saurabh turned the informant and her daughter out of the matrimonial home. She, therefore, took a premises on rent at Saklecha Nagar itself. Since Janvi passed SSC in 2017, both the informant and Janvi went to Kota for better education. Both of them returned in 2019. Applicant Shantilal agreed to bear educational expenses of Janvi. He, however, did not pay a farthing. On their return to Jalna, again disputes and quarrels started between the applicants on one hand and the respondent/informant and her daughter Janvi on the other. The respondent/informant secured a premises on rent belonging to one Praful Bharvada. Those were the days of corona pandemic in 2020. She was in financial distress. Shantilal did not provide anything for their maintenance. It has further been averred that in February, 2021, the respondent/informant went to her matrimonial home to fetch original documents of a L.I.C. policy. That time, applicant Saurabh alleged her to have committed theft. Thereafter, Shantilal stopped providing money for the maintenance of the respondent/informant and

her daughter. It has further been averred that on 7th May, 2021 both Shantilal and Saurabh visited the premises wherein the respondent/informant was residing on rent. They thrown out her household articles. Saurabh manhandled Janvi. Both of them, therefore, left Jalna. That incident was reported at Sadar Bazar Police Station, Jalna on 8th May, 2021. After having realized the police report to have been filed, both Shantilal and Saurabh came to her house and asked her to withdraw the complaint or else the informant and Janvi would be set on fire. With a fear, both Janvi and her mother left for Dahanu. Thereafter, she could not attend the Court matter filed by Saurabh for cancellation of deed of adoption. On 23rd January, 2022, the informant went to the house of applicants to meet Arham, grandson of Shantilal. That time, applicant Saurabh and his wife Priyanka picked up quarrel with her. She asked her to see Arham in photograph only. Both of them abused her and threatened of dire consequences if she returned.

6 It has further been averred that on 21st September, 2022, which was a scheduled date for civil suit filed by Saurabh for cancellation of adoption deed, she, therefore, attended the Court proceedings. Saurabh came to her that time and requested her to come around to settle the same. In the evening of the very day, she, therefore, went to the house of the applicants. Both Shantilal and

Saurabh were there. They asked her to withdraw the case (filed by her), lest it would be ensured that she would not be seen in Jalna.

7 Based on the aforesaid allegations, the aforesaid crime came to be registered, investigated, as well and the charge-sheet has been filed.

8 The statements of the relations of the respondent / informant are consistent with the averments in the FIR.

9 Learned counsel for the applicants would submit that a false and concocted crime has been lodged against the applicants. Close reading of the FIR would only indicate that at the most a non-cognizable offence punishable under Section 506 of the Indian Penal Code to have been made out. According to him, allowing the prosecution to continue, would be an abuse of process of Court. He also adverted our attention to some documents placed on record on behalf of the applicants to indicate that the incident of Saurabh giving a fist blow on the stomach of the respondent/informant was false. The documents relied on by the applicants cannot be looked into in this proceeding, since those are not of sterling quality. Be that as it may.

10 The learned counsel for respondent / informant and the learned APP would, on the other hand, submit that detailed FIR has

been lodged. Each and every incident of harassment and ill-treatment has been averred therein. No mini trial can be held here. The statements of witnesses reinforce the averments in the FIR. As such, it is for the Trial Court to decide the applicants' claim on its own merits. No relief of quashment of FIR and consequential charge-sheet, thus, could be granted to the applicants.

11 Considered the submissions advanced. Perused the FIR and the related papers.

12 Section 498-A of the Indian Penal Code 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.”

13 Admittedly, both Shantilal and the respondent/informant were previously married. Shantilal's first wife passed away while the respondent/informant was a divorcee. Both of them have been blessed with children of their respective first marriages. The respondent's daughter Janvi used to reside alongwith the applicants. In view of the aforesaid fact, necessarily relations between Saurabh, son of first marriage of Shantilal and the respondent/informant were not good. The alleged harassment and ill-treatment started soon after the marriage and is said to have continued until some time before registration of the FIR. On investigation, Section 312 of the Indian Penal Code, which was earlier invoked, came to be dropped. The same suggests the respondent/informant to have made false or unfounded allegations in regard of that offence. In 2015 itself, Saurabh filed a civil suit for cancellation of deed of adoption. The suit was pending. It is also revealed that Janvi has also filed a civil suit for partition of the family properties and for cancellation of deed of gift that was executed by Shantilal in favour of Saurabh. The allegations of demand of Rs.5,00,000/- for purchase of a sports bike were allegedly made by Saurabh way back in 2013. When the relations between the parties had turned sore since beginning and they were residing separately since 2017, the respondent/informant could have lodged a report in relation to the offence punishable under Section 498-A of IPC

at the earliest. There was no allegation of unlawful demand to have been made by any other applicants, except Saurabh. It is improbable that a step son would ask his step mother to fetch Rs.5,00,000/- for purchase of a bike. Close reading of the FIR would indicate that the applicants have been alleged to have harassed and ill-treated both the respondent/informant and her daughter for one or the other reason by visiting their residence. Last such incident is stated to have taken place on 21st September, 2022. It was a day on which the civil suit was scheduled for hearing before the Court at Jalna. The parties had attended the Court's proceedings. Applicants Shantilal and Saurabh allegedly met her and threatened her to withdraw the civil suit filed by her daughter. She was even threatened for dire consequences. Therefore, the FIR was lodged. It is reiterated that the ingredients of unlawful demand of Rs.5,00,000/- allegedly made by Saurabh way back in 2013. The offence under Section 498-A of IPC is punishable with imprisonment for three years. A report in that regard ought to have been lodged within three years of commission of the alleged offence. The crime in that regard and for alleged other ill-treatment has been lodged long thereafter and that too on 21st September, 2022. It has rightly been suggested by the learned counsel for applicants that at the most the incident dated 21st September, 2022 could only make out an offence punishable under Section 506 of IPC.

14 The Apex Court in ***State of Haryana and Ors Vs. Ch. Bhajan Lal and Ors., AIR 1992 SC 604*** has observed that criminal proceedings may be quashed when the offence turns out to be a non-cognizable one. In our view, the averments in the FIR do not make out an offence punishable under Section 498-A of IPC. The allegations at the most make out an offence punishable under Sections 323, 504 and 506 of IPC, being non-cognizable one. The FIR appears to have been lodged with *mala-fides*. In such circumstances, asking the applicants to stand trial would be an abuse of process of Court. Interest of justice demands allowing the present application.

15 We are therefore, inclined to allow the application. The application thus, succeed. The application is, therefore, allowed in terms of prayer clause (A).

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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