

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.431 OF 2022

1. Amol Valmik Gaikwad,
Age : 37 years, Occup: service,

2.Trishla Valmik Gaikwad,
Age: 60 years, Occup:Housewife,

3.Valmik Hariba Gaikwad,
Age :70 years, Occup: Retired,

4.Avinash Valmik Gaikwad
Age: 33 years, Occup: Teacher,
All Residing at Y8 Vrindavan
Apartment, Wada Road,
Rajguru Nagar, Khed, Pune.

..... Petitioners.

Versus

1. The State of Maharashtra
Through Faujdar Chawadi Police Station,
Taluka Solapur, District Solapur.
(Copy to be served on the A.P.P.
High Court, Mumbai)

2. Ashwini Amol Gaikwad
Age 35 years, Occu: Service
All Residing at U-304,
Indradhanu Apartment
Bhaiya Chowk, Solapur-413001.

..... Respondents.

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Mr Vivek B. Rane @ Sejal Todkar, for the Petitioners.

Smt G.P.Mulekar, APP for Respondent No.1.

Mr Viresh Purwant, for Respondent No.2.

.....

**CORAM: NITIN W. SAMBRE &
R.N.LADDHA, JJ.**

DATE : 1 MARCH 2023.

Judgment (Per R.N.Laddha) :

Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. By this writ petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973, the Petitioners, the husband and his relatives of a married woman/Respondent No.2, have prayed for, *inter alia*, *quashing* the prosecution initiated on the strength of the first information report bearing C.R.No.789 of 2021 registered at Faujdar Chawadi Police Station, Solapur for the offences punishable under Sections 498-A, 323, 504, 506 r/w Section 34 of the Indian Penal Code.

4. It revealed from the record that the marriage of Ashwini-Respondent No.2 (hereinafter referred to as 'the first informant') was solemnized on 17.5.2011 at Pune with Amol-Petitioner No.1. At the time of marriage Petitioner No.1 was serving in Oriental Bank of Commerce at Pune whereas Respondent No.2 was serving in Panchayat Samiti South Solapur as an Agricultural Officer. After marriage, the first informant used to go to Khed to reside with the Petitioners every Sunday and the second and fourth Saturdays of the month. Petitioner No.2-Trishala is the mother, Petitioner No.3-Valmik is the father and Petitioner No.4- Avinash is the brother of Petitioner No.1.

5. It revealed from the record that the first informant had lodged the FIR on 20.11.2021 with Faujdar Chawadi Police Station, Solapur, against the Accused persons. Further, it revealed from the record that Petitioner No.1, in the year 2020, filed a divorce petition in the Family Court, Solapur. It is alleged in the FIR that all the Petitioners ill-treated and harassed her. It is alleged that in 2018 Petitioners No.2 and 3 had forced her to do an abortion. As alleged by the first informant, all the Accused even raised illegal demands of dowry, and upon her failure to meet that demand, she was harassed.

6. On completion of the investigation, a charge sheet was filed against the Accused persons/ Petitioners, being Regular Criminal Case No.1404 of 2022, pending before the learned JMFC, Solapur.

7. Mr Vivek Rane, learned Counsel appearing on behalf of the Petitioners, took us through the FIR as also the statement of the witnesses. It is submitted that the marriage had taken place way back in the year 2011, while the impugned FIR was lodged in the year 2021, i.e. after about ten years of the marriage. It is submitted that even if the allegations in the FIR are taken as gospel truth, no offence can be said to have been made out against the Petitioners so as to warrant their prosecution. The consequential investigation, too, does not attribute any criminal act to the Petitioners. It is submitted that based on the general and omnibus allegations, the Petitioners were roped in the crime. It is submitted that no specific instances of the involvement of the Petitioners are found either in the first information report or in the statement of the witnesses. It is submitted that from the overall nature of the matter, it is evident that since Petitioner No.1 has filed a divorce petition against the first informant and Petitioners No.2 to 4 being close relatives of Petitioner No.1, have been implicated only to satiate the first informant's ego and wreck vengeance against them. It is submitted that besides general and omnibus allegations, the FIR and the

statements of the witnesses are vague and silent as regards the allegations against the Petitioners. It is submitted that by no stretch of the imagination it can be stated that the allegations against the Petitioners had the propensity to drive the first informant to commit suicide or cause harm to herself.

8. Disagreeing with the aforestated contentions of the learned Counsel for the Petitioners, Mr Viresh Purvant, learned Counsel for Respondent No.2 and Mrs G.P.Mulekar, the learned Additional Public Prosecutor, submitted that the allegations are not general, that they are specific and that the first informant had lodged FIR against the Petitioners with some hidden motive. They submitted that the inherent powers of this Court should not be exercised to stifle a legitimate prosecution. According to them, even though the inherent powers of the High Court under Section 482, Cr.P.C. to interfere with criminal proceedings are wide, such powers have to be exercised with circumspection and only in exceptional cases. Jurisdiction under Section 482 Cr.P.C. is not to be exercised for asking. They submitted that the Petitioners cannot insist that this Court ought minutely to examine the allegations made in the complaint to ascertain as to whether all the ingredients of the offence are present therein or not.

9. According to the learned Counsel for Respondent no.2 and learned APP, the instant case cannot be a fit case to exercise extraordinary jurisdiction under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973. They submitted that the petition for quashing of FIR is untenable since the proceedings have gone past the stage of FIR and have resulted in a charge sheet.

10. We have given anxious consideration to the rival contentions and examined the record with reference to the applicable law.

11. The law on the exercise of powers under Section 482 Cr.P.C. to quash the FIR is well settled. In *Pepsi Foods Ltd. Vs Special Judicial Magistrate*¹, it has been held that summoning of an Accused, in a criminal case, is a serious matter and criminal law cannot be set in motion as a matter of course. The Accused can approach the Court, under Section 482, Cr.P.C. to have the proceedings quashed when the complaint does not make out any case against him and he is still required to undergo the agony of a criminal trial, as the provisions of Section 482, Cr.P.C. are devised to advance justice and not to frustrate it.

1 (1988)5 SCC 749.

12. In *State of Orissa Vs. Saroj Kumar Sahoo*², it has been held that when a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

13. Similarly, in *State of Haryana Vs. Bhajan Lal*³, it is held that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the Accused, then it is permissible for the High Court to exercise its inherent powers under Section 482 of the Cr.P.C.

14. We need not further multiply the authorities. Suffice it to say that the High Court can very well exercise its inherent powers under Section 482, Cr.P.C., if the allegations made in the first information report or complaint do not make out any case against the Accused.

15. By a catena of decisions of the Hon'ble Supreme Court, it is clear that the ordinary quarrels, the difference of views, and wear and tear of life, which every home has witnessed, do not come

2 (2005) 13 SCC 540.

3 1992 Supp. (1)SCC 335.

within the expression “*cruelty*” in Section 498-A. To fetch a person within the tentacles of Section 498-A, the married woman must have been subjected to cruelty which would drive the woman to commit suicide or cause grave injury or danger to life or harassment to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not come within the purview of Section 498-A, IPC.

16. It is a settled position of law that while exercising the powers under Section 482 of the Code of Criminal Procedure, 1973, the allegations made by the witnesses against the Accused persons are to be scrutinised at their face value, taking them to be true. It is not permissible for the Court to go into the aspect of the reliability or credibility, or trustworthiness of the witnesses.

17. In ***Neelu Chopra & Anr. Vs. Bharati***⁴, it was held that

“In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end all the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”

⁴ (2009) 10 SCC 184.

18. Similarly, in *Kehkashan Kausar @ Sonam Vs. The State of Bihar and Ors.*⁵, it was held that-

“The abovementioned 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.

19. Bearing in mind the principles of law, let us now scrutinise and examine the first information report and witness statements. The first informant alleged that her parents had incurred expenditures of her marriage. Contrary to the advice of the doctor, Petitioner No.2 did not allow her to rest. It is alleged when she was pregnant, her husband and mother-in-law forced her for an abortion. Her husband wanted a divorce from her as he developed illicit relations with a woman working in his office. The Petitioners

⁵ 2022 SCC OnLine SC 162.

were demanding money from her to pay the instalments of the home and the vehicle loans. They were also demanding money from her to get a job for Petitioner No.4. She alleged that the Petitioners used to subject her to beating on several occasions. These allegations were followed by general allegations that she was compelled to do household work, the Petitioners used to pass taunts, and had ill-treated and harassed her.

20. As noted above, the crucial aspect in this matter is whether allegations against the Petitioners are like general omnibus allegations. On the anvil of the above-noted legal position, when we weigh these allegations, it becomes apparent that these allegations against the Petitioners are general omnibus. No specific distinct allegations have been made against any of the Petitioners. None of the Petitioners has been attributed any specific role in the furtherance of the offence. Based on such allegations, by no stretch of the imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or cause harm to herself.

21. As regards the contentions of the learned Counsel for Respondent No.2 and learned APP that since the charge sheet has been filed, the Petitioners have an alternate remedy before the trial

Court and that this Court may not exercise its jurisdiction u/s 482 of Criminal Procedure, 1973, is concerned, it is settled position of law that the High Court can exercise jurisdiction u/s 482 of Cr.P.C. even when the discharge application is pending with the trial Court.

22. In *Anand Kumar Mohatta Vs. State (Government of NCT of Delhi)*⁶, it was held that-

“17. There is nothing in words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of Code or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialised into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power on any Court.”

⁶ (2019)11 SCC 706.

23. In view of this, even if the alternative remedy is available to the Petitioners, they are entitled to invoke the powers of this Court under Section 482 Cr.P.C.

24. Given the above, we are of the considered view that the continuation of the prosecution against the Petitioners would be an abuse of the process of law and compelling them to undergo the trial would cause grave injustice. Considering these facts and circumstances, the petition deserves to be allowed. Hence, the present criminal writ petition is allowed in terms of prayer clause (b 1) which reads thus:

“(b1) This Hon’ble Court be pleased to issue appropriate Writ or any other appropriate order or direction, thereby quashing and setting aside the proceedings bearing R.C.C. No.1404 of 2022, dated 04/11/2022, pending on the file of J.M.F.C., Solapur for the offences punishable u/S. 498(A), 313, 323, 504, 506, with 34 of the Indian Penal Code, 1860, against the Petitioners in CR No.789 of 2021 registered with Faujdar Chawadi Police Station.”

25. It is made clear that the observations made in this Judgment shall not be pressed into service in any proceedings between the parties.

26. All concerned to act on the authenticated copy of this order.

[R.N.LADDHA, J.]

[NITIN W.SAMBRE, J.]