

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1059 OF 2016**

Rameshchandra Ambadas Bargage and Ors. ... Applicants

V/s.

State of Maharashtra and Anr. ... Respondent

Mr. C. M. Kothari for Applicants.

Mrs. Geeta P. Mulekar, APP for Respondent No.1-State.

Mr. Shekhar A. Ingawale for Respondent No.2.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 12th JULY, 2023.

Per Shivkumar Dige, J.

1. Applicants i.e.father-in-law (Applicant No.1); mother-in-law (Applicant No.2) and husband (Applicant No.3) of Respondent No.2 have filed this Application under Section 482 of Criminal Procedure Code, praying for quashing of FIR No.106 of 2016 registered with Wai Police Station, District Satara for offences punishable under Sections 498A, 323, 313, 504 and 506 read with Section 34 of Indian Penal Code (for short "IPC").

Present Application is admitted by an Order dated 16th February 2017.

2. We have heard learned counsel for Applicants and learned counsel for Respondent No.2 and learned APP. We have perused the FIR and documents produced on record.

3. Applicant No.3 and Respondent No.2 got married on 13th December 2006. The FIR in question came to be registered on 4th June 2016 against the Applicants under above referred Sections of IPC.

It is contention of learned Advocate for Applicants that, the FIR was maliciously filed by making false, absurd and inherently improbable allegations. The allegations made in the FIR are of general nature without any overt act or role attributed to Applicants. The charge under Section 313 of IPC was subsequently added upon a complaint by Respondent No.2 that, her husband had caused abortion of her fetus against her wish on 10th February 2007. Though, the allegation was specifically against Applicant No.3 yet the charge was applied to all the Applicants. It is the specific contention of learned counsel for the Applicants that, Respondent No.2 herself is a Doctor and she herself wanted to terminate the pregnancy and had given written consent in the prescribed form willingly for medical termination of pregnancy. Bare allegation that, the Applicants forced her to undergo abortion without attributing any role to any of the Applicants cannot prima- facie attract offence under Section 313 of IPC. Hence, the allegations under Section 313 of IPC are false, wrong and baseless. Learned counsel further submitted that, allegations under Section 498A of IPC are general in nature without any specific role attributed to the Applicants of causing ill-treatment or hardship to Respondent No.2. The allegation made in the FIR that, Petitioners demanded Rs.20,00,000/- for taking admission to MDS Course which was refused by Respondent No.2's

father is of 2009, whereas the complaint under Section 498A of IPC is filed in 2016 is time barred as the limitation prescribed for taking cognizance of the offence is three years even if it is assumed to be true. Learned counsel further submitted that, there is no allegation against Applicants to constitute offences under Section 323, 504, 506 and 34 of the IPC. Learned counsel submitted that, Applicants are falsely implicated in this case. Hence, requested to allow the Application.

4. It is contention of learned Advocate for Respondent No. 2 that, the contents of FIR show that specific role is attributed to the Applicants. All Applicants have mentally tortured Respondent No.2 and ill-treated her. They pressurized and compelled her to undergo abortion against her wish. It is also the contention of learned Advocate for Respondent No.2 that, Applicant No.1 and 3 in the year 2009 had demanded Rs.20,00,000/- lakhs from the father of Respondent No.2 for taking admission for MDS course, which was refused by him. Learned counsel submitted that, the Applicants have harassed and humiliated Respondent No.2 and have subjected her to physical torture. Their acts amounts to cruelty. He lastly submitted that, this Court has to see the nature of allegations and no case is made out to quash the FIR. The Application is devoid of merit and, as such, the same be dismissed.

5. This Court, prima facie, has to see the nature of allegations. Bare perusal of the FIR shows that, the allegations levelled against the Applicants in the FIR are serious in nature. In respect of charge under Section 313 of

the IPC is concerned, it is alleged in FIR that, Applicant No.1 believes in astrology. The astrologer had told Applicant No.1 that, marriage of Applicant No.3 with Respondent No.2 will benefit their family, on that basis, marriage was performed with Respondent No.2. After marriage, Respondent No.2 was pregnant, but Applicant Nos.1 and 3 did not approve it, as they wanted that Respondent No.2 should earn more money before her pregnancy, and they forced her to terminate the pregnancy. It is contention of learned Advocate for Applicants that, said pregnancy was terminated as per consent of Respondent No.2. In our view, it is settled principle of law that, defense of Applicants cannot be tested while quashing FIR. Whether Respondent No.2 had given consent for abortion or not, is matter of trial. It is the contention of learned Advocate for Applicants that, the incident is of 2007 and FIR is lodged in the year 2016. The allegation in respect of demand of Rs.20,00,000/- from father of Respondent No.2 is concerned, is of the year 2009 and the FIR is of the year 2016. In our view, it is settled principle of law that, offence under Section 498A of IPC is of continuous nature. In the FIR, it is alleged that, Respondent No.2 delivered child on 3rd February 2009. After three days of her delivery, Applicants demanded Rs.20,00,000/- for MDS Admission of Applicant No.3 from father of Respondent No.2. Her father refused to give said amount. Thereafter, Applicants tortured and insulted Respondent No.2. There are specific allegations made against the Applicants in FIR. The contents of FIR prescribes role to the each Applicant.

According to us, a prima facie case against Applicants is made out. The Hon'ble Apex Court in the case of *Central Bureau of Investigation Vs. Aryan Singh*, dated 16th April 2023 passed in Criminal Appeal No.1025-1026 of 2023 (@SLP (CRL) NOS.12794-12795 OF 2022) has held that, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.PC., the Court is not required to conduct a mini trial.

6. In view of the above, Application is dismissed. Rule is discharged.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)