

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

CRIMINAL WRIT PETITION NO. 4698 OF 2018

Shri Nitin Anand Khankal & Ors.

....Petitioners

V/s

The State of Maharashtra & Anr.

.....Respondents

Mr. Sharad Bhosale for the Petitioners.

Ms Sharmila S. Kaushik, APP for the Respondents/State.

Ms Komal Sinha appointed Advocate for Respondent No.2

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

DATED : 9th OCTOBER, 2023

P.C.:

1. This Petition is by the husband of the Respondent No. 2/Complainant, his brother and sister-in-law i.e. his brother's wife seeking quashing of the charge-sheet which has led to the registration of Regular Criminal Case No. 216 of 2019 pending on the file of Judicial Magistrate, First Class, Madha.
2. The Petitioners in the aforesaid case are tried for an offence punishable u/s. 498A, 323, 504, 506 r/w. 34 of the IPC. The facts necessary for deciding the Petition are as under:
3. The Respondent No. 2/Complainant claiming to be belonging to the backward class married Petitioner No. 1-husband on 15/05/2015. According to Respondent No. 2/Complainant, after

marriage on 15/05/2015, she started residing jointly with the Petitioners. After about a month of marriage, the Petitioners have stopped providing the Respondent No. 2/Complainant food, the Petitioner No. 2 assaulted her. It is claimed that the Respondent/Complainant was assaulted sometime in June, 2016. The Petitioner No. 1-husband refused to live with the Respondent/Complainant and as such, the offence in question.

4. In the investigation, the investigating officer recorded a supplementary statement of the Respondent/Complainant dated 13/09/2018, statement of her uncle viz. Ravsaheb, Vikas - maternal uncle of the Respondent/victim, Sandhya - mother of the Respondent/Victim, Dada and Ratan - uncles of the Respondent/Victim. Accordingly, Petitioners came to be charge-sheeted as evidence was found against the Petitioners.

5. While questioning the aforesaid charge-sheet, learned Counsel for the Petitioners would invite attention of this Court to the divorce proceedings granted under the provisions of Section 13B of the Hindu Marriage Act, 1955 by an order dated 07/01/2022 decided by the Court of Civil Judge, Senior Division, Barshi. According to learned Counsel for the Petitioners, it is an admitted position that the Petitioner No. 1-husband and

Respondent No. 2 /Complainant were living separately for more than two years i.e. from the date of initiation of the said proceedings viz. 2018. As such, it is claimed by learned Counsel for the Petitioners that the Respondent/Complainant parted the company of the Petitioner No. 1-husband from 16/07/2016, which led to filing of the proceedings u/s. 9 of the Hindu Marriage Act. According to him, the Court of Joint Civil Judge, Senior Division, Barshi has allowed the said proceedings on 15/12/2017 and as such, the fact that the Respondent/Complainant has parted the company of the Petitioner No. 1-husband on the aforesaid date i.e. 16/07/2016 came to be proven.

6. In this backdrop, once the findings are recorded that the Respondent/Complainant was not residing with the Petitioner No. 1-husband from 16/07/2016 the contentions raised in the FIR are false.

7. It is also claimed that the FIR contains non-specific, vague and general allegations against the Petitioners as no specific instances of cruelty are alleged. It is also claimed that the witnesses whose statements were sought to be relied on are related to the Respondent/Complainant. In absence of statement of independent witness the prosecution cannot bring home the

guilt. As such, quashing is sought.

8. While countering the aforesaid submissions, learned APP and Ms Komal, appointed Advocate for the Respondent/Complainant would oppose the prayer. According to her, this Court is not supposed to appreciate the evidence at this stage. According to them, since the statements of the witnesses support the case of the prosecution, the Petition is liable to be dismissed.

9. We have appreciated the aforesaid submissions.

10. In ***Kahkashan Kausar alias Sonam & Ors. vs State of Bihar & Ors.*** reported in **(2022) 6 SCC 599** the Apex had an occasion to deal with the prayer for quashing an offence punishable u/s. 498A, 323, 34 of IPC. The Apex Court has held that the Court should be careful in proceeding against distant relatives in a crime pertaining to matrimonial disputes. It is further held that the relatives of the husband should not be roped in on the basis of omnibus and general allegations unless specific instances of their involvement in the offence are demonstrated. The paragraph nos. 13 to 17 reads thus:

"13. Previously, in the landmark judgment of this court in Arnesh Kumar Vs. State of Bihar, it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is

greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

14. Further in Preeti Gupta & Anr. Vs. State of Jharkhand & Anr., it has also been observed:-

"32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

15. In Geeta Mehrotra & Anr. Vs. State of UP & Anr., it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we

entirely agree that:

“12. ... there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.”

The view taken by the judges in this matter was that the courts would not encourage such disputes.”

16. Recently, in K. Subba Rao v. The State of Telangana, it was also observed that:-

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

17. The above-mentioned 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."

11. In the aforesaid background, if we appreciate the rival contentions in the backdrop of the material available on record, the admitted facts are, on 15/05/2015 Petitioner No. 1-husband was married to the Respondent/Complainant. The Respondent/Complainant allegedly parted company of the Petitioner No. 1-husband on 16/07/2016, which led to the filing of the proceedings u/s 9 of the Hindu Marriage Act for restitution of conjugal rights on 16/09/2016 wherein it is alleged by Petitioner No. 1-husband that the Respondent/Complainant parted the company on 16/07/2016. The said proceedings were not contested and were decided *ex-parte* wherein findings are recorded against the Respondent/Complainant that she has parted the company of the Petitioner No. 1/husband on 16/07/2016. The parties i.e. Petitioner No. 1-Husband and Respondent No. 2/Complainant have already applied for grant of divorce by mutual consent in Hindu Marriage Petition No. 216 of 2018 wherein there are no allegations of alleged cruelty by the Petitioners.

12. In the aforesaid background, if we appreciated the

submissions of learned Counsel for the Petitioners, the fact remains that the Respondent/Complainant has parted company of the Petitioner No. 1/husband on 16/07/2016 whereas in the FIR she has falsely stated that she has parted the company of the Petitioner No 1/husband since 2017. Apart from above, the FIR and the statement of witnesses contain non-specific, general and vague allegations. The Petitioner No. 1-husband, brother and brother's wife are impleaded as accused that too without there being any specific allegations against them.

13. The fact that Petitioner No. 1-husband's claim for restitution of conjugal rights was allowed on 15/12/2017 subsequent to which the Respondent/Complainant lodged a complaint dated 12/09/2018 sufficiently establishes the falsity of an offence. Apart from above, even in the decree for divorce by mutual consent, which was decided on 17/01/2022, which proceedings were initiated on 18/08/2018 i.e. prior to the filing of the FIR dated 12/09/2018 it is not pleaded that the Petitioners subjected the Respondent/Complainant to cruelty. As such, the allegations of cruelty are alleged by the Respondent/Complainant by way of afterthought.

14. Apart from above, necessary ingredients of the offence

punishable u/s. 323, 504 of IPC also cannot be inferred from the contents of the FIR and vague, general, omnibus statements made by the witnesses.

15. In the backdrop of the aforesaid observations, having regard to the law laid down by the Apex Court in the matter of ***Kahkashan*** cited supra case of quashing is made out.

16. In the aforesaid background, the present Petition stands allowed in terms of prayer clause (b)(i).

(N. R. BORKAR, J)

(NITIN W. SAMBRE, J.)