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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 997 OF 2021**

- | | | |
|--------|---------------------------------------|----------------|
| 1. | Rahul J. Tiwari | |
| 2. | Smt. Geeta J. Tiwari | |
| 3. | Jayantnath B. Tiwari (Deleted) | |
| 4. | Ramendra J. Tiwari | ...Petitioners |
| Versus | | |
| 1. | The State of Maharashtra | |
| 2. | Smt. Sanyogita R. Tiwari | ...Respondents |

Mr. Bhalchandra Shinde for the Petitioners.
Ms S. S. Kushik, APP for the Respondent/State.
Ms Pooja S. Agrawal for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ.
DATE : 23 OCTOBER, 2023.**

PC:-

1. The present petition under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 is filed to quash the First Information Report No.93 of 2020 dated 29 February 2020 registered at Rabale Police Station, Navi Mumbai for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code and the criminal case arising out of said FIR being R.C.C. No. 1213 of 2023 pending on the file of Judicial Magistrate First Class, Vashi Court at Belapur.

2. The aforesaid crime came to be registered at the instance of respondent No.2/complainant. The petitioner No.1 is the husband of respondent No.2 and petitioner Nos.2 to 4 are her mother-in-law, father-in-law and brother-in-law respectively.

3. The petitioner No.3 - Jayantnath B. Tiwari (father-in-law) has expired during pendency of the present petition.

4. The marriage of respondent No.2 and petitioner No.1 was solemnized on 7 March 2019. According to respondent No.2, after three months of marriage, the petitioners told her either to bring Rs.20 lakhs from her parents to purchase flat or tell her father to transfer one flat out of two flats owned by them in their favour. It is alleged that she was subjected to cruelty for non-fulfillment of said unlawful demand.

5. We have heard the learned counsel for the petitioner, learned counsel for respondent No.2 and learned APP for respondent/State.

6. The learned counsel for the petitioners submits that respondent No.2 has made afterthought *omnibus* allegations against the petitioners. It is submitted that in the complaint addressed to the Assistant Commissioner of Police dated 31 December 2019 which was sent two days after respondent No.2 was allegedly driven out of the house, no allegations of demand were made. It is further submitted that the FIR came to be lodged only after filing of divorce petition by petitioner No.1.

7. On the other hand, learned counsel for respondent No.2 submitted that there is *prima facie* material to indicate that the petitioners had subjected respondent No.2 to cruelty on

account of unlawful demand. It is therefore, submitted that the present petition may not be entertained.

8. We have perused the record. In the complaint dated 31 December 2019 addressed to the Assistant Commissioner of Police, the allegations of cruelty are essentially against the petitioner No.1-husband. Though there are general allegations against petitioner Nos.2 to 4, however, there are no allegations of alleged unlawful demand. Even in the FIR the allegations against the petitioner Nos.2 to 4 are general in nature. Admittedly, respondent No.2 has lodged the FIR after filing of divorce petition by petitioner No.1. In absence of any allegations of unlawful demand against the petitioner Nos.2 to 4 in the previous complaint dated 31 December 2019, we are constrained to hold that the allegations in the FIR to that effect against the petitioner Nos.2 to 4 are afterthought allegations.

9. In ***Kahkashan Kausar alias Sonam and ors. vs. State of Bihar and ors.***¹ as well as in ***Abhishek Vs. State of Madhya Pradesh***², the Hon'ble Supreme Court referred to previous decisions wherein concern was expressed over the misuse of Section 498A of IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analyzing the long term ramifications of a trial on the complainant as well as the accused. The Apex Court cautioned that false implication by way of general *omnibus* allegations made in the course of matrimonial dispute, if left unchecked

¹ (2022) 6 SCC 599

² 2023 Livelaw SC 731

would result in misuse of the process of law and has warned the Courts from proceedings against the relatives and in-laws of the husband when no *prima facie* case is made out against them. The Apex Court also emphasized that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused and such an exercise must therefore be discouraged.

10. Considering the facts and circumstances of the case, in our view, it is a fit case to exercise the powers under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure to quash the proceedings *qua* petitioner Nos.2 and 4. Hence, the following order is passed.

ORDER

A] The Petition is partly allowed.

B] The proceedings in R.C.C. No. 1213 of 2023 pending on the file of Judicial Magistrate First Class, Vashi Court, at Belapur arising out of C.R. No. 93 of 2020 dated 29 February 2020 registered at Rabale Police Station, Navi Mumbai for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code *qua* the petitioner Nos.2 and 4 are quashed.

C] The Petition *qua* petitioner No.1 is dismissed.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)