

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 251 OF 2021

Mushir Mehmood Alam Ansari and others ...Applicants

Versus

The State of Maharashtra and another ...Respondents

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Mr. Maaz Ahmed Ansari alongwith Mr. Abdul Wahab Shaikh for the Applicants.

Ms. M.M. Deshmukh, APP for the State.

Mr. M.A. Vaid instructed by Vaid and Associates for Respondent No.2.

Mr. Jabbar Tamboli, PI, Shivajinagar Police Station, Mumbai – present.

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

DATED : 17th OCTOBER 2023

P. C. (Per Nitin W. Sambre, J.) :-

1. Prayer is for quashing of charge-sheet dated 28th November 2019 registered at the instance of respondent No.2 with Dongri Police Station at 505/PW/2021 for the offences punishable under Sections 498-A, 354, 406, 323, 504 r/w. 34 of Indian Penal Code.

2. Respondent No.2 was married to the applicant no.1 on 14th April 2019 in Mumbai. Both i.e. respondent No.2/complainant and applicant No.1 are Advocates by profession. Applicant No.2 is

mother-in-law, applicant No.3 is unmarried sister-in-law and applicant No.4 is unmarried brother-in-law of the respondent No.2-complainant. Respondent No.2/complainant alleged in the FIR that she was treated with cruelty and since the demand of dowry was not honoured, the offence being crime No.199 of 2019 punishable under sections 354, 498A, 406, 324, 504 r/w. 34 of Indian Penal Code came to be registered on 28th November 2019.

3. As the substance was noticed in the complaint, after investigation, charge-sheet came to be filed against the applicants. As such, the applicants referred above are seeking quashing of the offence viz. Crime No.199 of 2019, so also the charge-sheet against the applicants.

4. Learned Counsel for the applicants submits that in view of specific attribution against the applicant No.1/husband, the application is not pressed as he may apply for discharge or can face the trial on merit. Accordingly, the present application **stands disposed** of as withdrawn at the behest of **applicant no.1** with liberty as prayed for.

5. Amongst other, the contentions of the learned Counsel for the applicants are, all the family members of the applicants are impleaded as accused. It is claimed that the applicant Nos.2, 3 and 4 are no way connected with the offence in question as even if what has been stated in the FIR is taken to be true, same will not result

in drawing an inference of satisfaction of ingredients of offence as alleged. Our attention is invited to the vague, general and non-specific attributions in the FIR against the applicant Nos.2, 3 and 4.

6. Learned Counsel for the applicants in addition to above would invite our attention to the messages exchanged between herself and husband i.e. applicant no.1 and respondent No.2, so as to infer that the contents in the FIR are based on incorrect narration of facts. According to the learned Counsel for the applicants even if what has been stated in the FIR is taken to be true, the fact remains that the intention of the respondent No.2/complainant is to implicate all the family members in the offence in question, so as to make them agree for settlement on her terms. Counsel for the applicants would urge that not only contents in FIR are false, contradictory but same are general, non-specific, vague, omnibus etc.

7. While countering the aforesaid submissions, the learned Counsel appearing for respondent No.2-complainant so also learned APP would urge that the FIR contains specific attributions against each of the applicant who are blood relations of the applicant No.1-husband. Drawing support from the provisions of Section 498A of IPC, it is claimed that since all the applicants are blood relatives, they are rightly so implicated and charge-sheeted. Learned Counsel for respondent No.2/complainant would invite our attention to the

datewise allegation demonstrating very conduct of the applicants whereby the offence as has been alleged can be inferred.

8. In the aforesaid backdrop, it is claimed that in view of the law laid down by the Apex Court in the matter of ***Central Bureau of Investigation v. Aryan Singh Etc.***, decided on 12th December 2023 in Criminal Appeal No.1025-1026 of 2023 arising out of Special Leave Petition Criminal Nos.12794-12795 of 2022, this Court cannot appreciate the evidence or the defence of the applicant. As such, it is claimed that in view of the law laid down by the Apex Court in the aforesaid Judgment, the application is liable to be dismissed.

9. We have considered the rival claims.

10. Applicant No.1 and respondent No.2/ complainant who are lawyers by profession got married in Mumbai on 14th April, 2019. All the applicants are blood relation of the applicant No.1/husband. Within six months of marriage, both have started living separately as respondent No.2/complainant alleged ill-treatment. It is settled law in view of the Judgment of the Apex Court in the matter of ***Kahkashan Kausar alias Sonam & Ors. vs State of Bihar & Ors.*** reported in ***(2022) 6 SCC 599***, vague, general and non-specific allegations against the family members of the husband cannot be relied upon for pursuing the prosecution against the blood relations. The Hon'ble Apex Court has directed the courts

below to be sensitive to the fact that the family members of the husband are brought to the criminal trial that too without there being any specific evidence against such parties.

11. We have specifically looked into the attributions wherein respondent No.2-complainant appears to be not happy with the conduct of the applicant No.2-mother-in-law while the complainant has brought certain misconduct of the applicant no.1 to her notice. Such conduct of applicant No.2 by itself will not lead to inferring an offence under section 498A. As far as applicant No.3 – sister-in-law is concerned, though she is referred to in the complaint at three occasions, the fact remains that on all three occasions, the allegation against the applicant No.3 – sister-in-law are vague, general and non-specific. As regards, the incident of 23rd November 2019 as narrated in the complaint if perused, it is the case of the complainant that both i.e. applicant Nos.2 and 3 in chorus had made derogatory comments and as such, offence punishable under Section 498A of IPC is alleged to have been committed by practicing mental cruelty.

12. It is claimed by the non-applicant that she is residing with her mother, brother and sisters. She has specifically stated that her sister is also a practicing lawyer with whom she has entered into a noble profession. It appears that the respondent No.2 /complainant, who is a practicing lawyer along with her elder

sister, who is also a lawyer has ensured that the averments made in the complaint which led to the registration of offence discloses or satisfies the ingredients to constitute the offence. Though the aforesaid attempt on the part of the respondent/complainant, a lawyer by profession is with an intention to implicate all the family members of the applicant No.1/husband as accused, fact remains that against the applicant No.2/mother-in-law and the applicant No.3/sister-in-law chorus, general, vague and non-specific allegations are made. In such an eventuality, this Court owes a duty to look into the other attending circumstances emerging from the record of the case in addition to the averments, with due care and circumspection. The Court is required to understand the very intentions of the respondent No.2/complainant from the material which is produced on record to find out as to the genuinely an offence is disclosed. In support of the aforesaid observation, reliance can be placed on the judgment of Apex Court in the matter of ***Mahmood Ali & Ors. Vs. State of U. P. & Ors.*** reported in ***2023 LiveLaw (SC) 613***, particularly, paragraph 12 which reads thus :-

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court

owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

As such, from the very contents of the FIR and other material on record not only stereotype statements of the witnesses could be noticed but also there appears to be enough space to infer that the respondent No.2/complainant with aid of sister, who is also a lawyer has carefully drafted the FIR so as to implicate all the family

members of her husband.

13. The Apex Court in the matter of *Kahkashan Kausar alias Sonam & Ors. (cited supra)* in paragraphs 15, 16 and 17 had an occasion to deal with a similar issue like the one which is sought to be canvassed before us. The observations in the said paragraphs read thus :-

15. In *Geeta Mehrotra Vs. State of U.P. reported in (2012) 10 SCC 741*, 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 reported in (2000) 3 SCC 693* 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 other 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* reported in (2018) 14 SC 452, 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 498A 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.”

14. By drawing support from the above consistent observations of the Apex Court, we have reason to believe that the complaint is not bonafide and is filed with an oblique motive. The respondent No.2/complainant and her elder sister, who are lawyers should have been more careful to the factual matrix which are dealt

with herein-above and in the following paragraphs.

15. The Apex Court in *Preeti Gupta Vs. State of Jharkhand* reported in **(2010) 7 SCC 667**, had made an observation as regards responsibility of the Bar members in the matter of pursuing prosecution for offence punishable under Section 498A of IPC. Said observations read thus :-

“32. It is a matter of common experience that most of these complaints under section 498A 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 498A 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.”

16. In view of aforesaid observation, applicant No.1/ husband, who is also a lawyer, so also, respondent No.2/complainant are conferred with enormous social responsibility and obligation in their such capacity to ensure that

social fiber of family life is not ruined or demolished. If applicant No.1/husband and respondent No.2/complainant/wife were having differences, such differences ought not to have been reflected on the applicants, who are blood relations of the husband. Rather perusal of the complaint reflects that respondent No.2/complainant at the time of lodging of FIR has already mentioned that she is not willing to go for mediation or counselling, which sufficiently establishes her mindset before lodging the complaint.

17. Apart from the above, we hardly see any material on record to draw a prima facie conclusion as regards the satisfaction of the ingredients of the offence punishable under Section 498A of IPC.

18. Though offence is also said to have been made punishable under Section 406 of IPC i.e. criminal breach of trust, however, there is no specific allegation against applicant Nos.2 to 4 that Stridhan was any time entrusted to them. As such, ingredients of offence punishable under Section 406 of IPC cannot be inferred to have been satisfied from the available material on record. Even otherwise allegations, if any, against applicant No.1 are not gone into, as application at the behest of applicant No.1/husband is not pressed.

19. As far as applicant no.4 i.e. brother-in-law is concerned,

a specific mention is as regards commission of offence punishable under Section 354 of IPC. A specific instance of 26th November, 2019 is narrated in the FIR. On the said date, it is claimed that the sister of the respondent-complainant who is also a lawyer by profession entered the house of the applicants who was forcibly removed which led to lodging of the complaints by not only the applicant no.1/husband but also by respondent No.2-complainant.

20. The NC complaint recorded under 155 of Cr.P.C. is placed on record which speaks of the applicant no.3 – sister-in-law of the complainant having lodged the complaint for an offence punishable under Sections 323, 504, 506 of IPC against not only the applicants but also her family members including her sister. In addition to above it is also worth to note that NC complaint was registered at the behest of respondent No.2 on 26 November 2019 for incidents of 25th & 26th November 2019 against applicant No.1 – Mushir and one Tabassum. If the allegations against respondent No.4 viz. brother-in-law of the complainant if appreciated, it was always open for the respondent No.2 to mention about the offence committed by applicant No.4 to be punishable under Section 354 of IPC in the said NC complaint. However, on perusal of the said NC complaint, the alleged offence committed by the applicant No.4 in regard to the one which is punishable under Section 354 of the IPC i.e. use of criminal force to woman with intent to outrage her modesty is absent. The aforesaid conduct of the respondent No.2

as could be inferred from the material available on record and the reasons discussed herein-above, can lead to draw inference of false implication of applicant nos.2, 3 and 4 in the offence in question.

21. As far as allegation of offence punishable under Section 504 of IPC *viz.* intentional insult with intent to provoke breach of the peace is concerned, the Apex Court in the judgment of ***Mohammad Wajid & Anr. Vs. State of U. P & Ors.*** reported in **2023 LiveLaw (SC) 624** has observed that mere abuse, discourtesy, rudeness or insolence may not amount to an intentional insult within the meaning of Section 504 of IPC. The fact remains that there are NCs registered against the respondent/complainant, so also, the applicant No.1/husband. In this background, merely because the applicant Nos.2 and 3 have not responded to the call of respondent No.2/complainant on each issue in positive manner by itself will not satisfy the ingredients of Section 504 of IPC or Section 498A of IPC. Apart from above, in paragraph 30 of the said judgment, the Apex Court has casted a duty on the Courts to look into the other attending circumstances emerging from the record of the case over and above the averments in the complaint and, if need be, try to read between the lines with due care and circumspection. Paragraphs 26 and 30 of the said judgment read thus :-

“26. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of

Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In ***King Emperor v. Chunnibhai Dayabhai***, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

“To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.”

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the

Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the over all circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

22. In the backdrop of aforesaid observations, we are of the view that the allegations in the complaint are made with sole intention to implicate applicant Nos.2, 3 and 4 in a false offence that too in a calculated manner. In such an eventuality, the Court is empowered to exercise powers under Section 482 of CrPC to quash the prosecution.

23. Though the counsel for the respondent No.2/complainant has relied on the judgment of the Apex Court in the matter of *Abhishek Vs. State of Madhya Pradesh* in *Criminal Appeal No.1457 of 2015* and *Criminal Appeal No.1456 of 2015* referred

above, so as to claim that the power of quashing should be exercised sparingly, this Court in the light of aforesaid observations is duty bound to exercise powers of quashing of offence by taking into consideration pragmatic realities. The careful reading of the judgment in the matter of *Abhishek (cited supra)*, in our opinion, rather supports the case of applicant Nos.2, 3 and 4. This Court as such is of the view that the allegations made in the First Information Report, if are taken at its face value and are accepted in their entirety, will not constitute an offence to make out a case against the accused persons. Rather it can be inferred that the intention of the respondent No.2/complainant is to falsely implicate applicant Nos.2 to 4 in a false offence.

24. In view of the above, the application is allowed at the behest of applicant nos.2, 3 and 4 in terms of prayer clause (a).

25. Part of the arrears of maintenance which was deposited by the applicants in the trial court is permitted to be withdrawn by the respondent No.2/complainant as has been prayed by counsel for respondent No.2.

[N.R. BORKAR, J.]

[NITIN W. SAMBRE, J.]