

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

CRIMINAL APPLICATION NO.472 OF 2016

Smt. Lalita Shantilal Jain & Ors. ..Applicants
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Prashant Pandey a/w Dinesh Jadhvani, for the Applicants.
Mr. Ajay Patil, APP for the Respondent/State.
Mr. Amarendra Mishra, for the Respondent No.2.
Mr. Gawali, API, Kalachouki, Police Station – present.

**CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE : 30th AUGUST, 2023

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

1. The prayer is for quashing of FIR being Crime No.59 of 2016 registered with Kalachouki Police Station for the offence under Sections 498A, 406, 323, 504, 506 r/w 34 of IPC.
2. By interim order passed by this Court, the charge-sheet is directed to be not submitted to the Court below.
3. The petitioner No.1 – Smt. Lalita Shantilal Jain, is mother-in-law of the respondent No.2/complainant, whereas petitioner Nos.2, 3 and 4 are sisters-in-law, petitioner Nos.5, 6 and 7 are the husbands of sisters-in-law, whereas petitioner No.8 appears to be a mediator/friend of the petitioner Nos.2 to 7.

4. The prosecution case is, on 1st April, 2016, the respondent No.2/complainant approached the police authorities alleging that she got married with the son of petitioner No.1, namely, Sachin on 20th October, 2013. It is claimed that after the marriage, in 2015, petitioners started ill-treating the respondent No.2/complainant and at times, assaulted her and also treated her with cruelty. As such, offence came to be registered. Mr. Prashant Pandey, learned counsel appearing for the petitioners on instructions submits that he is not pressing the present application for prayer of quashing at the behest of petitioner No.1, as this Court is not inclined to grant such prayer.

5. Mr. Prashant Pandey would further urge that the perusal of the FIR would depict that the same is based on the vague and general allegations made against the petitioners. According to him, petitioner Nos.2, 3 and 4 are the sisters of Sachin, i.e. husband of respondent No.2/complainant. All these three petitioners are respectively married to petitioner Nos.5, 6 and 7 and residing independently. According to him, the petitioner No.8, who is alleged to be friend of petitioner Nos.2 to 7, claimed to have supported the cause of the other petitioners thereby practicing cruelty.

6. So as to substantiate aforesaid contentions, Mr. Prashant Pandey, counsel for the petitioners would rely on the contents in the FIR to claim that the very narrations in the FIR, even if are taken to be true to the extent of petitioners, the offence alleged cannot be

inferred. According to him, the intention of the respondent No.2/complainant is to force all the petitioners to come to a settlement so that they can part with the immovable property, which was gifted by the petitioner No.1 – mother to Sachin and petitioner Nos.2, 3 and 4 i.e. daughters in favour of the respondent No.2/complainant. Mr. Prashant Pandey would invite our attention to the pendency of DV Act proceedings in the Court of Metropolitan Magistrate, in which the Court has passed an order thereby directing Sachin, son of petitioner No.1 and husband of respondent No.2/complainant to pay monthly maintenance of Rs.5000/- to mother i.e. petitioner No.1 herein. In the aforesaid background, contentions of Mr. Prashant Pandey are, the present proceedings are sought to be used by the respondent No.2/complainant so as to grab the immovable property of petitioner No.1, which was gifted in favour of other petitioners.

7. While countering aforesaid submissions, counsel for the respondent No.2/complainant would urge that the offence punishable under Section 498A of IPC is a continuing offence. According to him, the Court is not required to go into the truthfulness of the allegations made in the FIR. He would urge that if the entire FIR/complaint is read in its entirety, the same discloses a cognizable offence and that being so, the present application is liable to be rejected.

8. Learned APP would claim that since the complaint

discloses a cognizable offence, the crime came to be registered.

9. We have appreciated the submissions.

10. The complaint is lodged on 1st April, 2016, wherein the admitted position is, marriage of respondent No.2/complainant with Sachin, son of petitioner No.1 on 21st October, 2013. Petitioner Nos.2, 3 and 4 are the sisters of Sachin and Petitioner Nos.5, 6 and 7 are the husbands of petitioner Nos.2, 3 and 4, which is also not a disputed fact.

11. As such, having appreciated the claim put forth by the respondent No.2/complainant for inferring the necessary ingredients of offence of criminal breach of trust, there is hardly any iota of allegation to substantiate or infer the satisfaction of same *qua* the petitioner Nos.2 to 8. Rather the allegations in the FIR are too vague to infer the role played by each of the petitioner in the commission of offence viz. one punishable under Section 406 of the IPC, criminal breach of trust or the act of the petitioners amounting to subjecting the respondent No.2/complainant to cruelty.

12. The Apex Court in the matter of ***Kahkashan Kausar Alias Sonam Vs. State of Bihar & Ors.*** reported in ***2022(6) SCC 599***, considered the requirement of the ingredients for an offence punishable under Section 498A of the IPC. The Apex Court has held that Section 498A of the IPC is cognizable and non-bailable. It is

further observed that the provisions are used as a weapon rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In such circumstances, it is held that the Courts should be careful in proceedings against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. It is observed that 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. The support can be drawn from paragraphs 13, 16, 17 and 18 of the said judgment, which reads thus :-

“13. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar* [(2014)8 SCC 273], it was also observed: (SCC p.276, para 4)

“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, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

16. Recently, in *K. Subba Rao v. The State of Telangana*[(2018) 14 SCC 452], it was also observed that : (SCC p.454, para 6)

“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 abovementioned 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.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of

allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

13. The omnibus and vague allegations in the FIR cannot lead or can be taken to infer the satisfaction of necessary ingredients of the offence alleged against the petitioners viz. one punishable under Sections 498A, 406, 323, 504, 506 r/w 34 of IPC. The general allegations in the FIR against the aforesaid petitioners are issuing threats of not to lodge complaint, to remove from the property in question of which the respondent No.2/complainant is jointly in possession with the petitioner No.1 and using offensive words. The statements, particularly, uttered by the petitioners are such to be used in common or chorus. In the aforesaid background, it cannot be inferred that upon perusal of the FIR, ingredients of the offence alleged against the petitioners can be said to be satisfied.

14. Rather the respondent No.2/complainant has taken recourse to lodging of the FIR against all the family members of her husband.

15. We are informed that the husband is absconding as he was accused in one of the case of robbery i.e. under Section 392 of IPC.

16. In this background, even if the allegations made in the FIR are taken to be correct at its face value, it cannot be inferred that the petitioners have made themselves liable for facing prosecution for the offence alleged.

17. That being so, the present application stands allowed in terms of prayer clause (a).

[RAJESH S. PATIL, J.]

[NITIN W. SAMBRE, J.]