

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2083 OF 2023

Yogesh Niranjana Surve and another ... Petitioners

Versus

The State of Maharashtra and another ... Respondents

.....

Ms. Tripti Shetty alongwith Ms. Preshita Parab for the Petitioners.

Mr. Y.Y. Dabake, APP for the State.

Mr. Priyal Sarda for Respondent No.2.

PSI R. Deokate, Pantnagar Police Station, present.

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**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 14th DECEMBER 2023

P.C. :-

1. The Petitioners are challenging the First Information Report No.297 of 2023 (FIR) registered with Pant Nagar Police Station on 12th April 2023 for offences under Sections 323, 324, 498A, 504 r/w. 34 of Indian Penal Code (IPC).

2. The FIR has been registered at the instance of Respondent No.2. Petitioner No.1 is the husband and Petitioner No.2 is mother-in-law of Respondent No.2. The marriage between Petitioner No.1 and Respondent No.2 was solemnized on 26th November 2015.

3. The first informant has alleged that the marriage was performed in 2015. Pursuant to the marriage, she started residing with the accused at matrimonial home. Most of the time her husband was on ship being Sailor. The complainant had learnt that her husband is

having affair with some lady. She has lodged complaint in that regard. Her husband refused to pay the medical bills when the complainant was admitted in the hospital. Both the accused ill-treated and harassed complainant. On 11th April 2023, she was assaulted by her husband. The FIR was lodged on 12th April 2023.

4. Learned Advocate for the Petitioners submitted that offences under Sections 323, 324, 498A & 504 of IPC are not made out against the Petitioners. The allegations in the FIR are vague and omnibus. The complainant has alleged that her husband is on ship on most of the occasions. There is no allegation of demand of dowry or misappropriation of ornaments of complainant. No overt act is attributed to the Petitioners which would amount to cruelty as defined under Section 498A of IPC. The alleged incident of assault dated 11th April 2023 is attributed to husband. It appears that the incident had occurred in spur of moment. Sections 323 & 324 of IPC are not attracted. The complainant was allegedly assaulted with the *kada* by accused No.1. The said *kada* cannot be termed as a dangerous weapon or means as required under Section 324 of IPC. The medical bills were cleared by the Petitioner No.1 which is evident from the bills which are in his possession. No offences are made out against the Petitioners and the FIR may be quashed.

5. Learned APP submitted that investigation is in progress. Charge-sheet is yet to be filed. The FIR spells out the allegations which are sufficient to invoke the offences which are registered against the Petitioners. The incident of assault is corroborated by the medical evidence.

6. Learned Advocate for the Respondent No.2 submitted that the submissions advanced by the learned Advocate for the Petitioners cannot be appreciated at this stage. The trial Court during trial would appreciate the evidence and decide whether the offence would be covered by Section 323 or 324 of IPC. There was ill-treatment by the accused. Offence under Section 498A is made out. There was incident of assault which is fortified by the injury certificate. The complainant has also lodged the NC complaint on 12th August 2023. Hence, the Petition may be dismissed.

7. On perusal of the FIR, it is evident that the marriage was performed in 2015. The complainant has alleged that the accused had ill-treated her. There are specific allegations against the Petitioner No.1 (husband). There was incident of assault which is corroborated by the injury certificate. At this stage, it is not possible to give a finding that the offence is not made out against the Petitioner No.1 under Sections 323 & 324 & 498A of IPC. However, as far as Petitioner No.2 (mother-in-law) is concerned, we find that allegations are vague and omnibus, which are not sufficient to invoke Section 498A of IPC or any other provisions against her. FIR as against Petitioner No.2 can be quashed. No case is made out for quashing FIR against the Petitioner No.1.

ORDER

- (i) Criminal Writ Petition No.2083 of 2023 is partly allowed.
- (ii) Writ Petition as against Petitioner No.1 is rejected.
- (ii) First Information Report registered with Pant Nagar Police Station on 12th April 2023 is quashed and set aside qua Petitioner No.2.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)

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PRASHANT
DHURI

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