



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 591 OF 2023

1. Jyotindra Mohanlal Dave  
2. Kumud Jyotindra Dave ...Applicants  
Versus  
The State of Maharashtra and anr. ...Respondents

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Mr. Hrishikesh Mundargi i/b. Ms. Pravada Raut for the Applicants.  
Mr. Ajay Patil, APP for the State.  
Mr. Devang Parmar for Respondent No.2.

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CORAM : SMT. ANUJA PRABHUDESSAI &  
N.R. BORKAR, JJ.

DATED : 26<sup>th</sup> SEPTEMBER, 2023

**P.C. :-**

1. With consent, heard finally at the stage of admission.
2. This is an application under Section 482 of Code of Criminal Procedure to quash the First Information Report in Crime No.75 of 2023 registered with Kothrud Police Station, Dist. Pune for offences punishable under Section 323, 498-A, 504, 506 r/w. 34 of the Indian Penal Code.
3. The marriage of Respondent No.2 and the son of the Applicants

was solemnized on 25/05/2008. Since January, 2009, Respondent No.2 and her husband started living in a flat at Pune. Respondent No.2 has alleged that since 2009 her husband would assault her over trivial issues. The Applicants did not question their son, on the contrary convinced her to tolerate his behaviour. The Applicants came to Pune and stayed with her for about two months. Even then they did not persuade their son to change his behaviour. In the year 2010, Respondent No.2 and her husband shifted to Gurgaon in view of transfer of her husband. Even then her husband continued assaulting and abusing her.

4. In the year 2012, Respondent No.2 and her husband again shifted to Pune in view of transfer of her husband to Pune. She claims that the Applicants would visit her once in a year and would taunt her and instigate her husband. Respondent No.2 claims that her husband threatened to throw the child from the balcony. He assaulted her when she decided to go to her maternal home. When she lodged the complaint at Kothrud Police Station, her husband got scared and agreed to drop her at her maternal home at Ahmedabad. However,

instead of dropping her to Ahmedabad, he took her to his parental home at Gandhinagar. She claims that she informed the Applicants about the ill-treatment meted out to her but the Applicants did not intervene. She therefore lodged the FIR on 13/03/2023 alleging that her husband and his family members subjected her to cruelty.

5. Learned Counsel for the Applicants submits that Respondent No.2 has made omnibus allegations against the Applicants, which even if accepted in their entirety, would not constitute offence under Section 498A of IPC. He submits that in the previous complaint lodged by Respondent No.2 at Ahmadabad, there were absolutely no allegations of cruelty as against these applicants. Relying upon the decision of the Apex Court in *Kahkashan Kausar alias Sonam and others vs. State of Bihar and others*<sup>1</sup>, he submits that the Applicants, who are of advanced age cannot be prosecuted on the basis of such omnibus allegations.

6. Learned APP as well as the learned Counsel for Respondent No.2 submits that there is prima facie material to indicate that the Applicants had subjected Respondent No.2 to cruelty whenever they

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1 (2022) 6 SCC 599

visited her and her husband at Pune. It is submitted that the FIR cannot be quashed solely on the ground that the Applicants are senior citizens.

7. We have perused the record and considered the submissions advanced by the learned counsel for the respective parties.

8. The Applicants have invoked the powers of this Court under section 482 of Cr.P.C. to quash the first information report. It may be mentioned that section 482 of Cr.P.C. confers inherent powers on the Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In ***State of Haryana and others v/s. Ch. Bhajan Lal and others***<sup>2</sup> the Apex Court has set out by way of illustration the broad categories of cases in which the inherent powers under Section 482 of Cr.P.C. could be exercised. The illustrations relevant to decide the case in hand are :

*“102. (1) where the allegations made in the First Information Report or the complaint, even if they are taken*

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2 AIR 1992 SC 604

*at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

...

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

9. In ***Geo Verghase v/s. State of Rajasthan and Anr.***<sup>3</sup>, the Apex Court has reiterated that :-

*“ 34. ... Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent powers vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed.”*

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3 AIR 2021 SC 4764

10. In the instant case, the Applicants are alleged to have committed offence under section 498-A of the Indian Penal Code, which reads thus:-

*“498-A. Husband or relative of husband of a woman subjecting her to cruelty.-*

*Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

*Explanation.- For the purpose of this section, “cruelty” means –*

*(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”*

11. The term ‘cruelty’ for the purpose of Section 498-A of the IPC has been specifically defined. In order to constitute an offence under section 498-A, there must be prima facie material to prove willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the

woman or that they had harassed her with a view to coercing her to satisfy unlawful demand of dowry. In ***Manju Ram Kalita v/s. State of Assam (2009) 13 SCC 330***, the Apex Court while considering the meaning of ‘cruelty’ held thus :-

*“ 21. In Girdhar Shankar Tawade v/s. State of Maharashtra, AIR 2002 SC 2078; this Court held that ‘cruelty’ has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.*

*22. ‘Cruelty’ for the purpose of Section 498-A I.P.C. is to be established in the context of S.498-A as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as ‘cruelty’ to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty. ”*

12. In the instant case, the FIR reveals that the Respondent No.2 and her husband were living at Pune and Gurgaon at the work place of her

husband whereas the Applicants who are the octogenarians are residing at Gandhinagar, Gujarat. They never shared the same household with Respondent No.2, but as indicated in the FIR the Applicants would visit their son once in a year. The allegations in the FIR are essentially against the husband. The only allegation against the Applicants is that they did not intervene in the matrimonial dispute between Respondent No.2 and her husband. It is alleged that instead of advising their son and resolving the matrimonial dispute, the Applicants tried to justify his acts and advised the Respondent No.2 to cope up with the situation. The allegations even if accepted in their entirety, do not disclose 'cruelty' within the statutory meaning under Section 498-A of the IPC.

13. It is also pertinent to note that Respondent No.2 had left her matrimonial home on 18/03/2021. She had lodged the complaint dated 30/08/2022 before the Mahila Police Station, Ahmadabad, for offences under Sections 498-A, 323, 325 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act. The report dated 28<sup>th</sup> October, 2022 of Mahila Police Station, Ahmadabad reveals that Respondent No.2 did

not pursue the complaint lodged before the Mahila Police Station, Ahmadabad, in view of the crime registered at Kothrud Police Station, Pune, resulting in closure of the complaint.

14. A perusal of the said complaint lodged at Ahmedabad reveals that the allegations of cruelty were essentially against the husband. No allegations of ill-treatment or cruelty were made against these Applicants. The Respondent No.2 for the first time implicated the Applicants in the FIR lodged before Kothrud Police Station, Pune more than two years after she left the matrimonial home. As noted above, these Applicants are the residents of Gujarat and visited their son occasionally, may be once in a year. The FIR as well as the other material on record, accepted in its entirety does not indicate that these Applicants had subjected the Respondent No.2 to harassment or cruelty within the meaning of statutory definition, to bring home the offence under Section 498-A of the IPC. A plain reading of the FIR indicates that this is one of those cases where a disgruntled wife has invoked penal provisions under Section 498-A of IPC to rope in the elderly parents of her husband, in a matrimonial dispute. This is nothing but

sheer misuse of process of law.

15. In *Kahakashan Kausar* (supra) as well as in *Abhishek Vs. State of Madhya Pradesh*<sup>4</sup> 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 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.

16. Considering the facts of the case in the light of the aforesaid pronouncement, in our considered view allowing the Respondent No.2

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<sup>4</sup> 2023 Livelaw SC 731

to wreak vengeance against her in-laws and compelling the Applicants to go through the rigors of criminal trial would amount to abuse of the process of Court. The case falls squarely in categories (1) and (7) set out in the case of ***Bhajanlal*** (supra). Hence, this is a fit case to exercise inherent powers under Section 482 of Cr.P.C. to quash the FIR qua the Applicants.

17. Under these circumstances, the Application is allowed. First Information Report in Crime No.75 of 2023 registered with Kothrud Police Station, Dist. Pune for offences punishable under Sections 323, 498-A, 504, 506 r/w. 34 of the Indian Penal Code is quashed qua the Applicants.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)