

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1015 OF 2022**

Sajida Nasiruddin Sayed Anr Ors.

...Applicants

Versus

State Of Maharashtra And Anr.

...Respondents

Mr.Adil Khatri Advocate for Applicants.

Mr. S. S. Hulke, APP for Respondent-State.

Mr. Mustafa S. Shamim i/by Shamim and Co. for Respondent No.2.

W.P.S.I. Snehal N. Tambade, Mira Road Police Station is present.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****DATE : 28th APRIL 2023.**

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1. Applicants i.e. mother-in-law (Applicant No.1); brother-in-law (Applicant No.2); husband (Applicant No.3) and brother-in-law (Applicant No.4) i.e. husband of sister of Applicant No.3 of Respondent No.2 have filed present Application under Section 482 of Criminal Procedure Code (Cr.P.C.) for quashing of R.C.C. No. 401735 of 2012 pending on the file of learned Judicial Magistrate First Class, Thane, arising out of C.R. No.I-108 of 2012 registered with Mira Road Police Station, District Thane, dated 19th April 2012, under Sections 498-A, 406, 504, 506 read with 34 of Indian Penal Code (I.P.C.), lodged by Respondent No.2 i.e. wife of Applicant No.3.

2. Heard Mr.Khatri, learned Advocate for Applicants, Mr. Hulke, learned APP for Respondent No.1-State and Mr.Shamim, learned Advocate appearing for Respondent No.2. Perused entire record.
3. Respondent No.2 has lodged present crime i.e. C.R. No. I-108 of 2012 registered with Mira Road Police Station under Sections 498-A, 406, 504, 506 read with 34 of I.P.C. against the Applicants herein. As noted earlier, the Applicant No.3 is husband of Respondent No.2. It is the prosecution case that, the Respondent No.2 got married with Applicant No.3 on 5th November 2009 as per the Islamic rights and rituals at Mumbra, Thane. In the marriage, her parents gave her *stridhan* and various ornaments and other articles more specifically mentioned in the F.I.R.. Since, the next date of marriage, the Applicant No.1 started taunting the Respondent No.2 that, instead of giving fridge and washing machine in gift her parents ought to have given gold. Applicant No.1 used to instigate Applicant No.3 for demand of gold and therefore Applicant No.3 used to abuse Respondent No.2 in filthy language. Applicant No.3 went to Kuwait for joining his duty on 20th December 2009. The demand of dowry by Applicant No.1 continued thereafter. Applicant No.1 caused mental torture to the Respondent No.2. As the Respondent No.2 has completed her B.A. degree in Marathi vernacular, the Applicant No.1 used to taunt her on that count. It is alleged that, the Applicant No.4 used to instigate other Applicants for demanding ornaments from the parents of Respondent No.2. In the year 2010, Respondent No.2 informed the said fact to her parents.

In the settlement, the parents of Respondent No.2 gave her one gold necklace. After the marriage of Applicant No.2, again the Applicant No.1 and other persons started causing mental and physical cruelty to the Respondent No.2. As the continuous torture and cruelty by the Applicants became unbearable, Respondent No.2 went to her parents house in November 2011 and subsequently lodged present crime.

4. Learned Advocate for the Applicants submitted that, Anticipatory Bail Application No. 622 of 2012 was filed by Applicant No.3 and others before the Court of District Judge-6 and Additional Sessions Judge, Thane. In the said A.B.A., the Applicants and Respondent No.2 have executed 'Consent Terms' dated 1st June 2012 and as per Consent Terms, the Applicant No.3 provided maintenance to Respondent No.2 for the said period. He submitted that, the case in hand is an example of blatant misuse of provisions of Section 498-A of IPC. That general allegations are leveled against all Applicants for the sack of implicating them in a crime of serious nature. He submitted that, the Applicant No.4, who is the husband of sister of Applicant No.3, has been unnecessarily dragged in the present Application, as he is residing separately and has no concern with the affairs of other Applicants and Respondent No.2. He submitted that, taking into consideration the said facts, crime in question may be quashed including the charge-sheet filed therein.

5. Per contra, learned Advocate appearing for the Respondent No.2 opposed the Application and submitted that, specific roles have been

attributed to all the Applicants. That, the Applicant No.3 has not complied with his undertaking and/or covenants mentioned in the Consent Terms dated 1st June 2012 filed before the Sessions Court at Thane in Anticipatory Bail Application No. 622 of 2012. He submitted that, in last seven years necessary maintenance charges have not been paid by the Applicant No.3 to the Respondent No.2. He therefore prayed that, present Application may be rejected.

6. Learned APP also opposed the Application by pointing out relevant material from the F.I.R. and charge-sheet.

7. The facts narrated in paragraph No.(3) above, are deduced from the F.I.R. and repetition of the same is avoided for the sake of brevity.

Perusal of F.I.R. would indicate that, there are no allegations which attracts the provisions of Section 498-A or other Sections of I.P.C. to the present crime against the Applicant No.2. There is only passing reference of the his name in the entire F.I.R.. As far as other three Applicants are concerned, there is sufficient material in F.I.R. and other statements of relevant witnesses for Application of said Sections of I.P.C. against them.

The contention of the learned Advocate for the Applicants that, the Applicant No.4, who is the brother-in-law of Applicant No.3 has been unnecessarily dragged in the present litigation cannot be accepted for the simple reason that, if the Respondent No.2 in fact was intending to drag/indict all the family members in the said crime, she would have made serious

allegations against her sister-in-law namely Smt.Firdos, which she has not done. Therefore *prima facie* it appears to this Court that, the F.I.R. as lodged is *bonafide* and there is no ailment of *malafide* in it.

8. As noted earlier, there is *prima facie* sufficient material on record to show the indictment of Applicant Nos.1, 3 and 4 in the present crime. However, there is no material against Applicant No.2 Moinuddin Sayed @ Imran Sayed i.e. brother-in-law of Respondent No.2.

9. In view of the above, we quash the present R.C.C. No. 401735 of 2012 pending on the file of learned Judicial Magistrate First Class, Thane, arising out of C.R. No.I-108 of 2012 registered with Mira Road Police Station *qua* Applicant No.2 Moinuddin Sayed @ Imran Sayed only.

As far as the other Applicants i.e. Applicant No.1 Sajida Nasiruddin Sayed, Applicant No.3 Muniruddin Nasiruddin Sayed and Applicant No.4 Mohammad Salim Khan are concerned, we dismiss their present Application.

10. Application is partly allowed in aforesaid terms.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)