



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.36 OF 2023

1. Kashinath Jalaba Boyewar
2. Suman Kahinath Boyewar
3. Kiran Kashinath Boyewar
4. Kirtikumar Kashinath Boyewar ...Applicants

Versus

The State of Maharashtra and Ors. ...Respondents

....

Mr. Chaitanya Nalgaonkar with Mr. Chirag Shah with Mr. Dharmesh Shah with Ms Khushali Padalia Sheth i/b. Advocate Melwyn Pereira for the Applicants.

Mr. Ajay Patil, APP for the Respondent Nos.1 and 2-State.

Ms Ameeta Kuttikrishnan, appointed Advocate for Respondent No.3.

Mr. Sunil Sonawane (pairavi), PSI Charkop Police Station, Mumbai, present.

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

DATED: 20th SEPTEMBER, 2023.

P.C.:-

1. By this application under Section 482 of the Cr.P.C. the Applicants seek to quash the FIR No.279 of 2022 registered with Charkop Police Police Station, Mumbai, for the offences punishable under Sections 323, 324 and 498-A r/w 34 of the IPC.

2. Heard Mr. Nalgaonkar, learned counsel for the

Applicants, Mr. Ajay Patil, learned APP for the State and Ms Ameeta Kuttikrishnan, learned counsel for Respondent No.3. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.3-Vaishali Kishore Boyewar. The Respondent No.3 and Kishor Boyewar were in love relationship since 2006 their marriage was solemnized on 06/05/2008. It was an inter-caste marriage. The Applicant Nos.1 and 2 are the parents and the Applicant Nos.3 and 4 are the brothers of Kishor Boyewar. Respondent No.3 has alleged that Applicant Nos.1 and 2 did not approve the said marriage.

4. The Respondent No.3 states that the first pregnancy was terminated at the instance of her husband. She was pregnant again in the year 2010. The Applicant No.2 asked her and her husband to come to their hometown at Shivneri Nagar, District-Nanded. She has stated that during her stay at Shivneri Nagar, Applicant Nos.2, 3 and 4 would constantly quarrel with her over trivial issues. The

Applicant No.2 would taunt, abuse and beat her and would not give her timely meals. Hence, she returned to Mumbai. She claims that her new born child died as he was under-nourished.

5. The Respondent No.3 claims that she and her husband lived peacefully at Mumbai and had two children from the wedlock. In the year 2011, her husband got a Sanad and started his practice as an advocate. Their matrimonial relation got strained since September, 2021. Her husband started ignoring her and the children. He claimed that she was uneducated and did not belong to the same caste. She later learnt that he was having illicit relationship with another woman. When questioned, he threatened to drive her out of the matrimonial home and live with the other woman. Respondent No.3 claims that she attempted to commit suicide by drinking phenol and was treated in Zenith hospital. She continued to live with her husband but their relations did not improve.

6. On 14/03/2022, the Applicant Nos.1 and 2 came to her matrimonial home to resolve their dispute. She claims that instead

of resolving the dispute, they blamed her, called her insane and accused her of making false allegations against her husband. She further states that Applicant No.2 told her to come to the hometown along with the children. When she refused to go with them to the hometown, they fought with her and asked her to return all the expenses incurred by her husband for her treatment. She claims that her husband had assaulted her and deprived her and her children of basic necessities.

7. The FIR reveals that the dispute is essentially between Respondent No.3 and her husband. The only allegation against Applicant Nos.1 and 2 is that instead of resolving the dispute between Respondent No.3 and her husband, they blamed her for the matrimonial dispute. The only allegation against the Applicant Nos.3 and 4 is that while she was in her hometown in the year 2010, they had fought with her and abused her.

8. 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 Abhishek v/s. State of Madhya Pradesh 2023 LiveLaw (SC) 731***, the Apex Court has held thus :-

“13. Instances of a husband’s family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in Kahkashan Kausar alias Sonam and others vs. State of Bihar and others [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial

disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In Preeti Gupta and another vs. State of Jharkhand and another [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband's close

relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in Neelu Chopra and another vs. Bharti [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking

either the inherent power under Section 482 Cr.P.C. or the 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 of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be 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 as, 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, to try and read between the lines.”

9. In the instant case, the FIR reveals that the Respondent No.3 and her husband were living separately. The Applicants have

never shared household with Respondent No.3. 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.3 and her husband and instead of resolving the matrimonial dispute, they blamed her for everything. The allegations in the FIR even if accepted in its entirety, do not disclose 'cruelty' within the statutory meaning under Section 498-A of the IPC.

10. In ***Geo Varghese v/s. State of Rajasthan and Anr., AIR 2021 SC 4764***, the Apex Court has observed thus :-

“ 34. The scope and ambit of inherent powers of the Court under Section 482 Cr.PC. or the extra-ordinary power under Article 226 of Constitution of India, now stands well defined by series of judicial pronouncements. 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.”

11. Having considered the relevant circumstances and in the absence of any specific role attributed as against these Applicants, it would be injustice to compel these Applicants to go through the tribulations of trial. Hence, the application is allowed in terms of prayer clause (b). Consequently, FIR No.279 of 2022 registered with Charkop Police Police Station, Mumbai, for the offences punishable under Sections 323, 324 and 498-A r/w 34 of the IPC, stands quashed.

12. The application stands disposed of.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)