

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 115 OF 2022

1. Shashikant s/o Veerantappa Gajjari
Aged about 35 years, R/o. G-3,
Sunshine Paradise, Abbaiah Reddy Layout,
Kaggadasapura, Bangalore.
2. Chinnamma Veerantappa Gajjari
Aged about 77 years
3. Chandrakant Veerantappa Gajjari
Aged about 53 years
4. Prabhavathi Chandrakant Gajjari
Aged about 46 years
5. Padmavathi Bijapnor
Aged about 61 years
6. Savita Suraj Patil
Aged about 38 years
7. Suraj Basavaraj Patil
Aged about 43 years
8. Ranjari Chandra Kala
Aged about 42 years
9. Shashikala Revansidda Gadanti
Aged about 39 years

.. Petitioners

Petitioner Nos.2 to 9, R/o, C/o.
Petitioner No.2, Near Gram Panchayat Sonth,
Tahsil – Kamalapur, District – Kalaburagi,
Karnataka.

Versus

1. State of Maharashtra,
Through Police Station Awadhootwadi,
District – Yavatmal.
2. Mrunal w/o Shashikant Gajjari
Aged about 35 years, R/o. Plot No.37,
Police Mitra Society, Yavatmal,
Tahsil and District – Yavatmal
(Present address as per FIR)

.. Respondents

Mr. Soumitra Paliwal, Advocate for petitioners.

Mr. V.A. Thakare, APP for respondent No.1.

Mr. Vivek Awchat, Advocate for respondent No.2.

**CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.
DATED : 14.03.2023.**

ORAL JUDGMENT : (PER: Bharat P. Deshpande, J.)

. **Rule.** Rule made returnable forthwith. Heard the learned counsel for the parties with consent at the stage of admission itself.

(2) The petitioners are praying for quashing of the First Information Report No.58/2022, dated 24.01.2022, registered at Awadhootwadi Police Station, District – Yavatmal, at the instance of respondent No.2, for the offences punishable under Sections 498-A read with Section 34 of the Indian Penal Code.

(3) Petitioner No.1 is the husband of respondent No.2. Petitioner No.2 is the mother of petitioner No.1. Petitioner No.3 is the brother of petitioner No.1. Petitioner No.4 is the wife of the petitioner No.3. Petitioner Nos.5, 6, 8 & 9 are the sisters of petitioner No.1 and petitioner No.7 is the husband of the petitioner No.6. All the petitioners are residing separately as per the addresses mentioned in the cause title.

(4) In order to consider the submissions, thereby praying to quash First Information Report, few facts in nutshell are as under :

(5) The marriage of petitioner No.1 with respondent No.2 was solemnized on 13.12.2015 at Yavatmal, as per the customs and traditions. The said marriage was also registered with the Registrar of marriages at Bengaluru on 16.04.2016. Petitioner No.1 along with respondent No.2 stayed in the matrimonial home at Bengaluru only for few months. From 01.05.2016 they started residing separately, due to differences amongst themselves. The petitioner No.1 filed a petition for divorce in August 2017 before the Family Court at Bengaluru under Section 13 (1) of the Hindu Marriage Act, 1955. The respondent No.2 approached the Hon'ble Apex Court for transfer of the said petition from Family Court at Bengaluru to the Family Court at Nagpur. After the order passed by the Hon'ble Apex Court, the matter was transferred to the Family Court at Nagpur. Petitioner No.1 also filed proceedings for custody of their child before the District Court at Yavatmal. The said proceedings were also transferred to the Family Court at Nagpur. Efforts were made to settle the dispute by referring it to the Mediator, however, there was no

success. Only in January 2022, the petitioners received information that an FIR was registered against them by respondent No.1 for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, on a complaint lodged by respondent No.2.

(6) Learned counsel appearing for the petitioners would submit that since 2016, petitioner No.1 and respondent No.2 are residing separately and that FIR discloses omnibus allegations which nowhere constitute the ingredients of Section 498-A read with Section 34 of the Indian Penal Code against petitioner No.1, specifically and against the other petitioners generally. He submitted that said FIR was lodged only as an arm twisting method, so as to pressurize the petitioner and his relatives to concede the demands of respondent No.2.

(7) The learned counsel for the petitioners further submitted that the allegations in the FIR are only upto the year 2016 and not thereafter and therefore, the allegations could not have been considered for registering FIR which were clearly time barred. He would submit that even the names of the family members of the petitioner No.1 are wrongly recorded in the FIR which show that

respondent No.2 is not aware of the correct names of the family members.

(8) The learned counsel for the petitioners further submitted that by an e-mail dated 18.12.2016, he informed respondent No.2 that she may take possession of the flat at Bengaluru, which stands in the name of respondent No.2. It is his contention that such FIR has been lodged and registered only to pressurize the family members and the petitioner No.1, since he has filed proceedings for custody of a child and divorce which are pending.

(9) The learned APP appearing for the State would submit that allegations made in the FIR constitute the offence punishable under Section 498-A against the husband, as well as against the in-laws. The respondent No.2 disclosed in detail, the harassment caused to her and thus, there is no ground to quash the said FIR.

(10) The learned counsel for the respondent No.2 vehemently opposed the petition on the ground that the allegations in the FIR are specific and even till date such harassment continues.

(11) The learned counsel for the petitioners placed reliance on the following decisions:

(i) *Kamlesh Kalra Vs. Shilpika Kalra and Ors., with Shilpika Kalra Vs. Manish Kalra and Ors., in Criminal Appeal Nos.416/2020 & 415/2020 decided on 24.04.2020.*

(ii) *Swapnil and Ors. Vs. State of Madhya Pradesh (2014) 13 SCC 567.*

(iii) *Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors., 2022 SCC OnLine SC 162.*

(iv) *Rashmi Chopra Vs. State of Uttar Pradesh and anr., 2019 SCC OnLine SC 620.*

(12) Rival contentions fall for consideration as under:

(13) Perusal of the FIR clearly goes to show that the marriage between petitioner No.1 and respondent No.2, is the outcome of love affair and marriage was solemnized at Yavatmal on 13.02.2015. During the marriage, father of respondent No.2 spent huge amount and also handed over dowry by way of ornaments of gold, silver and other household articles. The respondent No.2 then joined petitioner No.1 in their original house. It is her contention that the family members started taunting her for not giving proper dowry, four wheeler, by the father of the respondent No.2. It is further alleged

that petitioner Nos.3 to 9 used to talk in Kannad language which respondent No.2 was not understanding and therefore, she asked petitioner No.1 upon which he disclosed that the said petitioners were talking of 'not giving proper dowry by the father of respondent No.2'. The complaint then show that after few days petitioner No.1 along with respondent No.2 proceeded to Bengaluru where petitioner No.1 was serving, whereas other petitioners remained at their native place. It is further alleged that by using credit card of respondent No.2, petitioner No.1 purchased household articles, amounting to Rs.10,00,000/-. Respondent No.2 purchased flat at Bengaluru of which she was paying the installments.

(14) The complaint further show that petitioner No.1 with respondent No.2 started cohabiting at Bengaluru, however, petitioner No.1 was in the habit of consuming liquor and he started harassing respondent No.2 on petty issues. He also used to check the mobile phone of respondent No.2 on the suspicion that she is having some affair. The petitioner No.1 started demanding Rs.20,00,000/- from the parents of respondent No.2 and on refusal, he started abusing her in filthy language. Even the petitioner No.1 used to show pornographic videos on his mobile to the respondent No.2 and was

forcibly performing unnatural sex with her. It is further alleged that when respondent No.2 became pregnant, the petitioner No.1 told her that he is not ready to take responsibility of parenting and started suspecting and harassing her. It is further alleged that petitioner No.1 assaulted respondent No.2 on her stomach, due to which her pregnancy was terminated. The petitioner No.1, thereafter, started demanding divorce and when she refused, he started assaulting her and even tried to kill her. The petitioner No.1 was not allowing respondent No.2 to talk with her relatives. The petitioner No.1 was not even contributing any amount towards the household expenses, but instead of it, he used to snatch the salary of the respondent No.2 forcibly.

(15) Complaint further shows that the petitioner No.1 used to make physical relations forcibly with respondent No.2 without her consent, due to which she became pregnant. This time also the petitioner No.1 was forcing her to abort the child. He was also demanding divorce and when refused, used to abuse her and tried to assault.

(16) Complaint further shows that respondent No.2 on 01.05.2016 came to her parents house at Yavatmal and delivered a

baby boy on 07.06.2016.

(17) Complaint further shows that she intimated her parents about the harassment. After the delivery of baby boy, intimation was given to the petitioner No.1, who came to the hospital after consuming liquor and demanded divorce, as well as Rs.10,00,000/-. He even did not see the child during that time. The petitioner No.1 even did not enquire about the respondent No.2 and her condition. Since then i.e. from 01.05.2016 respondent No.2 is staying with her parents. The petitioner No.1 or his family members did not approach her however, they started demanding Rs.20,00,000/- and divorce.

(18) Complaint further shows that in the meantime, the mother of the complainant became ill due to Cancer and then expired on 04.04.2019. Thereafter, from March 2020, the Pandemic Covid-19 started, due to which lock-down was imposed. By taking advantage of such situation, the petitioner No.1 filed petition for divorce at Bengaluru. Hence, she filed a complaint with Yavatmal police.

(19) We have considered all the contentions raised in the complaint and observed that basically allegations are only against

petitioner No.1 being a husband and that too upto 01.05.2016. The other allegations against petitioner Nos.2 to 9 are omnibus, vague and general in nature. Admittedly petitioner No.1 and respondent No.2 resided at Bengaluru whereas petitioner Nos.2 to 9 are resident of Tahsil-Kamalapur, District – Kalaburagi, Karnataka. The allegations against them are only that they used to instigate the petitioner No.1 and they used to talk in their local language which respondent No.2 was not understanding.

(20) First of all, it is clear from the above allegations that the said couple stayed together only till the month of May 2016 and since then respondent No.2-wife is staying separately with her parents. The learned counsel for respondent No.2 submitted that respondent No.2 is a Chartered Accountant and working in Mumbai. A child was born out of the wedlock and is staying with parents of respondent No.2 at Yavatmal.

(21) The petitioner No.1 filed divorce petition in the Family Court at Bengaluru, which is registered as MC No.4227/2017. Prior to filing of such petition, a legal notice dated 23.01.2017, was served on respondent No.2. The learned counsel for respondent No.2

failed to show that allegations as found in the complaint dated 24.01.2022, were also made earlier by respondent No.2 in the divorce petition or in another proceedings which were filed and pending between the parties. The affidavit filed by respondent No.2 while opposing present petition also nowhere discloses that such allegations as found in the complaint were made earlier in any of the proceedings filed between the parties.

(22) It is only her contention that while she was staying at Bengaluru, she was subjected to cruelty by the husband and in-laws. Similarly, the husband is not handing over possession of the flat at Bengaluru. The husband is not paying any maintenance amount towards the expenses of the child.

(23) As far as the possession of the flat is concerned, the learned counsel for the petitioners pointed out e-mail dated 18.12.2016 addressed by the petitioner No.1 to respondent No.2, which reads thus:

“Hello Mrunal,

As per our today’s discussion as well as earlier repeated failure of reconciliation attempts, we are mutually agreed to dissolve our marriage. In light of above facts, you please take

care of your assets/membership from January 2017 onward. I am listing some of it however if I have missed something then please do let me know.

1. As we are mutually agreed for separation, so I'll not claim any of the amount (whatsoever) I have ever invested in the house located at G3, Sunshine Paradise, Abbaiah Reddy Layout Kaggadaspura, Bengaluru. So from Post Jan' 2017 your please take care of EMI incurring on Home Improvement Loan.

2. As I am already burdened with huge interest service so I cannot afford/dont't want to be co-member of Club Mahindra Holidays. In view of it, I am authorizing you to debar my co-membership with immediate effect. Hence forth I'll not entertain calls from Club Mahindra Holidays.

3. As I have decided to leave the house anytime in the month of Jan' 2017 (before 26th) therefore you please get in touch with Apartment Association in order to have update on Monthly Maintenance/Regularizing of apartment under Akrama Sakrama scheme. As on date monthly maintenance is Rs.3450 and regarding regularization fee it will calculated by the expert (Approximately Rs.2.50 to Rs.3.00 lacs for 3 BHK). I will ask whatsapp group admin to add you in Sunshine Paradise apartment owners group.

4. E-mai ID will be updated for electricity bill and also username and password.

Site :<https://www.bescom.co.in/SCP/Myhome.aspx>

Username : sunil1234 ; Password : bescom1234

5. Regarding our separation process I met with counselor/advocate Mr. Jagdish. As per his guidance and requirement I have submitted required documents however we need to finalize on location so that he will complete the documentation process. As I have already paid part of his fees so do let me know the location so that future course of

action will be decided.

Thanks.

Shashikant Gajjari”

(24) On perusal of the above contents of the e-mail, one thing is fair that there were several attempts of reconciliation between the parties and the petitioner No.1 was ready and willing to handover possession of the said flat at Bengaluru to respondent No.2. The learned counsel for respondent No.2 failed to demonstrate, as to why respondent No.2 failed to take possession of the said flat as suggested by the petitioner No.1. Be that as it may, the said flat is admittedly in the name of respondent No.2. In such circumstances, the question of possession of such flat cannot be construed as harassment in any manner so as to invoke provisions of Section 498-A of the Indian Penal Code.

(25) In the case of *Kamlesh Kalra (supra)* the Hon'ble Apex Court has observed that the said couple were living separately since the year 2009 and even husband has filed petition for divorce. Even though, such petition was pending, no allegations in such proceedings were made by the wife. The complaint filed in the year 2017 for the offence punishable under Section 498-A of the Indian

Penal Code were considered as only pressure tactics against the husband and in-laws. Similarly, it was considered that the contents in the FIR were considered as time barred, as filed much more than three years after separation.

(26) The maximum punishment as provided under Section 498-A is imprisonment for a term which may extend to three years. Section 468 of the Code of Criminal Procedure deals with bar to take cognizance after the lapse of period of limitation and Sub-Section (1)(2)(c) provide three years of limitation if the offences punishable with imprisonment for a term exceeding one year, but not exceeding three years. Section 469 of the Code of Criminal Procedure deals with commencement of the period of limitation and provided that the period of limitation in relation to an offence shall commence on the date of the offence.

(27) Complaint filed by respondent No.2 and discussed in detail earlier would clearly go to show that it was lodged on 07.11.2021. Admittedly, the said couple stayed together lastly upto April, 2016, as respondent No.2 returned to her parental home at Yavatmal on 01.05.2016 and since then, she is residing separately. All

the allegations made in the said complaint specifically against petitioner No.1/husband are prior to 01.05.2016. Similarly, the allegations against petitioner Nos.2 to 9 though omnibus, vague are also restricted to the stay of the respondent No.2 along with petitioner No.1 in their ancestral house in Karnataka i.e. somewhere in the month of February, 2015.

(28) Though, in the complaint, respondent No.2 claimed that she got married with petitioner No.1 on 13.02.2015 at Yavatmal, the petitioners in the present petition disclosed that their marriage was solemnized on 13.12.2015. In the petition filed by petitioner No.1, before the Family Court at Bengaluru, as well as in the legal notice, the petitioner has disclosed the date of marriage was 13.02.2015. Therefore, it is clear that there is some typographical error in the petition filed before this Court showing the date of marriage as 13.12.2015. For the purpose of deciding present petition, we consider the date of marriage as 13.02.2015.

(29) Coming back to the complaint dated 07.11.2021 filed by respondent No.2 with Yavatmal police, we clearly observed that allegations though made against the petitioner No.1 specifically,

the same are without any proper details, omnibus and are made only with an intention to pressurize petitioners in the matters filed for divorce and custody of child. Those allegations are only upto a month of May, 2016, and therefore, such complaint filed after a period of more than five years making allegations of the incidences between 2015 to 2016 are required to be considered as time barred even for taking cognizance.

(30) The contentions of learned counsel for respondent No.2 that such harassment continues till date, since the marriage subsist, cannot be accepted, as the complaint nowhere discloses, further instances of such harassment or demand of dowry. The allegations in the complaint are therefore, found to be an attempt of arm twisting, pressurizing the petitioners and thus, considered to be abused of process of law.

(31) In the case of *Kahkashan Kausar (supra)*, the Hon'ble Apex Court while dealing with similar allegations, discussed earlier decisions in the case of *Rajesh Bajaj Vs. State of NCT of Delhi, (1999) 3 SCC 259, Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273, Preeti Gupta and anr. Vs. State of Jharkhand and anr., (2010) 7*

SCC 667, etc. and observed that the tendency of implicating husband and all his immediate relations is also not uncommon. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of complaint are required to be scrutinized with great care and circumspection. The Court should be careful in proceeding against 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.

(32) These observations are squarely applicable to the present matter and more specifically against petitioner Nos.2 to 9, who are admittedly residing separately and there are no allegations that they visited the matrimonial home at Bengaluru during the stay of the couple together. Therefore, such allegations in the complaint against petitioner Nos.2 to 9 are clearly omnibus and made only to harass the

petitioner/husband and his relatives as well as to pressurize them with regard to other proceedings pending between the couple.

(33) We are convinced that allegations against petitioner Nos.2 to 9 are clearly vague, without giving any specific instances and therefore, on such allegations that too prior to six years back, must be quashed.

(34) As far as petitioner No.1 is concerned, we are of the opinion that allegations against him of cruelty are also upto the year 2016, when the couple were staying at Bengaluru. These allegations are also found to be without any specific dates or instances. Not a single complaint was lodged at Bengaluru Police Station or even at Yavatmal, after respondent No.2 came and started residing with her parents from 01.05.2016. No documents has been placed before us to show that in the matrimonial petition filed for divorce, such allegations have been made by respondent No.2. Suddenly, in the year 2021, a complaint was lodged in connection with instances which took place between 2015 and 2016 and that too at Bengaluru. In this connection, the observations of the Hon'ble Apex Court in the case of *Kamlesh Kalra (supra)* are squarely attracted, as such allegations and in the fact

and circumstances of the complaint *prima facie* show time bar allegations. Admittedly, the couple separated from the month of May, 2016.

(35) In the case of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors., 1992 Supp (1) SCC 335***, the Hon'ble Apex Court elaborately dealt with powers under Section 482 of the Code of Criminal Procedure and a categories of cases by way of illustration, wherein such powers could be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice, were discussed in para 102. Considering such illustrations, we observed that even if allegations made in the FIR/complaint taken at their face value, would show that such allegations were of the year 2005-16 and therefore, taking cognizance of such allegations in the year 2021, by the police of registering the offence would be considered as a abuse of process of law. Similarly, we found that the allegations made in the said complaint are improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. We also observed that such complaint is manifestly attended with *malafide* and/or where the proceedings is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused.

(36) With these observations, we are convinced that FIR lodged against all the petitioners on the basis of so called complaint of respondent No.2 is clearly an abuse of process of law and therefore, we are inclined to exercise extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure.

(37) The petition, therefore, must succeed in terms of prayer clause (i). We hereby quashed FIR No.58/2022, dated 24.01.2022, registered at Awdhootwadi Police Station, District – Yavatmal, for the offences punishable under Section 498-A read with Section 34 of the Indian Penal Code.

(38) Rule made absolute in above terms. No costs.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Prity