

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

CRIMINAL APPLICATION (APL) NO. 407 OF 2022

1. Sandhya Pramod Shrimankar, Aged 62 years, Occ. Housewife, R/o Vyankatesh Nagar, Plot No. 14, Building No.A/11, Near KDK College, Nandanvan, Nagpur.
2. Boski Divesh Shah, Aged 37 years, Occ. Housewife, R/o Gera Trinity Tower, 605, Kharadi, District Pune – 411-14
3. Divesh Jaswantbhai Shah, Aged 42 years, Occ. Business, R/o Gera Trinity, Tower, 605, Kharadi, District Pune 411014

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station City Kotwali, District Akola.
2. Poona Gaurav Shrimankar @ Poonam Chandrakant Parmar Aged 34 years, R/o Mahakali Niwas, Lohiya Compound, Behind Sarkari Bagicha, Kholeshwar, Tahsil dna District Akola.

... NON-APPLICANTS

Shri M.R. Ali, Advocate for the applicants.
 Shri Rode, A.P.P. for the non-applicant/State.
 Shri Abhishek Shukla, Advocate for the non-applicant no.2.

CORAM : VINAY JOSHI AND BHARAT P. DESHPANDE, JJ.
DATED : 08/03/2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of learned Counsel appearing for the respective parties.

3. This is an application under Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report (FIR) in Crime No.99 of 2022 registered with the City Kotwali Police Station, District Akola for the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code (IPC) along with the related charge-sheet bearing R.C.C. No.1262 of 2022 pending on the file of the Chief Judicial Magistrate, Akola.

4. The applicants are the mother-in-law, sister-in-law and husband of the sister-in-law, who urged to invoke our inherent powers to quash the charge-sheet on account of absence of allegations to constitute the offence punishable under Section 498-A of the IPC. Moreover, it has been submitted that the criminal proceeding is

manifestly attended with *mala fides* to pressurize the husband. At the inception, we made it clear that the husband is not before us.

5. At the instance of the report lodged by the informant-lady dated 11.02.2022, the crime has been registered. It is the informant's case that on 16.05.2017, she got married with Gaurav Shrimankar and started to reside at matrimonial house at Nagpur. After initial two months, her husband started to harass her at the instance of monetary demand. She conveyed that already sufficient valuables have been offered in the marriage, and thus, it is not possible for her father to give more. It is the informant's contention, that her husband as well as mother-in-law (applicant no.1) at the instance of dowry demand, used to harass her as well as physically assaulted her. She stated that her sister-in-law (applicant no.2) and husband of sister-in-law (applicant no.3) though staying at Pune, intermittently used to come to Nagpur after two to three months and during said period, they used to instigate her husband resulting into harassment.

6. It is the informant's case that she delivered a baby on 23.06.2022, however her husband and mother-in-law did not come to see the new born. After six months from the birth of the child, she returned to her matrimonial house. At that time also her husband and mother-in-law harassed her by saying that she cannot cook properly nor

can do household work. The informant stated that on 06.10.2021, her husband has raised demand and also cursed her. At the instance of her mother-in-law and sister-in-law she was finally driven away, therefore the report.

7. So far as applicant no.1 (mother-in-law) is concerned, undisputedly from the date of marriage, the informant lady was residing with her husband and mother-in-law. The whole reading of police report indicates that all the time duo were present and allegedly harassing the lady to meet unlawful demand and also were abusing and humiliating her for that purpose. The informant has specifically stated the role of mother-in-law of harassing her by cursing for her inability to do household work, as well as time and again instigating her son to harass the informant. Therefore, it cannot be said on the face of it that, no case is made against the mother-in-law as regards the offence punishable under Section 498-A of the IPC. If the FIR and the material collected is accepted in entirety against the mother-in-law, then it makes out a *prima facie* triable case, therefore, we are not inclined to entertain the application to the extent of mother-in-law.

8. So far as the applicant nos. 2 and 3 are concerned, they stand on different footing. Admittedly, applicant no.2 is sister-in-law whilst applicant no.3 is husband of sister-in-law, who were separately

staying at Pune since prior to the marriage of the informant. There is no dispute that the couple stayed at Pune which is far away from the Nagpur and leading their matrimonial life. The FIR makes out allegation that after two-three months, the couple used to visit their house at Nagpur and during said period, they were instigating the husband. General allegations are made that the couple used to instigate, without specification about day, date or what they have conveyed to her husband. We find reference in last paragraph of the FIR that on 06.10.2021, the husband has physically assaulted the informant at the instance of her mother-in-law, sister-in-law and her husband. This time also we find that, it is a quite vague statement as it is improbable since they were residing at Pune. The informant never stated that on that day the couple had been at Nagpur or had telephonically conveyed the things.

9. As a matter of fact, in order to constitute the offence punishable under Section 498-A of the IPC, willful conduct must be of such a nature that the woman is likely to drive to commit suicide or to cause grave injury her life. Likewise, the harassment must be with a view to meet unlawful demand. The material collected during the investigation only suggest a vague reference, that though the couple is staying at Pune however they used to instigate the husband of the

informant.

10. The learned Counsel appearing for the informant would submit that merely because the couple was staying at distant place that by itself is no ground for quashing the FIR. In this regard, he relied on the decision of the Supreme Court in cases of *Taramani Parakh vs. State of Madhya Pradesh and ors. (2015) 11 SCC 260*, *State of M.P. vs. Awadh Kishore Gupta and ors. (2004) 1 SCC 691* and *Rajendra Singh vs. State of U.P. and anr. (2007) 7 SCC 378* and decision of this Court in case of *Shafi Liyakat Kazi and ors. vs. State of Maharashtra and anr.* In Criminal Writ Petition No.5067 of 2019 dated 15.07.2022. We have gone through all above decisions however it is a factual aspect to examine on the basis of case to case basis, whether the allegations made in existing case satisfies the constitution of *prima facie* case. We are not quashing the proceeding against the applicant nos. 2 and 3 only because they are staying at Pune, but as we find that besides their residence at far away place, the allegations does not make out a *prima facie* case.

11. Now a days, a tendency is at rise to implicate all relatives of husband so as to put the pressure. In such circumstance, the Court has to examine the role of relatives carefully so that without substance the relatives shall not be hauled in the criminal prosecution. The possibility

of implicating relatives staying at distant place with *mala fide* intention strongly surfaces. Facing of criminal prosecution is a serious affair. Reading of police papers at its face value, even if accepted in entirety do not *prima facie* makes out a case against applicant nos. 2 and 3 on the canvass of vague references.

12. In view of above, application is partly allowed. We hereby quashed and set aside the First Information Report (FIR) in Crime No.99 of 2022 registered with the City Kotwali Police Station, District Akola for the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code (IPC) along with the related charge-sheet bearing R.C.C. No.1262 of 2022 pending on the file of the Chief Judicial Magistrate, Akola to the extent of applicant nos. 2 Boski Divesh Shah and applicant no.3 Divesh Jaswantbhai Shah. The application as regards to applicant no.1 is hereby rejected. The above observations have no impact on any other pending proceedings in between the parties.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)