

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

CRIMINAL WRIT PETITION NO. 411 OF 2022

1. MRS. INDUBAI WAMAN PAWAR

Age : 52, Indian Inhabitant,

2. MR. WAMAN DHARU PAWAR

Age : 62, Indian Inhabitant,

Both residing at – D Wing, Room
No.116, Ramchandra Apartment,
Near Jarimari Temple, Tisgaon,
Kalyan (E), Maharashtra 421 306.

3 MRS. MADHURI VIKRAM LANDE

Age 32, Indian Inhabitant,

Residing at – Flat No.403, 4th Floor,
Yash Platinum, Plot No.81-A,
Sector – 19, Near Ram Sheth Thakur
Public School, Kharghar, Raigarh,
Maharashtra – 410 210

4. MR. MILIND WAMAN PAWAR

Age 34, Indian Inhabitant,

Residing at – E 201, Emerald Wing,
Jewel Arista Building, Near MSDECL
Power Station, Sonivali Village,
Badlapur (West) Maharashtra 421503.

... Petitioners

Versus

1. STATE OF MAHARASHTRA

(In the instance of Sr. Inspector
Washim Police Station)

2. MRS. ARCHANA BHUSHAN PAWAR

Age – Adult, Indian Inhabitant,
Residing at – Civil Line, Sarkari
Quarter, (PWD Government Quarter),
Gajanan Hotel, Behind Washim Bus
Depo, Washim – 444505.

... Respondents

Ms. Punam D. Pisurde, Advocate for petitioners.

Mr. Mayuri Deshmukh, APP for respondent No.1.

Ms. Aastha R. Sharma, Advocate h/f Shri P.R. Agrawal, Advocate for respondent No.2.

**CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.**

DATE : 01.03.2023.

ORAL JUDGMENT: (PER: Vinay Joshi, J)

Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for respective parties.

(2) The petitioners, parents-in-law, brother-in-law and sister-in-law are seeking to quash First Information Report bearing Crime No.309/2022, registered with Washim City Police Station, for the offences punishable under Sections 498-A, 315 read with Section 34 of the Indian Penal Code.

(3) It is the petitioners contention that the allegations made in the FIR and related statements does not constitute commission of alleged offences. According to petitioners, the entire allegations are omnibus and vague. Besides casual reference of their names, there is no other material. It is submitted that, even if the

allegations are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence and therefore, requested to quash the proceeding.

(4) At the instance of report lodged by the informant lady aged about 27 years, crime has been registered. It is the prosecution case that the couple got married on 14.06.2019 and started to reside at village Lohgad, Taluka – Barshitkali, District- Akola. After one week the informant, her husband and parents-in-law shifted to Kalyan, District – Thane, where the husband was serving as Sales Assistant. It is alleged that husband was liquor addicted and all the time, under influence of liquor, used to quarrel and physically assault the informant. The informant stated that intermittently her sister-in-law (Madhuri) and brother-in-law (Milind) used to visit their house and they were cursing her saying that she is of black complexion and less dowry was offered in the marriage. The parents-in-law were also blaming for said reason and thus, mentally harassing her.

(5) The informant stated that somewhere in the month of June 2021, she become pregnant, however her husband has administered some food items, resultantly, child was aborted. She

stated the story as to how all the time husband used to physically harassed and assault her. On 14.02.2022, by force husband has established sexually relations with her under influence of liquor and finally, she left the matrimonial house.

(6) At the inception, we make it clear that husband is not before us. The petitioners' her parents-in-law, brother-in-law and sister-in-law of the victim. The principle contention is that the First Information Report and investigation papers, merely bears casual reference of family members of husband without any details. According to petitioner on the basis of vague allegations petitioners can not be forced to face the trial. For this purpose, learned counsel for the petitioners relied on the decision of Supreme Court in ***Geeta Mehrotra and anr. Vs. State of Uttar Pradesh and anr.*** reported in ***(2012) 10 SCC 741***, wherein it has been observed that absence of specific allegations and *prima facie* case against the relatives, is a subject matter of quashing, as requirements is of specific disclosure of active involvement of the accused. The principle question is whether the allegations made against petitioners, who are the relatives of husband are in the nature of general and omnibus, requiring to quash

the prosecution. We have carefully examined the police papers, in particular First Information Report dated 18.04.2022. On perusal of entire FIR, we note that the principle allegations are against husband. We are able to make out following relevant allegations against the petitioners:-

1) Parents-in-law use to humiliate victim by stating that less dowry was offered and she is of black complexion.

2) Sister-in-law(Madhuri) and brother-in-law(Milind) were frequently visiting their house and similarly, harassing her by saying that she is of black complexion and less dowry was offered in the marriage.

(7) Besides, these two allegations and general conclusion at the end of report, we are unable to see any specific instance demonstrating active role on the part of petitioners. Apparently, after one week from marriage the couple shifted to reside separately at Kalyan. Though, it is alleged that parents-in-law also accompanied them, however, it is stated that they have returned to village Dhabba, Taluka – Barshitkali, District- Akola. There is no

specification, as to how many days the parents-in-law stayed with the couple. It is apparent that brother-in-law and sister-in-law are having their own families and residing separately. It is not specified as to when they went to Kalyan and mentally harassed the victim.

(8) Learned counsel appearing for petitioners by placing reliance on the decision of this Court in case of ***Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors. 2022 SCC Online SC 162***, would submit that, tendency of roping all family members in matrimonial dispute is a routine. The Court has taken note of said situation and expressed that the Court has to meticulously examine the facts and find out whether there are specific allegations constituting the offence. In resistance the learned counsel appearing for informant took us through the reply and annexed documents. It reveals that the entire allegations are against husband. Though a bunch of printouts of whatsapp chat have been produced, she is unable to point out incriminating material against the petitioners.

(9) The Supreme Court in reported case of ***State of Harayana and Ors. Vs. Bhajnanlal and Ors. 1992 Supp (1) SCC 335***, has laid down the guidelines to be adhered while exercising inherent

powers under Section 482 of the Code of Criminal Procedure.

(10) Having regard to the facts, we find that the case of petitioners would fall in the category of guidelines No.1 and 3, which reads as below:

“1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.”

(11) The informant lady has already filed proceeding under Domestic Violence Act, as well as summary proceeding in terms of Section 125 of the Code of Criminal Procedure, which is pending. On the other hand, husband has filed divorce petition against the informant. Apparently, there is a rift in matrimonial relations. The possibility of implicating all family members to create pressure can not be ruled out. Considering the overall allegations, which are of general and vague nature, prima facie, they does not make out role of

petitioners to constitute that they have subjected the victim to physical and mental cruelty within the meaning of Section 498-A of the Indian Penal Code. Facing of criminal prosecution is a serious affair to which one shall not be pushed unless there is substantial material. Having regard to all above facts, we are satisfied that the case is made out to exercise our inherent powers.

(12) In view of above, petition is allowed. We hereby quashed and set aside FIR in Crime No.309/2022, registered with Washim City Police Station, for the offences punishable under Sections 498-A, 315 read with Section 34 of the Indian Penal Code, along with related criminal case bearing RCC No.341/2022, pending on the file of Judicial Magistrate First Class, Washim, as regards to petitioners only.

(13) Rule is made absolute in aforesaid terms, with no order as to costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity