



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

CRIMINAL APPLICATION NO.1056 OF 2021

1. Shri Vilas s/o Ukandrao Gayaki, aged about : 37 years, Occupation : Service.
2. Shashikala w/o Ukandrao Gayaki, aged about : 60 years, Occupation : Service, Both 1 and 2 R/o New Bina Bhanegaon, Tahsil : Saoner, Khaperkheda, District : Nagpur.
3. Sandip s/o Purushottam Chalpe, Aged about : 50 years, Occupation : Service,
4. Shobhana s/o Sandip Chalpe, aged about : 40 years, Occupation : Housewife, R/o of Petitioner No.3 and 4 Plot No. 217, Behind NMC School, Dattatray Nagar, Ayodhya Nagar, Nagpur -440024

... APPLICANTS.

VERSUS

1. State of Maharashtra, through Police Station. Khaperkheda, District : Nagpur Gramin
2. Sau. Urvashi w/o Vilas Gayaki, aged about : 25 years, Occupation : Household, R/o C/o. Kiran Baburao Mane, Hanuman Mandir, Sadar Chhaoani nagar, Nagpur.

... NON-APPLICANTS.

Shri P.K. Bezalwar, Advocate for the applicants.
Shri S.S. Doifode, A.P.P. for the non-applicant/State.
Shri Shyam Dewani, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 11.08.2023.

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

Heard. **ADMIT.**

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

3. This is an application seeking to quash the First Information Report as well as charge-sheet relating to Crime No.230 of 2021 registered with the Khaparkheda Police Station Nagpur Rural for the offence punishable under Sections 498-A, 323 read with Section 34 of the Indian Penal Code, on account of inadequacy of material and absence of *prima facie* case.

4. Applicant No.1 is the husband, applicant no.2 is the mother-in-law, applicant no.3 is the husband of sister-in-law and

applicant no.4 is the sister-in-law. It is submitted that the informant-lady was having love affair with someone else. Within three days from the marriage, the past of the informant was revealed, which resulted into informant returning to her maternal house.

5. Learned Counsel for the applicants would submit that within few days from the marriage, a person namely Yashwant with whom the informant had relationship assaulted the applicant's father for which the report has been lodged. According to the applicants, the allegations about monetary demand and assault are false, fabricated, and therefore, this is a fit case for quashing of FIR.

6. *Per contra*, learned Counsel appearing for the informant resisted this application by stating that the informant-lady has made specific allegations about the demand and harassment. It is pointed out that incidents dated 31.05.2021 and 01.06.2021 have been specifically stated by the informant, which *prima facie* makes out a case of matrimonial cruelty. The learned Counsel appearing for the informant took us through the injury report as well as Sonography report to impress that said material *prima facie* supports the informant's contention about physical harassment.

7. The couple got married on 09.01.2021 and resumed to

cohabit together. It is the informant's case that within few days from the marriage, her friend namely Yashwant came to her matrimonial house, assaulted her father-in-law on which she was cursed for past love relationship and on that account, she was beaten. The informant returned to her maternal house after the said occurrence. For next four months, her husband did not turn to take her back. She stated that on 31.05.2021, she went to the house of her husband however he refused by raising monetary demand of Rs.10 lakhs. She stated that once-again on 01.06.2021 she went to cohabit however her husband and mother-in-law physically assaulted her. She stated that her sister-in-law and husband of sister-in-law used to misguide her husband and asked him to harass her.

8. Learned Counsel appearing for the informant took us through the observations made by the Supreme Court in paragraph 11 of the decision in case of ***Saranya vs. Bharathi and another (2021) 8 SCC 583***, which reads as below :

"11. In Deepak, to which one of us (Dr.D.Y. Chandrachud, J.) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander, State of Rajasthan v. Fatehkaran Mehdu, and Chitresh Kumar Chopra v. State (NCT of Delhi), it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if

there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.”

9. Certainly, at this stage we can scan the material to the extent of finding out whether a *prima facie* case has been made out. In that regard, we have examined the entire material and considered the rival submissions. The informant has quoted two specific incidents and particularly participation of her husband and mother-in-law. She stated that on 01.06.2021 while she was carrying pregnancy of five months, her husband kicked at her stomach as well as caused bleeding injury at her hand. Likewise, her mother-in-law pulled her hair and put her away. Injury certificate supports those allegations, therefore, it cannot be said that there is no material to hold *prima facie* case against them.

10. As regards to the applicant nos.3 and 4, admittedly they are sister-in-law and her husband who are obviously staying away from the couple. After reading of entire FIR, we could find their reference only

to the extent that they used to misguide the informant's husband for harassing her. There are no particulars about the active role played by applicant nos.3 and 4 in the act of harassment. There is no material as to when, in whose presence they have instigated her husband .

11. Learned Counsel for the informant by placing reliance on the decision of this *Court in Criminal Application (APL) No.1254 of 2022 (Prabha Vijay Dhoke and ors. vs. State of Maharashtra and anr.) dated 08.12.2022* would submit that though some of the relatives are staying away that by itself would not exclude them from the prosecution. As a matter of fact, in paragraph 8 of the said decision specifies that there were certain allegations against them and in that context said decision was rendered. In case at hand, besides a vague reference of applicant nos.3 and 4 who are staying away, we find nothing to put them on full fledged trial. Therefore no *prima facie* case exists against the applicant nos.3 and 4. Continuation of trial against them leads to abuse of the process of Court.

12. In view of above, the following order :

(a) The application is partly allowed.

(b) We hereby quash and set aside the First Information Report as well as charge-sheet relating to Crime

No.230 of 2021 registered with the Khaparkheda Police Station Nagpur Rural for the offence punishable under Sections 498-A, 323 read with Section 34 of the Indian Penal Code as regards to applicant no.3 Sandip s/o Purushottam Chalpe and applicant no.4 Shobhana s/o Sandip Chalpe, only.

13. The application stands disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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