

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

CRIMINAL APPLICATION [APL] NO. 1054 OF 2022.

1.Abdul Salim Ahmad Abdul Jabbar,
Aged about 55 years, Occupation – Service

2.Ahmad Rehan Salim,
Aged about 24 years, Occupation - Student,

Both are residents of Noor Nagar,
Old Town, Badnera, District Amravti.

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APPLICANTS.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Taluq Chandur Railway
(Amravati Gramin), District
Amravati.

2.Anjum Sadaf Salman Khan,
Aged about 25 years, Occupation
Household, resident of c/o. Noor Khan
Pathan, at Post Malkhed, Taluq
Chandur Railway, District Amravati.

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NON-APPLICANTS

Mr. A.M. Haque, Advocate for Applicants.
Mr. S.S. Doifode, Addl. P.P. for Non-applicant No.1-State.
Mr. S.B. Gandhe, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

JUDGMENT RESERVED ON : 09.06.2023.

JUDGMENT PRONOUNCED ON : 12.07.2023.

JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Admit. By consent of the learned Counsel for the parties,
Criminal Application is taken up for final disposal.

2. Applicants are seeking to quash the first information report bearing Crime No.247/2022 registered with Chandur Railway Police Station, District Amravati [Gramin], for the offence punishable under Sections 403, 405, 406, 323, 506, 420, 498-A read with Section 34 of the Indian Penal Code, Sections 4 and 7 of the Muslim Women [Protection of Rights on Marriage] Act, 2019 and Sections 4 and 7 of the Dowry Prohibition Act, 1961 along with Final

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Report No.63/2022.

3. The quashing is sought on account of inadequate, vague and general allegations. Particularly, it is tried to impress that applicants, who are relatives of wife of brother-in-law of husband, cannot be termed as 'relatives' of informant's husband, and therefore, prosecution is untenable. Moreover it is submitted that in order to pressurize the husband and other relatives, they have been falsely implicated, though they never resided in the shared household. The other side has resisted the application by contending that there are specific allegations against both applicants, who have actively participated in harassing the informant.

4. The first information report dated 12.05.2022 was registered at the instance of the informant – lady against in all 7 accused. Applicants are arrayed as accused nos. 7 and 8, who are father and son. To be specific, applicant no.1 Abdul Salim [accused no.7] is uncle of wife of brother of husband, whilst applicant no.2 Ahmad Rehan [accused no.8] is son of applicant no.1. It is

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informant's case that she got married with accused no.1 on 02.02.2022. She has resumed cohabitation with her husband and other relatives. She was subjected to harassment on account of monetary demand. All accused including applicants used to physically and mentally harass her to meet unlawful demand. As regards to accused no.7/applicant no.1, it is alleged that all the time he was instigating accused no.1[husband] to leave the informant and marry with his niece. It is alleged that applicant no.2 was also saying that they should inject her poisonous substance while she is in sleep. It is alleged that on 05.03.2022, in the evening, all the accused beat her, particularly applicants [accused nos. 7 and 8] also beat her by fists blows and kicks, and left her to bus stand from where she returned to her parental house.

5. It reveals from the entire police report that major allegations are against husband and his nearer relatives. The informant has stated that after marriage she resumed to cohabit at her husbands place at Village Dhanaj, Taluq Karanja Lad, District Washim with accused nos. 1 to 6. She stated that applicants

[accused nos.7 and 8] also used to come and stay at said place. Therefore, it is evident that applicants are residing elsewhere, however, allegedly they used to visit at informants matrimonial house. On perusal of the charge sheet it reveals that rest of the accused no. 1 to 6 are residing at village Dhanaj, Taluq Karanja, whilst applicants are resident of Badnera, District Amravati. Since applicants/accused nos. 7 and 8 are residing separately, the matter is viewed with a different perspective. Though there are omnibus allegations that all the accused used to harass the victim, however, besides last incident dated 05.03.2022, there are no specific allegations against applicants.

6. According to applicants, the prosecution against them under Section 498-A of the Indian Penal Code itself is untenable because they cannot be termed as “relative of husband” of the informant lady. To substantiate said contention heavily reliance is placed on the decision of Supreme Court in case of **U.Suvetha .vrs. State by Inspector of Police and another [2009] 6 SCC 757**. In said case, the question which fell for consideration was – whether the

term 'relative of husband of a woman' within the meaning of Section 498-A of the Indian Penal Code should be given an extended meaning. In that regard, it is observed that in absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, grand children. It is also observed that the status of relative is confined only by blood or marriage or adoption. The meaning of term 'relative' depends upon the nature of statute. The Supreme Court has also observed that Section 498-A of the Indian Penal Code being penal one, it deserves strict construction.

7. Applicants have further relied on the decision of Supreme Court in case of **State of Punjab .vrs. Gurmit Singh [2014] 9 SCC 632**. In said decision, the Supreme Court has reiterated that the term 'relative' means such person who are related by blood, marriage or adoption. In that case it was held that brother of husband's aunt by marriage cannot be said to be a relative. Our attention is also attracted to another decision of Supreme Court in case of **Vijeta**

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Gajra .vrs. State of NCT of Delhi [2010] 11 SCC 618. In said case, the Supreme Court has similarly held that in context to Section 498-A of the Indian Penal Code, one has to be relative of husband by blood, marriage or adoption.

8. Coming to the facts of the case, accused no.1 Salman is husband of informant, accused no.2 is her mother-in-law. Accused no.3 Imram and accused no.5 Wasim are brothers of husband. Accused no. 4 Saba and accused no.6 Nagma are wife's of real brothers of husband. There can be no dispute that they would fall within the term 'relative of husband'. Pertinent to note that accused no.7 Salim is uncle of Saba and Nagma i.e. cousin in-law of husbands' brother. The question is – the term 'relative' can be given so extensive and extended meaning to include any of the distant relatives in context with the penal statute. Since applicants belong to a different family, they are not related with blood with husband, neither by marriage nor adoption. The persons related with marriage can be construed to the extent of husbands' brothers, sisters, parents, their children etc. However, applicants belong to a

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different family i.e. from the parental house of in-laws of husbands' brother. Therefore, by any stretch of imagination they cannot find place within the term 'relatives of husband' and thus, in absence of specific allegation of abetment or instigation, they cannot be hauled in criminal prosecution under Section 498-A of the Indian Penal Code.

9. The learned Counsel appearing for the informant would submit that in like matters under Section 498-A of the Indian Penal Code, the Court shall not adopt hypertechnical view in context with the aims and object of the legislative intent. In this regard, reliance is placed on the decision of Supreme Court in case of **B.S. Joshi and others .vrs. State of Haryana and another [2003] 4 SCC 675**. There cannot be no dispute about the said proposition of law, however, on the basis of facts of each case the matter requires consideration. The ultimate object of justice is to find out the truth and punish the guilty, as well as to protect the innocent. The tendency of implicating husband's and distant relatives is not uncommon. While dealing with such complaints, Court must take pragmatic realities

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into consideration. Experience reveals that long and protracted criminal trials leads to acrimony and bitterness in the relationship. In reported case of **Preeti Gupta and another .vrs. State of Jharkhand and another [2010] 7 SCC 667**, the Supreme Court has taken a note that a large number of such complaints are not even bonafides, but, are filed with oblique motive. The Delhi High Court also in a case of **Akhtar Malik and another .vrs. State [NCT of Delhi] and another 2019 SCC Online Del8773**, took a view that maternal uncle of Jethani i.e. wife of elder brother of husband cannot fall within the term 'relative of husband' under Section 498-A of the Indian Penal Code.

10. Reverting to the facts of this case, it is apparent that applicants belong to a different family and are residing elsewhere. The allegations against them are vague and of general nature. On close scrutiny of entire material, we are of the considered view that allowing such an action would result in injustice and prevent promotion of justice. Continuation of such prosecution would amount to an abuse of the process of Court, therefore, this is a fit

case to invoke the inherent powers of this Court. In view of that, we pass the following order.

ORDER.

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.247/2022 registered with Chandur Railway Police Station, District Amravati [Gramin], for the offence punishable under Sections 403, 405, 406, 323, 506, 420, 498-A read with Section 34 of the Indian Penal Code, Sections 4 and 7 of the Muslim Women [Protection of Rights on Marriage] Act, 2019 and Sections 4 and 7 of the Dowry Prohibition Act, 1961 along with Final Report No.63/2022 is hereby quashed and set aside, to the extent of applicants -Abdul Salim Ahmad Abdul Jabbar [accused no.7] and Ahmad Rehan Salim [accused no.8], only.

JUDGE

JUDGE