

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

CRIMINAL APPLICATION (APL) NO. 1174/2021

1. Sakhubai Bhagwan Adhav,
aged 48 yrs., Occ. Housewife,
2. Sanjay Bhagwan Adhav,
Aged 29 yrs., Occ. Service,

No.1 & 2 R/o. Malipura, Ward No. 17,
Deulgaon Raja, Buldana.
3. Vidya Pravin Kharat,
Aged 31 yrs., Occ. Housewife,
4. Pravin Ramdas Kharat,
Aged 43 yrs., Occ. Service,
5. Thakubai Ashok Fulzade,
Aged 58 yrs., Occ. Housewife,

No. 3 to 5 R/o. Malipura, behind
Sarkari Godown, Ward No.1,
Chikhli, Buldana.

APPLICANTS

VERSUS

1. State of Maharashtra,
Through its P.S.O. Deulgaon Raja,
Buldana,
2. Kiran Vijay Adhav,
Aged 25 yrs., Occ. Housewife,
R/o. Malipura, Deulgaon Raja, Buldana,
Police Station: Deulgaon Raja.

NON-APPLICANTS

Mr. A. A. Dhawas, Advocate for applicants.
Mr. A. M. Kadukar, APP for non-applicant No.1/State.
Mr. Raju Kadu, Advocate for non-applicant No.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.**
DATE OF JUDGMENT : 30.03.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. **Admit.**

3. This is an application seeking to quash First Information Report in Crime No. 338/2021 for the offence punishable under Sections 498-A, 506 read with Section 34 of the Indian Penal Code registered at Police Station Deulgaon Raja, Tah. and Dist. Buldana and also seeks to quash charge-sheet bearing R.C.C. No. 412/2021 pending on the file of Judicial Magistrate First Class, Deulgaon Raja, Dist. Buldana.

4. The applicants are nearer relatives of the husband of informant lady. They seek to quash FIR and related charge-sheet on account of false implication. It is submitted that the criminal proceeding is actuated with mala fide and has been maliciously instituted by the informant at the behest of her husband. Moreover, it is submitted that the allegations levelled in the report are general and vague.

5. The application is resisted by the learned APP and learned counsel appearing for the non-applicant No.2-informant. It is submitted that FIR specifically spells out the role of applicants

and demand of dowry. According to informant, there is sufficient material to put the applicants for trial.

6. This case has peculiar facts of its own, that the husband has not been made accused rather the informant lady has praised her husband in FIR stating that his behaviour is quite good and sober. She has levelled allegation against relatives of husband. Reading of FIR and related statement discloses that all the applicants allegedly harassed the informant by raising monetary demand. Learned counsel for applicants would submit that during pendency of this application, the matter was settled and accordingly, the informant has signed on the joint application, but later refused. True, the settlement was not materialized, however it appear that the informant made a statement in her joint application about filing of FIR under misunderstanding.

7. It is submitted that applicant Nos. 2 to 5 never resided in the shared household. Applicant No. 2 is brother of husband, who is said to be staying in Mumbai. Applicant No. 2 has produced appointment letter as well as identity card to show that he is serving with the Ministry of Defence and posted at Mazagaon Dock Ship Builders, Mumbai. Prima facie, it is evident that applicant No. 2 Sanjay never resided in shared household. Moreover, it is submitted that applicant No. 3 is married sister who is residing separately with her husband i.e. applicant No. 4 at Taluka Chikhali,

District Buldana. So also, applicant No. 5 is also resident of Chikhali i.e. away from Deulgaon Raja, where couple resided. In that context, we have examined the statement of the witnesses which do not convey any instance, besides general and omnibus allegations.

8. Relying on the decision of the Supreme Court in case of **Kahkashan Kausar alias Sonam and others Vs. State of Bihar and others, (2022) 6 SCC 599**, the learned counsel for applicant would submit that, on the basis of general and omnibus allegations, the proceeding under Section 498-A of the Indian Penal Code would not stand. In the said decision, the Supreme Court has cautioned that the Court should be careful in proceeding against the distant relatives in matrimonial dispute. In that context, we do not see any specific allegation against either of the applicant. It is submitted that the informant lady is happily residing with her husband at different place. It is strange that she has no grievance against her husband rather having good relation, but is making grievance against the family members of the husband. In this background, possibility of husband being preparator against his own family cannot be ruled out. The fact of this case clearly falls in category No. 7 as laid down by the Supreme Court in case of **State of Haryana Vs. Bajan Lal, AIR 1992 SC 604**.

9. In view of above facts, it is evident that the continuation of such prosecution would be abuse of the process of the Court. In the circumstances, we are inclined to exercise our inherent jurisdiction. Hence, application is allowed. We hereby quash and set aside First Information Report in Crime No. 338/2021 for the offence punishable under Sections 498-A, 506 read with Section 34 of the Indian Penal Code registered at Police Station Deulgaon Raja, Tah. and Dist. Buldana and also related charge-sheet bearing R.C.C. No. 412/2021 pending on the file of Judicial Magistrate First Class, Deulgaon Raja, Dist. Buldana.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane