



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

CRIMINAL APPLICATION NO.1127 OF 2023

1. Ganesh s/o Janrao Solanke, aged about 31 years, Occ. Student (Brother in law)
2. Baldev s/o Janrao Solanke, aged about 28 years, Occ-Student (Brother in law)

... APPLICANTS

VERSUS

1. The State of Maharashtra, through Police Station Officer, P.S. Daryapur, Tq. Daryapur, Dist. Amravati.
2. Manisha w/o Kishor Solanke, aged about 27 years, Occ – household, Permanent R/o C/o Ambadas Pawar Panjabra Colony, Shendgaon, Tq.Anjangaon, Dist. Amravati, Presently R/o Plot No.64 Jin Plot Banosa Tq. Daryapur, Dist. Amravati.

... NON-APPLICANTS.

Shri A.B. Mirza, Advocate for the applicants.
Shri Badar, Addl.PP for the State
Shri V.A. Lohia, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED : 22.12.2023.

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

Heard. **ADMIT.**

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

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants who are brother-in-laws of the informant seek to quash the First Information Report bearing Crime No.464 of 2023 registered with the Daryapur Police Station, Amravati Rural for the offence punishable under Sections 498-A, 504 read with Section 34 of the Indian Penal Code, on account of absence of *prima facie* case and the allegations are vague, general.

4. The informant lady aged 27 years got married with the applicants' brother Kishor on 20.05.2017. After the marriage, she resumed to cohabit with her husband and other family members at village Chohatta Bazar, Tq. Akot. At relevant time, the informant's father-in-law was residing at Telhara due to his police service. The applicants were also staying at Telhara with their father.

5. It is the informant's case that after few days from the marriage, she was subjected to matrimonial harassment. Her grate-grand mother-in-law used to harass and abuse her. The informant was beaten by her husband on an often. She has levelled various allegations against her husband, grate-grand mother-in-law and father in-law. As regards to the applicants (brother-in-law), she alleges that both used to instigate her husband by saying false things. They used to say to her husband as to why he is allowing the informant to stay there. It is alleged that at the instance of saying of all the relatives including applicants, her husband used to quarrel and harass. She stated that once the applicant Baldev drove her out of the house. With these allegations she has lodged the report.

6. Learned Counsel appearing for the applicants would submit that there are no specific and distinct allegations against either of the applicants, who are the brother-in-law of the informant. Particularly, it is argued that since the marriage, the couple was staying separately at village Chohatta Bazar whilst the applicants were staying with their father at Telhara, which is 30 kilometers away. It is submitted that both applicants are preparing for MPSC competitive examination. Particularly, the letter has been produced to show that applicant Ganesh has been selected in State Reserved Police Force. It is contended that

due to pendency of criminal case, the applicant would put to great ignominy and inflict a permanent scare. There is also likelihood that they may lose their career prospects.

7. *Per contra*, learned Counsel appearing for the informant would submit that there are specific allegations about harassment at the hands of the applicants too. It is submitted that the distance between Chohatta Bazar and Telhara is 30 kilometers, therefore it was easy for the applicants to frequently visit and harass the informant. It is submitted that though the applicants produced documents that they were studying at Khamgaon however the place of residence was at Telhara.

8. Besides that learned counsel for the informant would submit that at this stage, the Court shall not embark into evaluating the material adduced, which is essentially a matter of trial and to that regard, he relied on the decision of the Supreme Court in case of *Rishipal Singh vs. State of Uttar Pradesh and anr. (2014) 7 SCC 215*. Learned Counsel for the informant further submits that the plea of alibi is a matter of defence which cannot be considered at this stage. In this regard, he would rely on the decision of the Supreme Court in cases of *Ravindra Kumar Madhanlal Goenka and anr. vs. Rugmini Ram Raghav*

Spinners Private Limited (2009) 11 SCC 529 and *Rajendra Singh vs. State of U.P. and another (2007) 7 SCC 378*. Those cases would not render any assistance since the case in hand pertains to matrimonial offence. The allegations are pertaining to the matrimonial cruelty and thus, it is not a case in real sense to establish alibi. It is the applicants' contention that they are residing separately at Telhara, which is not disputed. The applicants may stay at Khamgaon or may not, but there is no dispute about their separate residence.

9. The learned Counsel for the informant by relying on the decision of the Supreme Court in case of *State of Maharashtra vs. Ishwar Piraji Kalpatri and ors. With one another case (1996) 1 SCC 542* would submit that the allegations of *mala fides* can be assessed at the time of trial. In the context of the case in under the Prevention of Corruption Act, 1947 those observations have been made.

10. While exercising the jurisdiction under Section 482 we are well guided by the guideline set out by the Supreme Court in the decision of the *State of Haryana vs. Bhajan Lal AIR 1992 SC 604 in paragraph 108*, which runs as below :

“1. When 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.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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.

4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR of complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of

the aggravated party.

7. Where a criminal proceedings is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. In the light of the said observations we have assessed the entire material. It reveals that principal allegations are against the husband. Apparently, it is alleged in general sense that the applicants (brother-in-laws) used to taunt and instigate the informant's husband.

12. Learned Counsel for the applicant's relied on the decision of the Supreme Court in case of ***Kahkashan Kausar @ Sonam and ors. vs. State of Bihar and ors. 2022 0 AIR(SC) 820***, wherein the Supreme Court has deprecated the tendency of involving husband's all family members in a criminal prosecution under Section 498-A of the IPC. It is also observed that general and *omni bus* allegations cannot manifest in a situation where the relatives of complainant's husband are forced to undergo trial. It is also observed that allegations of general and omnibus nature can at best be said to have been made out of skirmishes and do not warrant prosecution.

13. Our attention has also been invited to the decision of this

Court in case of *Sayyad Rahmat Ali and ors. vs. State of Maharashtra and anr. 2018 ALL MR (Cri) 1089*, wherein it is observed that isolated instance cannot be construed to constitute the offence punishable under Section 498-A of the IPC. The applicants further relied on the decision of the Supreme Court in case of *Preeti Gupta and anr. vs. State of Jharkhand and anr. AIR 2010 SCC 3363* to contend that the relatives of husband residing in different place, cannot be put on trial in absence of specific allegations.

14. Apparently, the informant has not stated any specific instance as to when the applicants have either taunted or instigated her husband. The allegations are vague, general and omnibus. Besides isolated instance, alleging applicant Baldev forcing her to go away there is nothing against them. Moreover, admittedly, both applicants are educated, aspirants for government job and residing separately with their father at Telhara. Certainly continuation of prosecution on vague and general allegations against the relatives, would mar their prospect.

15. Having regard to the above facts, we are not convinced about existence of *prima facie* case to put both applicants (brother-in-laws) to undergo the ordeal of long drawn trial.

16. In view of that, the application is allowed. We hereby quash and set aside the First Information Report bearing Crime No.464 of 2023 registered with the Daryapur Police Station, Amravati Rural for the offence punishable under Sections 498-A, 504 read with Section 34 of the Indian Penal Code as regards to the present applicants.

17. The application stands disposed of accordingly.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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