



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

CRIMINAL APPLICATION [APL] NO. 1551/2022.

1.Abhishekh s/o Kishor Pohankar,
Aged about 31 years,
Occupation - Business, (Husband)

2.Mrunal d/o Kishore Pohankar @
Marunal w/o Shashikant Gajjari,
Aged about 35 years,
Occupation - Service,
(Sister-in-law)

3.Kishore s/o Madhukar Pohankar,
Aged about 64 years,
Occupation - Retired,
(Father-in-law).

Applicants 1 to 3 all residents of
Plot No.37, Police Mitra Society,
Darwaha Road, Yavatmal,
Taluka and District Yavatmal.

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APPLICANTS.

VERSUS

1.The State of Maharashtra,
through its Police Station
Avdhootwadi, District Yavatmal.

2.Dhanashree w/o Abhishek Pohankar,
Aged about 30 years, Occupation –
Service, resident of C/o. Abhay
Kothiwan Annexed to Additional
District and Sessions Court premises
Hinganghat, Kochar Ward, Hingahghat

Rgd.

Taaluka Hinghat, District Wardha.
Mob.09373476866.

... **NON-APPLICANTS.**

Mr. V. Awchat, Advocate for Applicants.
Mr. J.Y. Ghurde, A.P.P. for Non-applicant No.1 State.
Mr. M. Rai, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 17, 2023

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel appearing for respective parties, the matter is taken up for final disposal.

2. This is an application seeking to quash the first information report bearing Crime No.794/2022 registered with Avdhootwadi Police Station, Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

3. Applicants are husband, sister-in-law and father-in-law of the informant lady. The couple got married on 11.11.2019, on which the informant resumed cohabitation at her matrimonial house. It is her

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case that soon after the marriage, all applicants started harassing her mentally, as well as physically. They were saying that she is not a good looking lady, and they could have got a better choice. All the time, applicant nos. 2 and 3 were provoking her husband to abuse and beat her. There was monetary demand, and thus due to harassment she left her matrimonial house and lodged the report.

4. The learned Counsel appearing for applicants would submit that the report is actuated with malafide. It has been filed with an ulterior motive for wrecking vengeance so as to pressurize the husband to succumb in other pending litigation. It is submitted that the informant lady has hardly stayed for 15 days in the matrimonial house, and thus, the allegations which are vague, are improbable. Applicants have also assaulted the tenability of the first information report by stating that after long gap of 3 years, report has been lodged.

5. On the other hand, the learned Counsel appearing for the informant would submit that the first information report bears specific allegations about physical abuse and monetary demand. It is submitted that after separation there were meeting in between the parties. Since the lady was hopeful of reunion, she has not filed the report in immediate proximity.

Rgd.

6. Undisputedly the couple got married on 11.11.2019 and the lady resumed cohabitation with applicants. Entire reading of the first information report no where suggests any specific date, instance or occasion on which she has been humiliated or harassed. Though the first information report does not bear the date on which the couple separated, however, applicants have attracted our attention to the affidavit at page no.100 of the application, filed by the wife in a matrimonial proceedings, where she herself stated the date of separation as 29.11.2019. Besides that, applicants have produced evidence of wife recorded in matrimonial proceedings wherein she also admitted the date of separation. Thus, it is apparent that barely for 15 days the wife stayed in the matrimonial house. The evidence of informant in matrimonial proceedings bears admission that after marriage on 14.11.2019 and 15.11.2019 all of them went to her matrimonial house for ceremony. On 16.11.2019, mother of husband was admitted in the hospital. These things postulate that the relation was smooth at the initial days. In that context, the period was very short for which she lived in the matrimonial house. In absence of any specific allegations it is difficult to accept that in those days, there was incessant harassment.

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7. Apart from that applicants have produced copy of notice [page no.32 of the application], issued by husband to the wife dated 15.09.2020 seeking restitution. He has also filed a petition for annulment of marriage on 15.10.2020. In said proceeding, wife has appeared and filed written statement on 05.01.2021. She has also filed restitution petition [page no.67 of the application] on 22.02.2020. It was followed by husband filing a divorce petition on 25.01.2022. In the meantime, there were some criminal complaints. At this juncture, the wife has lodged the first information report on 24.08.2022.

8. Apparently for near about 3 years from separation, she did not file any report. It is not the case of the informant that during intermittent period there was monetary demand or harassment. The learned Counsel for applicants has relied on the decision in case of **Rashmi Chopra .vrs. State of Uttar Pradesh and another – 2019 [7] Scale 152**, to contend that in absence of specific instance, date or details of the incident, the prosecution under Section 498-A of the Indian Penal Code is not tenable. Similarly, our attention has been invited to a decision of this Court in case of **Vrushali Jayesh Kore .vrs. State of Maharashtra and another – 2023 [2] Mh.L.J. (Cri) 700**, to contend that unjustifiable prosecution has serious consequences.

Reliance is also placed on the decision of this Court in case of **Ramesh Devidas Kurhade and others .vrs. State of Maharashtra and another – 2020 [1] Mh.L.J. (Cri) 520**, wherein it is ruled that in absence of specific allegations and overt-act, the proceeding is liable to be quashed.

9. The Supreme Court in case of **State of Haryana .vrs. Ch. Bhajan Lal and others – 1992 (Supp.1) SCC 335**, has elaborately dealt with the scope and ambit of Section 482 of the Code of Criminal Procedure. Paragraph no.102 enumerates 7 categories of cases where inherent powers can be exercised under Section 482 of the Code. The present case squarely falls in category no.7, wherein it is expressed that if the proceeding is maliciously instituted with an ulterior motive, then it is a matter of quashing. Taking over all view of the matter, it is prima facie evident that there was no occasion for the lady to live in the company of applicants, barring initial few days. She has hardly stayed for 15 days in the house of the husband. Besides that there are no specific allegations against either of the applicant. The long history shows that the parties were fighting various litigations since long. They were pursuing marriage petitions for three years, but, during that time no report was lodged. There is every possibility that in order to

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pressurize the husband, belated report after three years has been lodged. This Court is invested with inherent powers with the sole object to prevent the abuse of the process of the Court and to secure the ends of justice. In above peculiar facts, continuation of prosecution would entail applicants to undergo uncalled hardship. Facing a criminal prosecution tends to party to suffer immense mental trauma, as well as monetary loss. In the circumstances we are of the view that a case for quashing of the crime has been made out, hence, following order is passed.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The first information report bearing Crime No.794/2022 registered with Avdhootwadi Police Station, Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code is hereby quashed and set aside.

(MRS. VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)