



Judgment

apl1571.22

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

CRIMINAL APPLICATION [APL] No. 1571/2022.

1. Shaikh Abdul Karim Shaikh Sattar,
Age 38 years, Occupation – Advocate,
resident of Gulshan Nagar, Near Aftab
Gym, Yavatmal, presently residing at
Kohinoor Colony, Near Panchakki,
Aurangabad [Husband].

2. Shaikh Sattar Shaikh Ismail,
Age 71 years, Occupation –
resident of Tayade Nagar, Awadhootwadi,
Yavatmal [Father-in-law].

3. Rajiyabi Shaikh Sattar,
Age 71 years, Occupation – Household,
resident of as above
[Mother-in-law].

4. Abdul Rahim Alias Sonu Abdul Sattar,
Age 37 years, Occupation –

resident of 3 and 4 Tahir Nagar,
Tayade Nagar, Yavatmal
[Brother-in-law].

5. Shahista Rafiyuddin Kazi Alias Munna,
Age 41 years, Occupation – Household,
resident of Priyadarshini, Pathanpura,
Near, District Yavatmal
[Sister-in-law].

Rgd.

6.Shagufta Roshan Khan,
Age 33 years, Occupation – Household,
resident of Sakalgaon, Post Jamb
Samarth, Ghansawangi, District Jalna.
[Sister-in-law].

7.Jeba Shaikh Anis,
Age 27 years, Occupation – Household,
resident of Aqsa Nagar, Jalgaon, Sarole,
District Jalgaon.
[Niece – daughter of Sister-in-law namely
Shama Jalil Khan].

... **APPLICANTS.**
(Ori.Accused No.1 to 7)

VERSUS

1.The State of Maharashtra,
through Police Inspector,
Police Station Awdhootwadi,
District Yavatmal.
[Copy to be served on the
Public Prosecutor, High Court of
Bombay, Nagpur Bench, Nagpur.]

2.Shabnam Sheikh w/o Abdul Karim,
Age 34 years, Occupation Household,
Resident of c/o. Shaikh Harun,
Bilal Nagar, Yavatmal,
District Yavatmal.

... **NON-APPLICANTS.**
(No.2 Ori.Complainant)

Mr. H. Pawar, Advocate for Applicants.
Mr. N.R. Rode, A.P.P. for Non-applicant No.1.
Ms S.V. Upadhyay, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : AUGUST 23, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J) :

Heard. **Admit.**

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

2. By this application applicants have sought quashing of the first information report bearing Crime No.1002/2022 registered with Awdhootwadi Police Station, District Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code along with Regular Criminal Case No.929/2022 pending on the file of 2nd Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Yavatmal.

3. Applicants are husband and his nearer relatives. It is the case of applicants that the allegations in the police papers are vague

Rgd.

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and omnibus. Entire family members of husband, including married sisters have been falsely implicated to pressurize the husband. According to applicants, the prosecution is actuated with malafide, therefore, continuation of prosecution amounts to abuse of the process of Court.

4. The State, as well as the learned Counsel appearing for the informant/non-applicant no.2, have resisted the application. It is submitted that after few months of the marriage, the informant was subjected to physical, as well as mental cruelty. Time and again all family members insisted the informant to meet unlawful monetary demand and on that count she was harassed and compelled to leave her matrimonial house. It is submitted that the material collected during the course of investigation is sufficient to put applicants on trial.

5. Facts of the case in brief are that the informant – lady got married to applicant no.1 on 28.01.2018. After 8 months, she resumed co-habitation with her husband and other family members.

Rgd.

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It is her contention that since inception, applicants have humiliated her by stating that she belongs to poor family and unable to do household work. She was also humiliated on account of not providing offering in the marriage and insisted her to meet monetary demand of Rs.15 lakhs. The informant stated that two months precedent to the lodging of the police report, her husband left her company which compelled her to stay with her parents.

6. This is one another usual case wherein the wife alleges about matrimonial cruelty against husband, in-laws and other relatives of the husband. Undisputedly the couple got married on 28.01.2018, and after 8 months they had undergone religious ceremony and started to cohabit. It reveals from the police report and statements of witnesses that besides general allegations against all family members, there is nothing specific or particular allegations against other relatives. True, we do find allegations against the husband about harassment, physical abuse and inhumanly treatment meted to the wife. The learned Counsel for applicants would submit that the informant-lady has unnecessarily hauled all the married

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sisters of husband i.e. applicant nos. 5 to 7, though they are residing separately. In support of said contention, marriage certificates of sisters of husband are produced, which shows that they got married much earlier i.e. on 15.05.2006, 12.01.2014 and 22.06.2018. Apparently, they got married prior to the informant's marriage and obviously are staying with their respective family. It is not the case of informant that they used to stay with the couple, but, it is alleged that intermittently they used to visit and harass her. In absence of specific allegations, it is difficult to accept the contention that they also joined the husband in the act of harassment.

7. The learned Counsel for applicants relied on the decision of Supreme Court in case of **Kahkashan Kausar @ Sonam and others .vrs. State of Bihar and others – Criminal Appeal No.195/2022 decided on 08.02.2022** to contend that there is large scale of misuse of provisions of Section 498-A of the Indian Penal Code, and growing tendency to implicate relatives of husband in matrimonial dispute. Our attention has been invited to paragraph nos.18 and 19 of the said decision, which reads as under :

Rgd.

“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are

therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

8. Besides that the learned Counsel for applicants has relied on the decision of the Supreme Court in case of **Mirza Iqbal @ Golu and another .vrs. State of Uttar Pradesh and another – [2021] 9 SCR 469**, and of this Court in cases of **Sau.Mangala Ramdas Medhane and others .vrs. State of Maharashtra – [2022] 1 Bom CR [Cri]235** and **Pradeep Vilas Awasarmol and others .vrs. The State of Maharashtra – Criminal Application No.652/2023 decided on 21.06.2023**, to submit that on the basis of vague and bald allegations against the relative, the prosecution is not tenable.

9. We have re-examined the entire material to find out the prima facie case. As regards to the husband, we do find certain

allegations in the first information report, as well as in prior notice issued by the wife. It reveals from the record that after few days from the marriage the couple started to reside separately which has worsen the case against the relatives. Having regard to the case of applicants and the material placed on record, except vague and bald allegations against the relatives of husband, there is nothing specific disclosing the involvement of other applicants to prosecute them for the alleged offences. General and vague allegations without specification would not further the prosecution to establish the case of cruelty. Thus, there is no prima facie material against applicants, except husband. Continuation of such prosecution against them amounts to abuse of the process of Court. However, the case of husband materially differs.

10. In view of above Criminal Application is partly allowed. The first information report bearing Crime No.1002/2022 registered with Awdhootwadi Police Station, District Yavatmal for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code along with Regular Criminal Case

Rgd.

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No.929/2022 pending on the file of 2nd Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Yavatmal is hereby quashed and set aside, so far as it relates to Applicant Nos.[2]Shaikh Sattar Shaikh Ismail, [3] Rajiyabi Shaikh Sattar, [4] Abdul Rahim Alias Sonu Abdul Sattar, [5] Shahista Rafiyuddin Kazi Alias Munna, [6] Shagufta Roshan Khan and [7] Jeba Shaikh Anis, only.

JUDGE**JUDGE**