



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.17 OF 2022**

1. SHANKAR AMRUJI JADHAV
Age: 69 years, Occu: Nil,
R/o: Amrunaik Tanda, Masalga,
Post Devthana, Taluka Bhokar, District Nanded
(Father-in-law)
2. PARVATIBAI SHANKARRAO JADHAV
Age: 65 years, Occu: Household,
R/o: As above (Mother-in-law)
3. SARASWATI VILAS JADHAV
Age: 33 years, Occu: Household,
R/o: As above (Sister-in-law- wife of brother of husband)
4. SUMAN PANDURANG RATHOD
Age: 40 years, Occu: Household,
R/o: At Mulpeth Tanda, Post Rani Savargaon, Taluka
Gangakhed, District Parbhani
(Married Sister-in-law)
5. PANDURANG LOBHAJI RATHOD
Age: 44 years, Occu: Agriculture,
R/o: As above (husband of sister in law)
6. LAXMAN PITU JADHAV
Age: 38 years, Occu: Agriculture
R/o: Amru Tanda, Masalga, Post Devthana,
Taluka Bhokar, District Nanded (Cousin brother-in-law)
7. USHA MOHAN JADHAV
Age: 28 years, Occu: Household,
R/o: 33, Amru Tanda, Masalga,
Post Devthana, Taluka Bhokar,
District Nanded (Cousin sister-in-law)
8. JYOTI SATISH JADHAV
Age: 23 years, Occu: Household,
R/o: Amru Tanda, Masalga,
Post Devthana, Taluka Bhokar,
District Nanded (wife of accused No.1)
9. SAHEBRAO HARISHCHANDRA RATHOD
Age: 50 years, Occu: Agriculture

R/o: Wai Tanda, Pota (Bk),
Taluka Himayatnagar,
District Nanded (Father of applicant No.3)

10. SUNITABAI SAHEBRAO RATHOD
Age: 37 years, Occu: Household
R/o: As above
(Mother of applicant No.9)
11. RAJU @ RAJESH SAHEBRAO RATHOD
Age: 20 years, Occu: Student,
R/o: As above (Brother of applicant No.)
12. PARASRAM SOMLA RATHOD
Age: 61 years, Occu: Agriculture
R/o: As above (Maternal uncle -Mama)
13. SHANTABAI PARASRAM RATHOD
Age: 54 years, Occu: Household,
R/o: As above (Maternal aunt -Mami)
14. SURESH PARASRAM RATHOD
Age: 41 years, Occu: Agriculture
R/o: As above
(Maternal brother-in-law)
15. ANIL LAXMAN ADE
Age: 42 years, Occu: Agriculture
R/o: As above
(Maternal uncle -Mama)
16. SARITABAI ANIL ADE
Age: 38 years, Occu: household,
R/o: As above
(Maternal aunt -Mami)
17. RAMESH LAXMAN ADE
Age: 54 years, Occu: Agriculture
R/o: As above
(Maternal uncle -Mama)
18. MADHUKAR GANGADHAR PADVALE
Age: 65 years, Occu: Pandit
R/o: As above
(Pandit who has performed marriage)

19. PAWANKUMAR BAPURAO JADHAV •
Age: 41 years, Occu: Service as Gramsevak
R/o: House No.1-22-410, Ashirwad Niwas,
Bramhasingh Nagar, MGM College Road,
Nanded (Gramsevak of Wai Tanda)

20. ARVIND LALU JADHAV
Age: 47 years, Occu: Business,
R/o: Wai Tanda, Pota (Bk),
Taluka Himayatnagar,
District Nanded (Operator)

..Applicants

Versus

1. STATE OF MAHARASHTRA
Through Police Station Officer,
Shivaji Nagar Police Station, Nanded

2. PRIYANKA SATISH JADHAV
Age: 29 years, Occu: Household,
R/o: Amrut Niwas, Near Swami Samarth Mandir,
Maganpura, Nanded
Mobile No: 9373233573

..Respondents

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Mr. S. S. Bora, Advocate for the Applicants.

Mr. A. R. Kale, APP for Respondent-State.

Mr. G. R. Syed, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 18th OCTOBER, 2024.

ORDER (Per S. G. Chapalgaonkar, J):-

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code, thereby praying to quash and set aside FIR in Crime No.25/2020, dated 23.01.2020, registered with Shivajinagar Police Station, Dist. Nanded for offences punishable under Sections 498-A, 494 r/w 34 of the Indian Penal Code. During the pendency of this application, charge-sheet came to be filed in pursuance to impugned FIR in RCC No.283/2023 before learned Judicial Magistrate First Class at Nanded. Consequently, applicants have added prayer to quash and set aside

charge-sheet and consequential criminal proceeding pending before Judicial Magistrate First Class at Nanded.

2. The respondent no.2-Priyanka lodged report dated 23.01.2020 with Police Station alleging that on 26.05.2016 she married with Satish Shankarrao Jadhav as per Hindu rights and customs. Immediately after marriage she resided at her matrimonial home alongwith mother-in-law, father-in-law, sister-in-law, brother-in-law and co-sisters. She was treated well initially for few days. Thereafter, she was ill-treated in pursuance of demand of Rs.5,00,000/- for the purpose of establishment of medical shop and purchase of four wheeler. Consequently, she disclosed about demand and ill-treatment to her parents. Even, complaint was made to Women Grievance Desk. However, on assurance of in-laws to stop harassment, she went back and continued to reside at matrimonial home. In the month of November 2019 again her husband raised quarrel and use to stay away from home. She informed odd behaviour of her husband to parents and discussed with relatives. She came to know that her husband Satish Jadhav had instituted proceeding for divorce against her and obtained *ex-parte* decree. On 05.12.2019 she collected information from Family Court, Nanded and noticed that her false address was mentioned in the petition and service report of Court notice was falsely prepared. Accordingly, and *ex-parte* decree was obtained. Immediately, she reported fraud exercised by her husband to police station. Consequently, Crime No.499/2019 for offence punishable under Sections 420, 467, 468 and 34 of the Indian Penal Code has been registered.

3. Similarly, she found that her husband has obtained false certificate of marriage dated 16.12.2019 depicting his second

marriage on 01.12.2019. Consequently, she alleges that her husband solemnized second marriage while first marriage was in subsistence in connivance with other accused persons. As such, accused committed offence under Sections 498-A, 494 r/w 34 of the Indian Penal Code. Eventually, the Crime No.25/2020 has been registered against in all 21 accused persons. The investigation progressed in pursuance of registration of crime, however, finally charge-sheet has been filed against in all 19 accused persons for aforesaid offences. The R.C.C. No.283/2023 is now pending before Judicial Magistrate First Class, Nanded.

4. Mr. Satyajit Bora, learned Advocate appearing for the applicants on specific instructions seeks permission to withdraw application to the extent of applicant no.1-Shankar Amruji Jadhav i.e. father-in-law of respondent no.2 and restricted his submissions for applicant nos.2 to 20.

5. He submits that there is matrimonial dispute between respondent no.2 and her husband. The decree of divorce dated 19.11.2018 was passed by Family Court at Nanded in Petition No.A-93/2018 and marriage between respondent no.2 and her husband was dissolved. Later on respondent no.2 objected *ex-parte* decree on the ground that it was without service of notice to her. Particularly, she alleges that her false address was given in the petition before the Family Court and applicant no.1 i.e. father-in-law accepted the said notice and signed in the name of her father. Mr. Bora would point out that decree passed by Family Court was assailed by respondent no.2 in Appeal before this Court and on 06.12.2019 this Court was pleased to grant stay to the decree. Prior to grant of stay to the decree, husband of respondent no.2 solemnized second marriage with applicant no.8-Jyoti Rathod on

01.12.2019. The marriage has been duly registered with Grampanchayat. In this background, respondent no.2 has filed false complaint, thereby implicating all applicants, who are unconcerned with the family dispute of respondent no.2 with her husband. The FIR alleges that applicant nos.2 to 19 abated second marriage of her husband with Jyoti Rathod. The applicant no.19 has issued false certificate of marriage. The applicant no.18 was priest at the marriage.

6. Mr. Bora would further submit that allegations in the FIR or material in the charge-sheet would be insufficient to make out any offence against applicants. The charge-sheet would indicate that grievance of respondent no.2 is against her husband. However, all other relatives and family members have been implicated in the present crime with a view to maintain pressure against husband. He would, therefore, urge to quash and set aside FIR and consequential criminal proceeding.

7. Per contra, Mr. Kale, learned APP appearing for the respondent-State and Mr. Syed, learned Advocate for respondent no.2 vehemently opposed application contending that applicants were well aware about fraud exercised by husband of respondent no.2 and all of them knowingly abated commission of second marriage on the basis of fraudulent decree of divorce. According to them, the ingredients of offence under Sections 494 and 498-A of the Indian Penal Code can be inferred from the allegations in the FIR and material collected during the course of investigation.

8. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely gone through the FIR as well as investigation papers

included in the charge-sheet. The applicants before us are mother-in-law, sister-in-law, cousin brother-in-law, cousin sister-in-law, second wife of husband of respondent no.2, her father and mother and other relatives. The applicant nos.18 to 20 are unconcerned with family of respondent no.2, however, they are arraigned as accused attributing their role in performance or registration of second marriage. The gist of allegations in the FIR would depict that respondent no.2 married with Satish jadhav on 26.05.2016. She was ill-treated by in-laws in pursuance to the demand of Rs.5,00,000/- for setting up a medical shop. Thereafter, she lodged report of ill-treatment. However, owing to settlement arrived with in-laws, she went back to matrimonial home. However, in the month of November 2019 she noticed weird behaviour of her husband-Satish Jadhav and got knowledge of fraudulent decree of divorce obtained by him from Family Court at Nanded, so also second marriage performed by him with applicant no.8-Jyoti Rathod.

9. In aforesaid background, when we examined contents of FIR and statement of witnesses cited in the charge-sheet, it is observed that except omnibus statement of demand of Rs.5,00,000/-, no particulars of alleged ill-treatment by accused person is stipulated. It is trite that to make out offence under Section 498-A of the Indian Penal Code, ingredients of cruelty as per Explanation (a) and (b) needs to be shown. In absence of such material or stipulation in the FIR depicting individual role of the accused, no case can be made out for prosecution.

10. At this stage, reference can be given to the observations made by the Supreme Court in case of *Preeti Gupta and Another and Another Vs. State of Jharkhand and Another*¹,

¹ (2010) 7 SCC 667.

wherein the Apex Court observed in paragraph nos.30, 32 and 34 as under :-

“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

11. The Supreme Court of India has consistently observed that misuse of Section 498-A of the Indian Penal Code, particularly over implication of relatives of husband needs to be guarded. In present case, from the contents of the FIR or the statements of witnesses, it can be gathered that except omnibus statement of demand of Rs.5,00,000/- and general statement of ill-treatment by in-laws, there is nothing to bring home ingredients of offence under Section 498-A of the Indian Penal Code as against applicant nos.2 to 20. Since husband and father-in-law of respondent no.2 are not before us, we find that prosecution of applicant nos.2 to 20 for commission of offence under Section 498-A of the Indian Penal Code cannot be countenanced.

12. So far as charge under Section 494 of the Indian Penal Code is concerned, it can be observed that husband of respondent no.2

was holding decree of divorce in his favour as on 01.12.2019, when alleged second marriage was performed by him with applicant no.8-Jyoti Rathod. The respondent no.2 alleges that decree was fraudulently obtained by her husband in connivance with father-in-law. Assuming that such decree was fraudulent, the applicant nos.2 to 20 before this Court cannot be attributed with knowledge of such fraud exercised by husband of respondent no.2. It can be seen from the record that decree of divorce was stayed by this Court on 06.12.2019, whereas marriage between Satish Jadhav and applicant no.8-Jyoti Rathod was solemnized on 01.12.2019. In this background, applicant nos.2 to 20 cannot be attributed with commission of offence under Section 494 of the Indian Penal Code. Even in absence of specific statement in the FIR or material in the charge-sheet indicating that applicant nos.2 to 20 were having knowledge of fraudulent decree of divorce and there participation in the second marriage with such knowledge, no offence can be made out under Section 494 r/w 34 of the Indian Penal Code. In that view of the matter, we are of the considered view that applicant nos.2 to 20 need not face trial and we deem it fit to exercise our powers under Section 482 of the Criminal Procedure Code. Consequently, we proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.25/2020 dated 23.01.2020 registered with Shivajinagar Police Station, Dist. Nanded for offences punishable under Sections 498-A, 494 r/w 34 of the Indian Penal Code as well as charge-sheet and consequential criminal proceeding in RCC No.283/2023 pending before Judicial Magistrate First Class at Nanded is hereby quashed and set aside to the extent of applicant nos.2 to 20.

c. Criminal Application to the extent of applicant no.1-Shankar Amruji Jadhav stands dismissed as withdrawn and criminal proceeding pending before Judicial Magistrate First Class at Nanded to continue against applicant no.1 alongwith another accused Satish Shankarrao Jadhav.

d. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE