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418.23 CRAPLN (2).odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 418 OF 2023

1. Ashok s/o. Mahadeo Bangar,
Age 35 years, Occ. Private Service,
2. Prajakta W/o. Ashok Bangar,
Age 25 years, Occ. Household,

Both R/o. Bangarwadi, Tq. Kallam,
Dist. Osmanabad
At present R/o. Plot No.24, Malhar Park,
Fursungi, Tq. Haveli, Dist. Pune.
3. Sandip @ Balasaheb s/o. Chandrabhan
@ Chandrasen Kedar,
Age 45 years, Occ. Service,
R/o. Ekurka, Tq. Kaij, Dist. Beed,
At present R/o. Taraswadi, Tq. Atpadi, Dist. Sangli.
4. Chandrasen @ Chandrabhan S/o. Yashwant
@ Tanaji Kedar
Age 75 years, Occ. Nil.
R/o. Ekurka, Tq. Kaij, Dist. Beed,
At present R/o. Taraswadi, Tq. Atpadi, Dist. Sangli.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Kaij Police Station,
Tq. Kaij, Dist. Beed.
2. Arati w/o. Lahur Bangar,
Age 23 years, Occ. Household,
R/o. Bangarwadi, Tq. Kallam,
Dist. Osmanabad

.. RESPONDENTS.

Mr. S.G. Kawade, Advocate for applicants (through V.C.)
Mr. A.D. Wange, APP for respondent No.1
Mr. Ramraje Kawade, Advocate for respondent No.2. (appointed).

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

DATE : 20TH SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPLAGAONKAR, J]. :-

1. The applicants have approached this court under Section 482 of Cr.P.C., thereby praying to quash and set aside the FIR in Crime No. 216 of 2020, dated 8.6.2020, registered with Police Station, Kaij, Taluka Kaij, Dist. Beed for the offences punishable under Sections 498-A, 323, 504 r/w. 34 of IPC and consequential criminal proceeding bearing R.C.C. No. 126 of 2020 pending before learned J.M.F.C. Kaij, Dist. Beed.

2. Respondent No.2 herein, lodged report dated 8.6.2020 alleging that on 27.5.2017, she has been married with Lahu Mahadeo Bangar as per the Hindu rites and customs. At the time of marriage, the amount of Rs. 5 Lakhs was paid by her father to purchase a four wheeler in the name of her husband, who was in service with Central Reserve Police Force (C.R.P.F.) Similarly, the gold and silver ornaments were also gifted. After one month of the marriage, her husband joined his duties at Pulwama, Srinagar. However, she resided at matrimonial home alongwith her in-laws. She was treated well for initial 4 to 5 months. When her husband came back on holidays, he was not making any conversation with her. When she asked as to why he is behaving in such manner and also complained about his changed behaviour to father in law, all in-laws assaulted her. Her husband declared that he was not

willing to marry with her and also raised a demand of Rs. 5 Lakhs for purchase of land. She informed the aforesaid incident to her parents. They asked her to bear with them for some time. Her father in law was in the habit of drinking liquor and troubled her. However, other family members prevented her from raising any grievance. When she informed about the misbehaviour of father in law to husband, her in-laws snatched her ornaments and driven her out of the home on 10.1.2019. Since then she is residing with her parents.

3. It is further alleged that she made complaint to Woman Grievance Redressal Desk. Although her husband was noticed about said complaint, he did not appear before the police authorities. It is further alleged that her husband performed second marriage with one Sheetal Satish Dhas, which was mediated by maternal uncle of her husband. On the basis of such information, Crime No. 126 of 2020 came to be registered with Police Station, Kaij against in all 11 accused persons including the present applicants.. The investigation progressed. Finally, charge sheet has been filed in the Court of JMFC, Kaij against accused persons in R.C.C. No. 126 of 2020 which is pending for trial.

4. Mr. S.G. Kawade, learned advocate appearing for the applicants vehemently submits that applicant No. 1 is brother in law and applicant No.2 is the co-sister of respondent No.2. They are residing at Pune. Applicant Nos. 3 and 4 are distant relatives and unconcerned with family affairs of respondent No.2. However, they have been falsely implicated in aforesaid crime. He would submit that owing to the dispute between the respondent No.2 and her husband, the applicants are implicated as accused with an intention to bring pressure on the

husband. Mr. Kawade would submit that applicant Nos. 1 and 2 are residing at Pune and seldom visited the parents at Ekurka, Taluka Kaij. Applicant No.3 is a teacher and resides at Taraswadi, Taluka Atpadi, Dist. Sangli since 2002. By inviting attention of this court to the documents annexed alongwith the application, he would submit that there is ample material depicting that applicant Nos. 1 and 2 are residing at Fursungi, District Pune since 2014, whereas, applicant No.3 is serving on the establishment of Zilla Parishad, Taraswadi since 2002. He would therefore urge that no offence can be made out against the applicant on the basis of omnibus and vague allegations in the FIR.

5. Per contra, Mr. A.D. Wange, learned APP and Mr. Ramraje Kawade, learned advocate for respondent No.2 vehemently opposes the prayers in the application, contending that FIR coupled with material collected during investigation is sufficient to make out a triable case against the applicants, who are equally responsible for the ill-treatment against respondent No.2.

6. We have considered the submissions advanced by learned advocates for respective parties. We have minutely perused the allegations in the FIR, the statement of witnesses recorded during the course of investigation. It is apparent that respondent No.2 married in the year 2017 with applicant No.1, who was serving in C.R.PF. Since 10.1.2019 she is residing with her parents. If the contents of the FIR are minutely seen, no stipulations could be discerned to attract any offence. The narration in the FIR is vague, without particulars of any incident and role played by a particular accused. So far as demand of money is concerned, no particulars of such demand are specified except the

omnibus statement that Rs. 5 Lakhs was demanded for purchase of the land. In the last part of the FIR, allegations are made that her husband solemnized second marriage with one Sheetal Satish Dhas, which is witnessed by maternal aunt, namely Gavlan @ Chandrabhaga Dhas. However, statement of Gavlan do not specify any role of the applicants in the so called second marriage. She do not claim that she was present at the time of second marriage of applicant No.1 with Sheetal Dhas. The other statements of witnesses recorded during the course of investigation are omnibus and stereo-type in nature. No particulars of ill-treatment towards respondent No.2 are given. The statement of priest, namely, Shripad Pandav is recorded during the course of investigation, who states that on call of Mr. Ashok Shivaji Kedar, he acted as a Priest in the marriage of Sheetal Dhas with Lahu Bangar, which took place on 1.6.2020. He do not refer about presence or role of any of the applicants at the time of marriage.

7. In this background it would be apposite to refer to the observations made by the Supreme Court in the matter of ***Preeti Gupta Vs. State of Jharkhand, reported in (2010)7 SCC 667*** wherein the apex court observed in para. 30, 32 and 34 as under :-

“ 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.”

8. In yet another case of ***Kahkashan Kausar Vs. State of Bihar reported in (2022)6 SCC 599***, the Supreme Court after taking stock of various decisions, rendered by the supreme Court in the subject matter, observed in para. 17 as under.

“ 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 misbehavior 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.”

9. Similarly, in the case of ***Sushilkumar Sharma vs. Union of India and others, reported in (2005) 6 SCC 281***, the Supreme Court observed in para. 19 as under :-

“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the

complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

10. bearing in mind the proposition of law espoused by Honourable Supreme Court in aforesaid cases and considering the

averments in the FIR and the statement of witnesses in the charge sheet, we find that no offence can be made out against the applicants. Omnibus allegations made against them are palpably false and improbable in nature since applicant Nos. 1 and 2 appears to have residents of Fursungi, Dist. Pune, whereas, applicant Nos. 3 and 4 are residents of Taraswadi, Taluka Atpadi, Dist. Sangli, which are far away places from the place of residence of respondent No.2. In that view of the matter, we are of the considered opinion that this is a fit case to exercise our inherent powers under Section 482 of Cr.PC. to quash and set aside the FIR and consequential criminal proceedings against applicants herein. Hence, we pass the following order :-

O R D E R

- [i] The criminal application is partly allowed;
- [ii] FIR in crime No. 216 of 2020 dated 8.6.2020 registered with Kaij Police Station, Taluka Kaij, Dist, Beed for the offence punishable under Sections 498-A, 323, 504 r/w. 34 of IPC and consequential criminal proceeding bearing R.C.C. No. 126 of 2020 pending before Judicial Magistrate First Class, Kaij, Dist. Beed, is hereby quashed and set aside to the extent of applicants herein.
- [iii] Since. Mr. Ramraje Kawade, learned advocate is appointed by this Court to represent respondent No.2, his remuneration is quantified at Rs. 7000/-, to be paid through Maharashtra Legal Services Sub-Committee, Aurangabad,
- [iv] The application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-