



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 428 OF 2024

- 1] Bimbisar s/o Baburao Gaikwad (Husband)
Age: 40 years, Occ: Data Analyst,
R/o: B-1107, Manhattan, Gat No.1020,
Wagholi, Pune.
- 2] Rekha w/o Baburao Gaikwad (Mother-in-law)
Age: 63 yrs, Occ: Household,
- 3] Prasenjeet s/o Baburao Gaikwad
(Brother-in-law)
Age: 36 yrs, Occ: Service,

Both applicant nos. 2 and 3
R/o: Plot No.70, S.T. Colony,
N-2, CIDCO, Aurangabad.
- 4] Sanghamitra w/o Vijay Kamble (Sister-in-law)
Age: 41 yrs, Occ: Lawyer,
- 5] Vijay s/o Malhari Kamble (Husband of Sister-in-law)
Age: 47 yrs, Occ: Service,

Both applicant nos. 4 and 5
R/o: Sr.No.246, Khandave Nagar,
Kalwad, Lohagaon, Pune.
- 6] Aamrapali w/o Bharat Kamble (Sister-in-law)
Age: 33 yrs, Occ: Household,
- 7] Bharat s/o Malhari Kamble (Husband of Sister-in-law)
Age: 42 yrs, Occ: Service,

Both applicant nos. 6 and 7
R/o: N-8, Jijamata Nagar,
Diamond Chowk, Yerwada, Pune.

... Applicants

Versus

- 1] The State of Maharashtra
Through Police Inspector,
Osmanpura Police Station,
Dist. Aurangabad
in Crime No.64 of 2022.
- 2] Ms. Diksha Bimbisar Gaikwad
Age: 34 yrs, Occ: Education,
R/o: House No. E-6, Galle No.3,
Rama Nagar, Aurangabad. ... Respondents

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Mr. Sachin Subhash Panale, Advocate for the Applicants.
Mr. M. K. Goyanka, APP for Respondent No.1-State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 08 AUGUST 2024

PER COURT :-

1. By invoking provisions under Section 482 of Cr.P.C., present applicants have put up prayers for quashing FIR No. 64 of 2022 registered at Osmanpura Police Station, Aurangabad on 11.03.2022 for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code [IPC] and Sections 3 and 4 of the Dowry Prohibition Act, 1961, lodged by respondent no.2-informant, and also to quash the consequential charge sheet vide RCC no. 1534 of 2022 pending before learned JMFC, Aurangabad.

2. Heard learned Advocate for the applicants and the learned APP for the respondent no.1-State. Respondent no.2-informant, though served, is absent.

3. Learned counsel for the applicants took this Court through the FIR dated 11.03.2022 at the instance of respondent no.2, wherein she has levelled allegations of commission of above offences and is, as such, the basis of registration of crime. It is pointed out that there is apparently false implication. There is clear attempt to rope in entire family even when some of the applicants have no concern and are residing at distinct places.

4. Inviting attention to the contents of the FIR, learned counsel for the applicant submitted that, there are no specific instances, or form of cruelty except stating that there was taunting on her looks, annoyance expressed for giving less dowry and on the ground that she was weak and emaciated. It is pointed out that general allegations are levelled by stating that husband and in-laws indulged in above conduct. Even allegations of demand are not directed against specific person. Learned counsel pointed out that informant has herself left company of husband and other in-laws in October 2021 and FIR in question is lodged after five to six months. That, as proceedings

before Women's Grievances Redressal Cell did not materialize, thereafter above complaint has been filed. For all above reasons, alleging false implication, learned counsel prays for grant of relief as prayed for.

5. Learned APP opposed on the ground that there are allegations of cruelty, beating, issuing threats and about raising dowry demand and also demanding money for property. That, it is a fit case for trial and for such reasons, application is opposed.

6. After considering the submissions and on going through the FIR dated 11.03.2022, it transpires that, informant was previously married in April 2015 and after getting divorce from first husband, she married present applicant no.1 on 02.07.2021. She has informed police that barely 5 days after marriage, elder sister-in-law, brother-in-law, mother-in-law and husband of sister-in-law subjected her to physical and mental cruelty. Except stating so, she has not defined role of above relatives of husband. What was the form of harassment and on what count there was mental cruelty, is not elaborated. Thereafter she informed that, accompanied by husband and mother-in-law, she shifted to Pune and other family members came there to stay for a month. She has alleged that brother-in-law, sister-in-law

and other relatives were paying visits and on telephone they used to contacted her husband and mother-in-law and she was subjected to harassment. Again, such allegations are apparently omnibus in nature. Then she has alleged that mother-in-law and sister-in-law commented on her looks and said that she was not suitable. Even husband used to say that she was physically very weak and that he did not like her and on such count, she was continuously abused. Therefore, even such material does not suggest that there was any serious allegation in support of allegation of cruelty. She has attributed demand of Rs.2,00,000/- against husband and in-laws in omnibus fashion. As pointed out, it is also emerging that she came back to her parents' place in October 2021 and after proceedings before Women's Grievances Redressal Cell fail, instant report is lodged in March 2022.

7. Resultantly, taking the above accusations into consideration, it is clear that there are vague, general and omnibus allegations without specifying roles of husband and family members. General allegations of physical and mental cruelty are raised without giving instances.

8. In the case of ***Girdhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, the Hon'ble Apex Court gave succinct enumeration

of the object and ingredients of Section 498-A IPC as under :

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon'ble Apex Court has observed that, *"Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC"*.

9. As discussed above, in the present case there are general, vague and omnibus allegations, and “cruelty” as contemplated under law and as enumerated in ***Girdhar Shankar Tawade*** (supra) being not *prima facie* available, in the considered opinion of this Court, this case falls in the category spelt out in the case of ***State of Haryana and others v. Ch. Bhajan Lal*** ; AIR 1992 SC 604. Consequently, making applicants face trial with such material would definitely amount to injustice to them and the same therefore needs to be prevented. Hence, following order is passed :

ORDER

- I. The application stands allowed.
- II. The FIR No. 64 of 2022 dated 11.03.2022 registered with Osmanpura Police Station, Aurangabad and the chargesheet vide R.C.C. No. 1534 of 2022 pending before the learned JMFC, Aurangabad are hereby quashed and set aside.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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