



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

CRIMINAL APPLICATION NO.433 OF 2019

1. Avinash s/o. Punjaram Salve,
Age 41 years, Occ. Service,
R/o. Block No. 2/2, New Colony,
Thermal Colony, Parli Vaijnath,
Tq. Parli, Dist. Beed.
 2. Vilas s/o. Punjaram Salve,
Age 47 years, Occ. Service,
R/o. Shri Krushna Nagar, Gut No. 264,
P.No. 04, Taroda Budruk, Nanded.
 3. Lilabai w/o. s/o. Punjaram Salve,
Age 69 years, Occ. Nil,
R/o. "Leela Sadan", Near Hanuman Mandir,
Sri Nagar, Nanded.
 4. Punjaram s/o. Sambhaji Salve,
Age 74 years, Occ. Nil,
R/o. "Leela Sadan", Near Hanuman Mandir,
Sri Nagar, Nanded.
- ..Applicants

Versus

1. The State of Maharashtra
through its
Principal Secretary Home Department,
Mantralaya, Mumbai.
Police Station Shivaji Nagar, Nanded.
 2. Supriya w/o. Avinash Salve, (Orig. Complainant)
Age: 31Ycars, Occ:
R/o. House of Vishranti Bai w/o. Pralhad Buktare,
Prashnat Niwas, Ganesh Nagar,
Y Corner, Nanded.
- ..Respondents

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Mr. T. A. Quadri, Advocate for the Applicants.
Ms. R. P. Gaur, APP for Respondent No.1.
Mr. S. S. Gangakhekar, Advocate for Respondent No.2.

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

DATED : 09th SEPTEMBER, 2024.

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

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code praying to quash the FIR in Crime No.12/2019 dated 02.01.2019 registered with Shivajinagar Police Station, Nanded for offences punishable under Sections 498-A, 323, 504, 34 of the Indian Penal Code. During pendency of this application, charge-sheet has been filed. The applicants have added prayer to quash and set aside charge-sheet as well as criminal proceeding in R.C.C. No.143/2019 pending before 3rd Judicial Magistrate First Class at Nanded.

2. The respondent no.2 lodged report dated 02.01.2019 with Shivajinagar Police Station alleging that on 01.03.2016 she married with applicant no.1-Avinash. Out of matrimonial relationship, they are blessed with a son. She was treated well for three months after marriage. However, later on she was ill-treated in pursuance of the demand of Rs.10,00,000/-. She states that in the year 2016 she came back to her maternal home, as she had conceived pregnancy. After delivery of the child, her husband or in-laws did not take her back to the matrimonial house. On the basis of aforesaid report, Crime No.12/2019 has been registered. The investigation progressed and finally charge-sheet has been filed against in all four accused persons.

3. Mr. Quadri, learned Advocate appearing for the applicants submits that applicants have been falsely implicated in the aforesaid crime. The applicant no.1 has filed divorce petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act. The respondent no.2 appeared in the said proceeding on 03.09.2018. Thereafter, she filed present complaint. There is no demand of dowry. The allegations in the FIR are omnibus and vague. The respondent

no.2 resided only for initial period of seven months with applicant no.1 at Bhusawal. The applicant no.2 is elder brother of applicant no.1 and resides with his family at Nanded and he is serving as Computer Programmer at Swami Ramanand Teerth Marathwada University. The applicant nos.3 and 4 are old aged persons and resides at Sri Nagar, Nanded. He would, therefore, urge that contents of FIR are unbelievable. The learned Advocate appearing for the applicants further submits that the charge-sheet contains omnibus stereotype police statements of witnesses without particulars of overtact against accused persons. Hence, contents of the charge-sheet are bereft to make out any offence against the applicants.

4. Per contra, Ms. Gaur, learned APP for the State and Mr. Gangakhedkar, learned Advocate appearing for respondent no.2 vehemently opposes the prayers in the application contending that the contents of the FIR are sufficient to make out offences as charged. The corroboration of the witnesses cited in the charge-sheet makes out triable case.

5. We have considered submissions advanced by the learned Advocates appearing for respective parties. Admittedly, the marriage between applicant no.1 and respondent no.2 was solemnized on 01.03.2016. At the time of marriage, applicant no.1 was serving as Security Officer with Maharashtra State Electricity Generation Company and he was posted at Bhusawal. The respondent no.2 resided with him for about nine months and thereafter had been to maternal home for delivery. After delivery, respondent no.2 did not resume cohabitation with applicant no.1. The record indicates that on 16.11.2017, applicant no.1 served legal notice to respondent no.2 for restitution of conjugal rights. On 18.06.2018, he filed proceeding for divorce under Section 13(1)(ia)

(ib) of the Hindu Marriage Act. The impugned FIR appears to have been filed on 02.01.2019.

6. Perusal of the contents of FIR depicts that respondent no.2 is residing at her maternal home since she had gone for delivery. The FIR states that for initial three months of marriage, she was treated well by in-laws. However, under the pretext of demand of Rs.10,00,000/-, she was ill-treated by them. No particulars are given as to why such amount was demanded. The contents of the FIR as regards to the demand and ill-treatment are omnibus, vague and palpably inconceivable. The FIR appears to be counter blast to the legal notice for restitution of conjugal rights and the proceeding for divorce instituted by applicant no.1.

7. The charge-sheet contains the statements of close relatives of respondent no.2. However, all the statements are stereotyped without particulars of ill-treatment and purpose of demand of amount. Admittedly, after marriage respondent no.2 resided with applicant no.1 at Bhusawal. The applicant nos.2 to 4 are residing at Nanded. It is, therefore, clear that respondent no.2 never resided in common house at Nanded with applicant nos.2 to 4.

8. At this stage, reference can be given to Section 498-A of the Indian Penal Code, which requires that to make out an offence under Section 498-A, cruelty towards woman shall be of such a nature as is likely to drive woman to commit suicide or danger to life, limb or health or harassment with a view to coercing her or her relatives to meet any unlawful demand. In present case, although allegations are made that after marriage demand of Rs.10,00,000/- was raised towards dowry, it is not contention that any such agreement was made before marriage. Pertinently, no specific date, month of such demand is mentioned nor purpose of

such demand is elaborated. When respondent no.2 resided with applicant no.1 at Bhusawal hardly for period of seven months, the aforesaid omnibus allegation is apparently fallacious.

9. The Supreme Court of India in case of ***Preeti Gupta and Another Vs. State of Jharkhand and Another***¹ cautioned that discontent and unrest in the family life of a large number of people of the society is discernible and it is common experience that most of complaints under section 498-A Indian Penal Code are filed in the heat of the moment over trivial issues without proper deliberations. A large number of such complaints are not even bonafide and filed with oblique motive. The Courts are cautioned about the tendency of implicating husband and all his immediate relatives. The Courts are, therefore, expected to be extremely careful and cautious in dealing with complaints and consider pragmatic realities. The allegations in the complaint are required to be scrutinized with great care and circumspection. In yet another judgment in case of ***Kahkashan Kausar @ Sonam and Another vs The State Of Bihar and Others***², it is observed that there are enormous instances of misuse of Section 498-A of the Indian Penal Code. It is, therefore, manifest that general omnibus allegations made in the course of matrimonial disputes shall not be left unchecked.

10. Keeping in mind aforesaid observations of the Supreme Court of India and also guidelines in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***³, this Court finds that this is a fit case for exercise of jurisdiction under Section 482 of the Criminal Procedure Code and quash FIR and further proceeding. Resultantly, we proceed to pass following order:

¹ AIR 2010 SC 3363.

² (2022) 6 SCC 599.

³ AIR 1992 SC 604.

ORDER

- a. Criminal Application is allowed.
- b. The FIR vide Crime No.12/2019 dated 02.01.2019 registered with Shivajinagar Police Station, Nanded for offences punishable under Sections 498-A, 323, 504, 34 of the Indian Penal Code and consequential criminal proceeding in R.C.C. No.143/2019 pending before 3rd Judicial Magistrate First Class at Nanded are hereby quashed and set aside.
- c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE