



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 702 OF 2023

1. Shaikh Sohel s/o Shaikh Anwar
Age 26 years, Occu: Private job,
R/o: Line Galli, Degloor,
Tq. Degloor, Dist. Nanded.
(Husband)
 2. Shaikh Anwar S/o Shaikh Maula
Age 51 years, Occu: Business,
R/o: Line Galli, Degloor,
Tq. Degloor, Dist. Nanded.
(Father-in-law)
 3. Sultana Begum W/o Shaikh Anwar
Age 43 years, Occu: Housewife,
R/o: Line Galli, Degloor,
Tq. Degloor, Dist. Nanded.
(Mother-in-law)
 4. Shaikh Imran S/o Shaikh Anwar
Age 23 years, Occu: Education,
R/o: Line Galli, Degloor,
Tq. Degloor, Dist. Nanded.
(Brother-in-law/Brother of husband)
 5. Shaikh Mujahid S/o Ismail Dhanjkar
Age 35 years, Occu: Service,
R/o: Gulzar Mohalla, Khultabad,
Tq. Khultabad, Dist. Aurangabad.
(Brother-in-law/husband of sister)
 6. Ishratjaha S/o Mujahid Dhanjkar
Age 30 years, Occu: Housewife,
R/o: Gulzar Mohalla, Khultabad,
Tq. Khultabad, Dist. Aurangabad.
(Sister-in-law/sister of husband)
- ... Applicants

Versus

1. The State of Maharashtra,
Through Police Station,
Shivaji Nagar, Nanded,
Tq. & Dist. Nanded.
2. Mubashira Begum w/o Shaikh Sohel,
Age 23 years, Occu: Housewife,
R/o: Makhdum Nagar, Nanded,
Tq. and Dist. Nanded.

**[R. No.2 since deceased, deleted
as per order dated 27.06.2023]**

2. Azmeri Begum Syed Minuddin
Age 50 years, Occu: Household,
R/o Nayi Abadi, Tq. & Dist. Nanded.

**[Added as respondent vide order
dated 25.07.2023]**

... Respondents

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Mr. Irfan D. Maniyar, Advocate for the Applicants.
Mr. M. K. Goyanka, APP for Respondent No.1-State.
Mr. V. P. Sawant h/f Mr. A. D. Hande, Advocate for Respondent No.3.

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

DATED : 06.08.2024

ORDER :

1. By invoking provisions under Section 482 of Cr.P.C., present applicants have put up prayers for quashing the FIR registered at Shivaji Nagar Police Station, District Nanded on 30.01.2023 for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of

the Indian Penal Code [IPC] by respondent no.2-informant, who died during pendency of this application i.e. on 15.03.2023.

2. In support of relief, learned counsel would point out that present applicant no.1 was married to respondent no.2-informant (Mubashira Begum) on 07.10.2021. That, she lodged false and afterthought report and attempted to rope in entire family. It is pointed out that there are general and omnibus allegations of demand of Rs.1,00,000/- for filling up tender of construction work. That, allegations levelled are of taunting for not preparing good food and quarreling on petty counts. According to learned counsel, such allegations do not constitute “cruelty” as contemplated under law. That, husband had taken steps to undertake legal proceedings for restoration of conjugal rights. That, applicants are residents of distinct places but still they are roped in. That, because of registration of crime, entire family members would be required to face trial resulting into injustice and therefore, learned counsel prays for indulgence by this Court for quashing the proceedings and the chargesheet.

3. Learned APP as well as learned counsel for respondent (mother of deceased informant) would submit that there was cruelty and harassment on account of demand of Rs.1,00,000/-. Therefore,

offence under Section 498-A of IPC was clearly made out and therefore report was lodged. There are allegations of commission of offence under Sections 323, 504 and 506 along with Section 498-A of IPC and therefore, they both pray to dismiss the application.

4. After considering the submissions so advanced and on going through the FIR dated 30.01.2023, it is noticed that its sum and substance is that present applicant no.1 is the husband of deceased Mubashira Begum. Accusations are that after marriage, all accused started commenting that she was unable to cook food. They taunted addressing her family members as beggars and saying that marriage was not performed as per their expectations and of high standard. She has alleged that on petty counts, there used to be quarrels, abuses, beating and keeping her starved. However, it is noticed that role of none of the applicants are clearly defined and as such, omnibus allegations are levelled against in-laws. It seems that husband, parents-in-law and brother-in-law, who is a boy of 22 years, are shown to be residents of Degloor, whereas accused nos. 5 and 6 are shown to be residents of Khultabad. When was the occasion for all to come together and indulge in maltreatment, and who did what, is apparently not spelt out in the FIR. It is also noticed that when such demand was made, is also not reflected in the FIR. After being

allegedly driven out on 27.12.2022, instant FIR seems to be lodged on 31.01.2023. Therefore, taking above material into consideration, apparently, it is an attempt to rope entire family.

5. In a landmark 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."

5. Applying the principles laid down in ***State of Haryana and others v. Ch. Bhajan Lal*** ; AIR 1992 SC 604, and more particularly when there are general, vague and omnibus allegations, and when “cruelty” as contemplated under law and as enumerated in ***Girdhar Shankar Tawade*** (supra) being not *prima facie* available, making applicants face trial would inflict injustice on them. The application therefore deserves to be allowed. Hence, following order is passed :

ORDER

- I. The application stands allowed.
- II. The FIR No. 29 of 2023 dated 30.01.2023 registered with Shivaji Nagar Police Station, District Nanded, Chargesheet no. 38/2023 dated 28.03.2023 and the proceedings in RCC No. 282 of 2023 pending before the learned JMFC, Nanded are hereby quashed and set aside.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]