



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

CRIMINAL APPLICAITON NO. 1043 OF 2023

**SANJAYKUMAR SAMPATRAO BORSE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Applicants : Ms. Harshita M. Manglani
APP for Respondent Nos. 1 & 2 : Mr. V.K. Kotecha
Advocate for Respondent No. 3 : Mr. J.M. Murkute

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 30 JANUARY 2024

PER COURT (PER : SHAILESH P. BRAHME, J.) :

Heard both the sides finally.

2. The applicant by invoking powers under Section 482 of the Code of Criminal Procedure, is seeking quashment of First Information Report, bearing Crime No. 011/2019 for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code, Charge-sheet No. 30 A/2020 dated 07.04.2020 and RCC No. 54/2020 pending before Judicial Magistrate First Class, Selu. The offence in question has been registered at the instance of respondent no.3 who is the wife of accused no. 1 – Dr. Ajaykumar Borse.

3. The applicant is elder brother-in-law of respondent no. 3. Respondent no. 3 has filed First Information Report against her husband, mother-in-law, sister-in-law, husband of the sister-in-law and the present applicant with Selu Police Station. The marriage of respondent no. 3 with accused no. 1 – Dr. Ajaykumar, was solemnized on 01.11.2011. It is alleged that the accused created a scene at the time of marriage on account of impure gold gifted to them. On that account, she was subjected to physical and mental cruelty after the marriage also. She was being ill-treated on various grounds and she was being threatened and abused. It is further alleged that she was being beaten by husband. She was constrained to leave the matrimonial home as she was unable to bear the torture.

4. After completion of the investigation, the charge-sheet was filed on 07.04.2020. It was culminated into RCC No. 54 of 2020 which is pending before Judicial Magistrate First Class, Selu.

5. It is brought to our notice that mother-in-law of respondent no. 3 – Subhadrabai Sampatrao Borse had filed application for quashment of FIR, charge-sheet and consequential proceedings. By judgment dated 29.03.2022, the application was rejected by High Court. Being aggrieved, Criminal Appeal No. 3228/2023 was preferred before the Supreme Court. By judgment and order dated 16 October 2023,

Appeal was allowed. FIR, charge-sheet and consequential proceedings to her extent were quashed. It is recorded by Supreme court that allegations against mother-in-law are general in nature and distinguishable from the allegations made against her son (husband of respondent no. 3). A copy of order dated 16.10.2023 passed by the Supreme Court is placed on record for our perusal.

6. Learned counsel for the applicant submits that applicant is brother-in-law and is resident of Indore. Our attention is invited to various documents produced on record to show that he is resident of Indore. She would submit that there was no occasion for the applicant to stay with the couple either at Deulgaon Raja or Delhi where they cohabited. It is further submitted that the allegations are vague and the applicant is falsely implicated. She would further submit that in fact there are absolutely no allegation against the applicant to attract the offence under challenge.

7. Learned counsel for the applicant would submit that it is an abuse of process of law to proceed against the applicant. The applicant was not concerned with the couple when they resided at Delhi and Solapur together. The allegations are eminently improbable. The applicant seeks to rely upon the following judgments :

- i. *Pramod Uttam Shinde and others Versus State of Maharashtra*, **2015 ALL MR (CRI) 4232 ;**
- ii. *Varala Bharath Kumar and another Versus State of Telangana and another*, **(2017) 9 Supreme Court Cases 413 ;**
- iii. *Chandralekha and others Versus State of Rajasthan and others*, **(2013) 14 SCC 374 ;**
- iv. *Tukaram S/o. Bhagwan Sawant and another Versus State of Maharashtra*, **2019 ALL MR (Cri) 1123 ;**
- v. *Kamlesh Ghanshyam Lohia and others Versus State of Maharashtra and others*, order dated 23.08.2019 passed by Bombay High Court.

8. Per contra, learned APP and learned counsel Mr. J.M. Murkute for the respondent no. 3, have vehemently opposed the submissions. According to them, there is incriminating role played by the applicant. With a common intention the respondent no. 3 was being harassed and tortured. The statements recorded during the course of investigation would also show the involvement of the applicant. According to them, this is not a fit case to thwart the prosecution at this stage. They would further submit that the applicant was present in the marriage ceremony where the first confrontation took place on account of purity of gold. With these submissions, they pray to dismiss the application.

9. We have considered rival submissions of the parties and with their assistance, we have gone through the papers of investigation. Respondent no. 3 appears to have resided with the co-accused husband – Dr. Ajaykumar at Delhi and Solapur. The marriage was solemnized at Deulgaon Raja. While deciding Criminal Appeal No. 3228 of 2023 Supreme Court recorded findings that allegation against the mother-in-law of respondent no. 3 are general in nature and distinguishable from the allegations made against her son (husband of respondent no. 3). The first information report and the proceedings have been quashed by the Supreme Court to the extent of mother-in-law.

10. We have carefully perused the compliant. No specific allegations or role is attributable to the applicant. The applicant appears to have been present at the time of marriage. After marriage, respondent no. 3 went to Delhi to cohabit with her husband. Thereafter, no incriminating overt act is alleged against the applicant. Except presence of the applicant at the time of marriage and his participation in the confrontation, we do not notice any overt act on his part.

11. The applicant has produced on record Aadhar Card, electricity bill, certificate issued by SMEC Private Limited, No Dues Certificate, extracts of the pass book showing place of residence of the applicant as Indore. It is pleaded by the applicant that he is resident of

Indore since 1992. The contention and the documents produced on record have not been controverted by the respondents. The applicant is resident of Indore. The couple after the marriage resided at Delhi and Solapur which is also recorded by Supreme Court. The complaint and the papers of investigation do not spell out a case that the applicant had an occasion to visit to Delhi or Solapur to cause ill-treatment. Similarly, there is no material on record to suggest that the applicant is instrumental in abating the offence in question.

12. We have considered the complaint made by respondent no.3 to Police Inspector, Selu. The said complaint is also silent regarding involvement of the applicant. In view of the papers of investigation, we are of the considered view that the applicant has been falsely implicated in the offence in question to wreck vengeance. Present case is squarely covered by ratio laid down by Supreme Court in the matter of *Geeta Mahrotra and others Versus State of U.P. and others*, **(2012) 10 SCC 741**.

13. The applicant has relied upon the judgment in the matter of *Pramod Uttam Shinde* (supra) especially paragraph no. 8. Further reliance is placed on the judgment of Supreme Court in *Varala Bharath Kumar* (supra) in paragraph no. 8 which reads as follows :

“8. We are conscious of the fact that, Section 498A was added to the Code with a view to punish the husband or any of his relatives, who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Keeping the aforementioned object in mind, we have dealt with the matter. We do not find any allegation of subjecting the complainant to cruelty within the meaning of [Section 498A](#) of IPC. The records at hand could not disclose any willful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.”

14. We do not find that ingredient of Section 498-A of IPC are attracted in the present case, considering the papers of investigation. Learned counsel for the applicant has rightly cited judgment in the matter of *Chandralekha* (supra), *Tukaram Bhagwant Sawant* (supra) and *Kamlesh Ghansham Lohia* (supra). We are of the considered view that

the FIR, Charge-sheet and consequential proceedings are liable to be quashed. For the reasons stated above we pass following order:

ORDER

- i. First Information Report bearing No. 011/2019 of Selu Police Station, Charge-sheet No. 30 A/2020 dated 07.04.2020 and RCC No. 54 of 2020 pending before Judicial Magistrate First Class, Selu, are quashed and set aside to the extent of applicant, Sanjaykumar Sampatrao Borse.
- ii. Criminal Application is allowed in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]