



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1388 OF 2022**

1. Prashant s/o Ramchandra Gulhane,
Age 47 years, Occupation Nil,
Residing at c/o. Mr. Ramchandra Gulhane,
Rathi Nagar, Shivaji Nagar,
Amravati 444 603. (Husband)

2. Mrs. Shanta w/o Ramchandra Gulhane,
Age 67 years, occupation Household,
Residing at above address.

3. Ms. Varsha d/o Ramchandra Gulhane,
Age 48 years, occupation service,
Residing at above.

..Applicants
Original Accused

Versus

1. The State of Maharashtra
Through the Commissioner of Police,
Mill Corner, Aurangabad

2. The Senior Police Inspector,
Kranti Chowk Police Station,
Aurangabad - 431 001

3. Sandali w/o Prashant Gulhane,
Age 44 years, occupation Trade,
Residing at Pink Girls Home,
Ajab Nagar, Shivaji High School Road,
Aurangabad - 431

..Respondents
Nos.1 & 2-Prosecution
No.3-Complainant

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Mr. H. S. Surve, Advocate for the Applicants.

Mr. G. A. Kulkarni, APP for Respondent Nos.1 and 2.

Mr. N. T. Tribhuwan, Advocate for Respondent No.3.

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

DATED : 23rd SEPTEMBER, 2024.

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

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and

set aside FIR in Crime No.550/2021 dated 07.08.2021 registered with Kranti Chowk Police Station, Dist. Aurangabad for offences punishable under Sections 323, 34, 498-A, 504 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.1045/2022 pending before Chief Judicial Magistrate, Aurangabad for offences punishable under Sections 498-A, 323, 504 r/w 34 of the Indian Penal Code.

2. The respondent no.3 lodged report to Kranti Chowk Police Station alleging that on 15.12.2006 she married with Prashant Ramchandra Gulhane-applicant no.1 as per Hindu rites and customs. The marriage is registered on 01.02.2007 with Registrar of Marriage at Aurangabad. Out of said matrimonial relationship, couple is blessed with two children. The father-in-law, mother-in-law and sister-in-law of applicant no.1-husband reside at Amravati. Her husband was working as a teacher at Aurangabad in private classes. Therefore, she resided alongwith her husband at Ajab Nagar since 2011. Thereafter, they purchased new house with financial assistance from State Bank of India. Her husband started demand of money from her parents and mentally tortured her in pursuance of such demand. Finally she could pursue her parents and paid Rs.3,50,000/- to her husband. It is further alleged that respondent no.3 also employed in private sector and also takes care of household needs. Her husband insisted for second home and again raised demand to bring amount from her maternal home. Thereafter, her husband wanted to invest amount and run his own classes. However, he ill-treated her in pursuance of his demand and insulted in front of servant. On 04.06.2020 her husband left to Amravati alongwith children. On 08.02.2021, the children came back to Aurangabad, but husband continued to reside with his mother and sister at Amravati. He provides only

Rs.2000/- per month. The bank loan is raising. He is not taking care of payment of installments. Although she suffered sickness, her husband never cared for her. She complained to her in-laws about mis-behaviour of her husband, but they are not intervening. On the other hand, they are insulting her. Her husband left her midway after 14 years of marriage with huge liabilities. She has been pushed into financial distress, as husband is living his life alongwith mother at Amravati. Therefore, she filed complaint.

3. Consequently, Crime No.550/2021 has been registered with Kranti Chowk Police Station for aforesaid offences. The investigation progressed and charge-sheet has been filed against in all three accused persons. Consequently, R.C.C. No.1045/2022 is registered and pending trial before Chief Judicial Magistrate at Aurangabad.

4. Mr. Surve, learned Advocate appearing for the applicants vehemently submits that the allegations in the FIR, even if taken at its face value, does not constitute offence under Section 498-A of the Indian Penal Code. The marriage between respondent no.3 and applicant no.1 took place in the year 2006. The couple is blessed with two children. They resided together at Aurangabad, whereas old mother-in-law and sister-in-law residing at Amravati are made accused with intention to harass all family members. He would submit that the cruelty as defined under Section 498-A, particularly Explanation (I) and (II) cannot be made out on the basis of stipulations in the FIR or the statements of witnesses recorded during course of investigation. The matrimonial discord between applicant no.1 and respondent no.3 need not be culminated in the criminal proceeding in absence of ingredients of offences. He would submit that FIR simply narrates backtrack

from the commitment by the husband and nothing else. The absence of indispensable requirement of Section makes first information report non-est in law. He would submit that even to make out offence under Section 323 of the Indian Penal Code, the ingredients of causing hurt would be necessary. In present case, FIR or material in the charge-sheet does not constitute any such ingredients. He would, therefore, urge to quash FIR and consequential criminal proceeding against applicants.

5. Per contra, Mr. Kulkarni, learned APP appearing for the respondents-State and Mr. Tribhuwan, learned Advocate appearing for respondent no.3 vehemently opposed application. According to them, all the accused persons have jointly tortured respondent no.3 and created circumstances that would invite penalty under Section 498-A and other penal provisions.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely perused the contents of FIR and statements recorded during course of investigation. On scrutiny of FIR, we find that there is matrimonial dispute between respondent no.3 and her husband i.e. applicant no.1. She has ventilated her grievance as against applicant no.1 and given instances of his mis-behaviour, which constitute cruelty within the meaning of Explanation (II) of Section 498-A of the Indian Penal Code. The respondent no.3 has given instances of change in behaviour of her husband and circumstances created by him deserting her at Aurangabad while residing himself at Amravati. She states that now she has been financially trapped and made to suffer miserable life. Perusal of charge-sheet and statements of witnesses recorded during course of investigation supports stipulations in the FIR. Therefore, we do

not find it appropriate to quash FIR and consequential criminal proceeding in respect of applicant no.1. However, so far as applicant nos.2 and 3 are concerned, we find it necessary to consider observations of the Supreme Court of India in respect of matrimonial proceedings.

7. At this stage, reference can be given to the observations made by the Supreme Court in case of ***Preeti Gupta and Another and Another Vs. State of Jharkhand and Another***¹, wherein the Apex Court observed in paragraph nos.30, 32 and 34 as under :-

“30. 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 judgment in case of ***Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others***², the Supreme Court after taking stock of various earlier decisions in the subject matter, observed in paragraph no.17 as under:

1 (2010) 7 SCC 667.

2 (2022) 6 SCC 599.

“17. 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 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 **Sushil Kumar Sharma vs. Union of India and others**³, the Supreme Court observed in paragraph no.19 as under :-

“19. The object of the provision is prevention of the dowry meance. 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 ignomy 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. Keeping in mind aforesaid observations, when we consider stipulations in the FIR we find that applicant nos.2 and 3 never resided with respondent no.3 in shared accommodation. They are resident of Amravati, whereas respondent no.3 resides at Aurangabad. The respondent no.3 has grievance against her husband, but she believe that applicant nos.2 and 3 instigate her husband. However, no particular instance of any overtact of applicant nos.2 and 3 has been specified in the FIR or charge-sheet. The applicant nos.2 and 3 cannot be made scapegoat of matrimonial discord of applicant no.1 and respondent no.3. We do not find any reason to permit continuation of criminal proceeding as against applicant nos.2 and 3 based on impugned FIR and charge-sheet. Consequently, we proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.550/2021 dated 07.08.2021 registered with Kranti Chowk Police Station, Dist. Aurangabad for offences punishable under Sections 323, 34, 498-A, 504 of the Indian Penal Code well as consequential criminal proceeding in R.C.C.

No.1045/2022 pending before Chief Judicial Magistrate, Aurangabad for offences punishable under Sections 498-A, 323, 504 r/w 34 of the Indian Penal Code are hereby quashed and set aside to the extent of applicant nos.2 and 3.

c. Criminal Application to the extent of applicant no.1 is rejected and criminal proceeding in R.C.C. No.1045/2022 to continue against applicant no.1.

d. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE