



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

CRIMINAL APPLICATION NO. 1551 OF 2022

1. Shailesh S/o. Ganpat Gadwalwad,
Aged 32 years, Occ. Service,
R/o. House No. 2842, Radhika Nagar,
Taroda (Kh.), Nanded,
Tq. And Dist. Nanded.
2. Sow. Shivkanta W/o. Ganpat Gadwalwad,
Age 50 years, Occ. Household,
R/o. House No. 2842, Radhika Nagar,
Taroda (Kh.), Nanded,
Tq. And Dist. Nanded.
3. Ganpat S/o. Jalbaji Gadwalwad
Age 57 years, Occ. Govt. Service.
R/o. House No. 2842, Radhika Nagar,
Taroda (Kh.), Nanded,
Tq. And Dist. Nanded.
4. Shubham S/o. Ganpat Gadwalwad
Age 27 years, Occ. Education,
R/o. Hermitage Bunglow, Shri Hari
Society, Near Ganpati Mandir,
Dhankawadi, Pune 411 043.
5. Sow. Subhadra W/o. Ramrao Gadwalwad,
Age 61 years, Occ. Household,
R/o. Ward No.2, Islapur,
Tq. Kinwat, Dist. Nanded.
6. Sow. Sulochana @ Soni W/o.
Subhash Yerpawad,
Aged 30 years, occ. Household,
R/o. New Mondha, Mukhed,
Tq. Mukhed, Dist. Nanded.
7. Sow. Archana W/o. Datta Varvante,
Aged 40 years, Occ. Household,

R/o. Lahan Tq. Ardhapur,
Dist. Nanded.

8. Sow. Supriya W/o. Ganesh Chukewad,
Aged 30 years, Occ. Household,
R/o. Samartha Nagar, Nanded,
Tq. And Dist. Nanded.
9. Sow. Anita W/o. Sunil Varvante,
Aged 37 years, Occ. Household,
R/o. Lahan, Tq. Mukhed,
Dist. Nanded.
10. Sunil S/o. Maroti Varvante,
Aged 37 years, Occ. Household,
R/o. Lahan, tq. Mukhed,
Dist. Nanded.

.. Applicants
(Ori. Accused Nos. 1 to 10)

VERSUS

1. The State of Maharashtra
Through the Police Station Officer,
Bhagyanagar Police Station, Nanded.
Dist. Nanded.
2. Dr. Surekha W/o. Shailesh Gadwalwad,
Age 27 years, occ. Medical Practitioner,
R/o. C/o. Ashok S/o. Narayan Pentewad,
B-22, Snehanagar, B.& C. Colony,
Punarvasan Building, Near Govt.
Rest House, Nanded.

.. Respondents.

Mr. Ganesh P. Shinde, Advocate for petitioner.
Mrs. R.P. Bharaswadkar, APP for State
Mr. K.P. Rodge, Advocate for respondent No.2.

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

RESERVED ON : 11TH OCTOBER, 2024.
PRONOUNCED ON : 22ND OCTOBER, 2024

JUDGMENT : [PER S.G. CHAPALGAONKAR, J] :-

1. The applicants have approached this court under Section 482 of Cr.PC., thereby praying to quash and set aside the FIR in Crime No. 174 of 2021, registered with Bhagya Nagar Police Station, District Nanded for the offences punishable under Sections 307, 498-A, 323, 504 r/w. 34 of IPC and consequential proceeding bearing RCC No. 940 of 2021 pending in the court of JMFC, at Nanded.

2. The respondent No.2 lodged report dated 31.5.2021 against the applicants, alleging that on 12.7.2020, she got married with applicant No.1 Shailesh as per the Hindu rites and customs. Within 15 days of marriage, her husband, mother in law, brother in law, started ill-treatment over the demand of household articles and cash amount of Rs. 20 Lakhs. On 10.8.2020, her husband and mother in law, beat her. She was required to take treatment for injuries. On 16.8.2020, she was driven out of the home on the ground that she is not expert in cooking. While she resided with her parents, she acquired skills of cooking and called her husband and mother in law to take her back. However, they refused saying that they do not like her. Her sister in law was instigating the ill-treatment given to her. On 29.11.2020, a meeting of relatives was arranged. Her husband raised various complaints against her. The in-laws were saying that they wish to divorce her and used bad words against her parents. Hence, no settlement could be arrived. On 15.5.2021, her husband, mother in law, relatives of mother in law abused and assaulted her. On 21.4.2021, her brother had left her to the

matrimonial home. At that time, her husband, mother in law and father in law beat her and lodged false report dated 22.4.2021 against her brother. On 29.5.2021, while she had been to wash room, her husband, brother in law, mother in law, father in law and other relatives followed and assaulted her. Her husband suffocated her by pressing neck and made an attempt to kill her. Thereafter, she called her parents. They arrived alongwith police, took her to police station, Bhagyanagar. At that time, in-laws gave threats to kill her brother. Her mother in law removed gold ornaments weighing 50 grams from her bag.

3. The report led to registration of crime against in all 10 accused persons. The investigation progressed and finally charge sheet is filed against the applicants before Chief Judicial Magistrate at Nanded.

4. Mr. S.B. Choudhari, learned advocate for the applicant submits that the applicants are falsely implicated in aforesaid crime. The marriage between applicant No.1 and respondent No.2 was solemnized on 12.7.2020. However, after residing hardly for 15 to 20 days, respondent No.2 left for maternal home. She is better qualified than the applicant No.1 and wish to be independent from in-laws. Thereafter, on 23.4.2021 she arrived alongwith her brother sister at matrimonial home and raised assault on applicant No.1 and family members. Consequently, N.C. has been registered against them for the offences punishable under Sections 323, 504 and 506 of IPC. Similarly, on 16.5.2021, N.C. No. 182 of 2021 is registered at the instance of applicant No.1. One more NCR No. 153 of 21 has been registered on 21.4.2021 on the complaint of applicant No.1. He would submit that many close relatives of respondent No.2 are serving in Police Department. Therefore, a cooked story is

reported on 31.5.2021 by the respondent No.2 against the applicants.

5. Mr. Chaudhari would further submit that applicant No.4 resides at Pune in pursuance of his job. Applicant Nos. 5 to 9 are residing separately at different places. They are unconcerned with family affairs of the applicant Nos. 1 to 3. They have been falsely implicated with intention to pressurize the applicant Nos. 1 to 3. Mr. Chaudhari would further invite attention of this Court to the statement of witnesses recorded during the course of investigation to contend that omnibus allegations are made against all family members of applicant No.1. No offence can be made out against them on the basis of FIR and contents of charge sheet. He would, therefore, urge to quash and set aside the impugned FIR and consequential proceedings.

6. Per contra, Mrs. P.R. Bharaswadkar learned APP for the State and Mr. K.P. Rodge, learned advocate for respondent No.2 vehemently oppose the application contending that the FIR stipulates individual role of every applicant in the commission of offence. The contents of FIR are corroborated by the statement of witnesses recorded under Section 161 of Cr.P.C. The falsity of allegation cannot be a ground for quashment of FIR and proceeding. It would be a matter of trial. Hence, no interference is warranted in exercise of inherent powers of this Court.

7. We have considered the submissions advanced on behalf of respective parties. Record indicates that respondent No.2 married with applicant No.1 on 12.7.2020. She resided at matrimonial home till 16.8.2020. Thereafter, there are 2 N.C. cases registered against respondent No.2 on complaint given by applicant Nos. 1 and 2,

respectively. Those are under Sections 323, 504 and 506 of IPC, dated 21.4.2021 and 16.5.2021, respectively, wherein, allegations are made that the respondent No.2 and her family members have assaulted the applicant Nos. 1 to 3 and threatened them of filing false complaint. On 24.5.2021, applicant No.3 made a complaint to Superintendent of Police, Nanded with regard to atrocities by daughter in law i.e. respondent No.2. The impugned FIR appears to have been lodged on 31.5.2021 i.e. within 8 to 10 days from the date of N.C.s registered by applicant Nos. 1 to 3.

8. It is evident that there is serious matrimonial dispute between respondent No.2 and applicant Nos. 1 to 3. The documents on record show that there are allegations and counter allegations against each other. Apparently, applicant Nos. 1 to 3 were residing together at Radhika Nagar Taroda, Khurd, Nanded, whereas, applicant No.4 who is brother of applicant No.1, was residing at Pune in pursuance of his employment. Applicant Nos. 5 to 10 are residing at different places within Nanded District. However, they are not family members of applicant Nos. 1 to 4. In this background, if the contents of the FIR are considered, mainly there are allegations as against applicant Nos. 1 to 3, initially, as regards ill-treatment on account of demand of household articles and cash of Rs. 2,00,000/-. Even in the subsequent instances dated 12.7.2020 and 10.8.2020 OR 16.8.2020 the role limited against applicant Nos. 1 to 3 is stipulated. However, in alleged incident dated 29.5.2021, name of the applicants are implicated with attribution of assault against respondent No.2. Pertinently, it was a period of COVID pandemic. From the contents of FIR, it is not clear as to how and why applicant Nos. 4 to 10 had been to matrimonial home of respondent No.2. The allegations against them are apparently fabricated and

engineered so as to implicate them alongwith applicant Nos. 1 to 3.

9. At this stage, reference can be given to the observations made by the Supreme Court in the matter of ***Preeti Gupta Vs. State of Jharkhand, reported in (2010)7 SCC 667*** wherein the apex court observed in para. 30, 32 and 34 as under :-

“ 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.”

10. In yet another case of ***Kahkashan Kausar Vs. State of Bihar reported in (2022)6 SCC 599***, the Supreme Court after taking stock of various decisions, rendered by the supreme Court in the subject matter, observed in para. 17 as under.

“ 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.

11. Similarly, in the case of ***Sushilkumar Sharma vs. Union of India and others, reported in (2005) 6 SCC 281***, the Supreme Court observed in para. 19 as under :-

“19. The object of the provision is prevention of the dowry menace. 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 ignominy 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.”

12. On perusal of the charge sheet, it is discernible that the statement of relatives of respondent No.2 are recorded. However, in all those statements, certain allegations are employed only against applicant Nos. 1 to 3. There is no support to the allegations regarding involvement of the applicant Nos. 4 to 10 in the incident dated 29.5.2021. Pertinently, the allegations of assault by all applicants during the incident dated 29.11.2020 are not supported by medical evidence. From reading of the marriage card, which is placed on record, it is discernible that there are 2 high rank police officers in relation of respondent No.2 from maternal side. The possibility of false implication of the applicant Nos. 4 to 10 to generate pressure against applicant No.1 cannot be ruled out.

13. The FIR alleges commission of offence punishable under Section 307, 498-A, 324, 323, 504 of IPC. However, minute reading of FIR nowhere depict ingredients of Section 307 of IPC against applicants.

Even as to ingredients of Section 498-A are concerned, there is no material against applicant Nos. 4 to 10. Presence of applicant Nos. 4 to 10 at the place of incident on 29.11.2020 appears to be improbable.

14. Although falsity cannot be gone into in the application under Section 482 of IPC on overall consideration of the material on record, we have reached to a definite conclusion that this is a case of over implication of relatives, which requires us to exercise inherent powers in favour of applicant Nos. 4 to 10. Consequently, we proceed to pass the following order :-

ORDER

- [I] The Criminal Application is partly allowed;
- [II] FIR in Crime No. 174 of 2021, registered with Bhagya Nagar Police Station, District Nanded for the offences punishable under Sections 307, 498-A, 323, 504 r/w. 34 of IPC and consequential proceeding bearing RCC No. 940 of 2021 pending in the court of JMFC, at Nanded is hereby quashed and set aside to the extent of applicant Nos. 4 to 10.
- [III] The application stands rejected to the extent of applicant Nos. 1 to 3.
- [IV] R.C.C. No. 940 of 2021 to continue as against applicant Nos. 1 to 3 in accordance with law.
- [V] Criminal application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]