



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1504 OF 2023**

1. Vithoba @ Vitthal S/o Suryabhan Barde
Age: 58 years, Occu: Service, (Father-in-Law of Res no-2)
R/o. Survey no.32/1, Plot no. 20
Nandanvan nagar, Tapovan Road,
Bhistbag, Savedi, Ahmednagar,
Tal & Dist. Ahmednagar.
2. Mandakini W/o Vitthal Barde (Mother-in-Law of Res no-2)
Age: 53 years, Occu: Household,
R/o. Survey no.32/1, Plot no. 20
Nandanvan nagar, Tapovan Road,
Bhistbag, Savedi, Ahmednagar,
Tal & Dist. Ahmednagar.
3. Ravikiran S/o Vitthal Barde (Brother-in-Law of Res no-2)
Age: 31 years, Occu: Private Service,
R/o. B-7, Koregaon Road, Tal- Khed,
Dist- Satara.
4. Ganesh S/o Sahebrao Akolkar (Uncle-in-law of Res no.2)
Age: 41 years, Occu: Agri,
R/o. Karanji, Tal. Pathardi,
Dist. Ahmednagar.
5. Bandu S/o Sahebrao Akolkar (Uncle-in-law of Res no.2)
Age: 51 years, Occu: Agri,
R/o. Karanji, Tal. Pathardi,
Dist. Ahmednagar.

..Applicants
(Accused)

Versus

1. The State of Maharashtra
Through Police Station Officer
Pathardi Police Station, Tal. Pathardi,
Dist. Ahmednagar.
2. Ashwini W/o Rajkiran Barde
Age: 28 years, Occu: Household,
R/o. Behind Sagar Hotel, Madhavnagar, Tisgaon,
Tal- Pathardi, Dist- Ahmednagar

..Respondents
(Org. Complainant)

...

Mr. S. R. Zambre, Advocate for the Applicants.

Mr. V. K. Kotecha, APP for Respondent No.1.

Mr. Y. B. Bolkar h/f Mr. A. C. Sisodiya, Advocate for Respondent No.2.

...
CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 25th 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.175/2023 dated 15.02.2023 registered with Pathardi Police Station, Tal. Pathardi, Dist. Ahmednagar for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.137/2023 pending before Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar.

2. Mr. Zambre, learned Advocate appearing for applicants on instructions seeks permission to withdraw application on behalf of applicant nos.1 and 2. Accordingly application stands disposed as withdrawn to the extent of applicant nos.1 and 2.

3. The respondent no.2 reported Police Station Pathardi that on 18.09.2021 she married with Rajkiran Vitthal Barde as per Hindu rites and customs. She went to her matrimonial home after marriage. She was treated well for initial period of six month. Thereafter, her mother-in-law and husband used to tease her saying that she is not good looking. Occasionally she was assaulted by fists and kick blows. Her husband is in the habit of drinking liquor. She had complained to her parents regarding ill treatment meted towards her by in-laws. However, they advised her to bear it for some time. She alleges that although her brother-in-law Ravikiran is serving at Satara, during his telephonic conversation, he instigates her husband and mother-in-law to raise quarrel against her. She further alleges that demand of Rs.10,00,000/- had

been raised by in-laws for investments in new business. When she refused to accede with such demand, in-laws again tortured her. Therefore, she left matrimonial home and residing alongwith parents. Her parents asked applicant nos.4 and 5 i.e. maternal uncles of her husband about said torture but they supported in-laws and also advised her husband to perform second marriage. In concluding paragraphs she alleges that on 03.01.2023 and 03.07.2023 her in-laws had assaulted and mentally tortured her.

4. On the basis of aforesaid report, Crime No.175/2023 has been registered against applicants for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code. The investigation progressed and finally charge-sheet has been filed in the Court of Judicial Magistrate First Class, Pathardi for aforesaid offences against in all six accused persons. At present trial in R.C.C. No.137/2023 is pending.

5. Mr. Zambre, learned Advocate appearing for applicant nos.3 to 5 submits that applicants have been falsely implicated in aforesaid crime. The applicant no.3 is in private service and resides at Koregaon, Tq. Khed, Dist. Satara. The applicant nos.4 and 5 are not family members of respondent no.2. They are maternal uncles of husband of respondent no.2 and residing at village Karanji, Tq. Pathardi, Dist. Ahmednagar. He would submit that matrimonial home of respondent no.2 is at Bhistbag, Savedi, Dist. Ahmednagar. He would further submit that allegations in the FIR are vague and omnibus. The ingredients of offences alleged cannot be made out against applicants. Because respondent no.2 has matrimonial dispute with her husband, applicants have been falsely implicated in crime with intention to pressurize husband. The respondent no.2 is residing with her

parents since 03.07.2022 and lodged FIR on 15.02.2023. The intention of respondent no.2 is writ large. He would further submit that on 13.11.2022, applicant no.1 had lodged complaint for offences punishable under Section 504 and 506 of the Indian Penal Code against father of respondent no.2. Consequently, NC bearing no.2190/2022 is registered. Therefore he urges that present FIR is nothing but misuse of process of law to ventilate personal vengeance against the applicants. He would, therefore, urge that FIR and consequential criminal proceeding may be quashed and set aside as against applicant nos.3 to 5.

6. Per contra, Mr. Kotecha, learned APP appearing for respondent-State and Mr. Bolkar, holding for Mr. Sisodiya, learned Advocate appearing for respondent no.2 vehemently opposed the application contending that FIR and evidence collected during course of investigation makes out triable case against all the applicants, hence urges to reject the application.

7. We have considered submissions advanced on behalf of learned Advocate appearing for respective parties. We have minutely perused the contents of FIR and statements of witnesses recorded during course of investigation as well as other material tendered before us. Apparently, respondent no.2 married with son of applicant nos.1 and 2 and brother of applicant no.3. The applicant nos.4 and 5 are not family members of applicants. The present application is pressed only to the extent of applicant nos.3 to 5. Perusal of FIR reveals that only allegation incorporated against applicant no.3 is that although he resides at Satara, during telephonic conversation with in-laws, he instigated them to raise quarrel against respondent no.2. So far as allegations against applicant nos.4 and 5 are concerned, it is stated that when meeting

was arranged for reconciliation between respondent no.2 and her husband, applicant nos.4 and 5 were present and they stood by side of her in-laws and uttered that second marriage of husband can be performed. Assuming the allegations against applicant nos.3 to 5 are true and correct, on its face value, no offence can be made out against them.

8. 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.”

9. 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.”

10. 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.”

11. Keeping in mind aforesaid observations of Supreme Court of India, we find that stipulations in the FIR are bereft to make out any offence against applicant nos.3 to 5. We have also considered statements of witnesses recorded during the course of investigation and. The charge-sheet contains statements of father, mother, brother and maternal uncles of respondent no.2. All the statements are stereotype and does not stipulate specific role of any of the applicants. On the basis of such unspecific, omnibus stipulation in the FIR and statements of witnesses, offence under Section 498-A of the Indian Penal Code cannot be made out. Pertinently, FIR nowhere stipulates about demand of dowry at the time of marriage or same was fixed or in pursuance of such agreement further demand was raised by in-laws. The FIR simply stipulates that after few months of marriage, in-laws raised demand of money for business purpose. Such allegations are limited against husband and mother-in-law. The particulars of ill-treatment are unspecific, particularly no role is attributed against applicant nos.3 to 5, who are residing at different places and never resided together in shared accommodation with respondent no.2. In that view of the matter, we find that continuation of criminal

proceeding as against applicants no.3 to 5 would be abuse of process of law. Consequently, we find this to be a fit case for exercising jurisdiction under Section 482 of the Criminal Procedure Code. Hence, we proceed to quash FIR and consequential criminal proceeding as against applicant nos.3 to 5. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.175/2023 dated 15.02.2023 registered with Pathardi Police Station, Tal. Pathardi, Dist. Ahmednagar for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding in R.C.C. No.137/2023 pending before Judicial Magistrate First Class, Pathardi to the extent of applicant nos.3 to 5, are hereby quashed and set aside.
- c. The application to the extent of applicants no.1 and 2 stands disposed as withdrawn and proceeding in R.C.C. No.137/2023 to continue against time in accordance with law.
- d. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE