



{1}

1134.21 F crapln.odt

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

CRIMINAL APPLICATION NO. 1134 OF 2021

1. Akshay S/o. Ashok Joshi,
Age 29 years, Occ. Optometrist,
R/o. C/o. Vilas Devkar, Bhadra Colony,
Khultabad, Tq. & Dist. Aurangabad
At present Ramhari Niwas Sorti Nagar, Jalna.
2. Ashok S/o. Apparao Joshi,
Age 57 years, Occ. SERVICE in Court.
3. Rohibi W/o. Ashok Joshi,
Age 54 years, Occ. Teacher in Z.P. School,
R- 2 and 3 R/o. Ramhari Niwas Sorti Nagar, Jalna.
4. Yamini W/o. Ganesh Sal Joshi,
Age 32 years, Occ. Household
5. Ganesh Babu Deval Sal Joshi,
Age 35 years, Occ. Yasniki,
4 and 5 R/o. Nathkrupa, House No. 684
Kuchar Ota, Paithan, Tq. Paithan, Dist. Aurangabad

.. APPLICANTS

VERSUS

1. The State of Maharashtra,
through Taluka Jalna Police Station,
Tq & Dist. Jalna
in Crime No. 117 of 2021
2. Aditi W/o. Akshay Joshi,
(Ratnamala D/o. Shahurao Patange Maiden Name)
Age 31 years, Occ. Trainer under POCRA Scheme,
R/o. C/o. Vilas Devkar, Bhadra Colony,
Khultabad, Tq. And Dist. Aurangabad.
At present Ambajogai Tq. Ambajogai, Dist. Beed.

.. RESPONDENTS.

Mr. Vaibhav B. Kulkarni, for applicants.
Mr. A.D. Wange, APP for respondent State respondent No.1.
Mr. R.T. Deshmukh, Advocate for respondent No.2.

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

DATE : 3rd OCTOBER, 2024.

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

1. The applicants have approached this court under Section 482 of Cr.P.C, thereby praying to quash and set aside the FIR in Crime No. 117 of 2021, registered with Taluka Jalna Police Station, District Jalna for the offences punishable under Sections 498-A, 323, 504 r/w. 34 of IPC, as well as Sections 3 and 4 of Dowry Prohibition Act.

2. Since, during the pendency of the present application, charge sheet has been filed, the petitioners have added prayer for quashment of the proceeding in RCC No. 887 of 2021 pending before the JMFC, at Jalna.

3. On 15.3.2021, Respondent No.2 reported that four years ago she married with applicant No.1. She was treated well for initial six months after marriage, thereafter, her husband, mother in law, father in law, sister in law, ill-treated her on account of demand of Rs. 3 lakhs for purchase of apparatus required for business of husband. Her husband persistently persuaded demand and used abusive language against her. Since she had love marriage with applicant No.1, she sustained ill-

treatment. On 28.2.2021, at about 9.00 a.m. while she was busy in household work, her husband, father in law, mother in law, assaulted her in pursuance of demand. Her husband had locked her in a room, however, she managed escape and lodged report to police station. Thereafter, went to Ambejogai. Since then, she is residing with her parents.

4. She recorded her statement while in civil hospital at Ambejogai. In pursuance of aforesaid report, Crime No. 117 of 2021 came to be registered against the applicant. The investigation progressed leading to filing of charge sheet. Now, proceeding is pending in RCC No. 887 of 2021 before the JMFC, Jalna.

5. Mr. V.V. Kulkarni, learned advocate for applicants, on instructions, seeks withdrawal of the application to the extent of applicant No.1 and restricted his submissions only for applicant Nos. 2 to 5. He would submit that the applicant Nos. 2 to 5 have been falsely implicated in the aforesaid crime. Respondent No.2 had love marriage with applicant No.1. Applicant Nos. 1 and 2 were residing at Khultabad in pursuance of their job, whereas, respondent Nos. 2 to 5 were residing at different places. Applicant No.2 was serving in the Court at Jalna having residence at Sorti Nagar, Jalna alongwith applicant No.3. Applicant Nos. 4 and 5 resides at Paithan, District Aurangabad.

6. He would submit that there were disputes between the applicant No.1 and respondent No.2. Respondent No.2 had filed a complaint dated 19.2.2021 against her husband regarding incident dated 18.2.2021. Accordingly, N.C. No.119 of 2021 was registered for offences

under Section 323, 504 and 506 of IPC at Police station, Jalna. Thereafter, on complaint of applicant No.1 N.C. No. 149 of 2021 dated 1.3.2021 has been registered against sister of respondent No.2. He would submit that in complaint dated 19.2.2021 in NC No. 119 of 2021, allegations are only against applicant No.1. Further, no allegations regarding demand of dowry was made at that time. By inviting attention of this court to the rent receipts, he would point out that the applicant No.1 and respondent No.2 resided together at Khultabad, independent of the other family members. He would, therefore, urge that this is a clear case of over implication. No offence can be made out against applicant Nos. 2 to 5 on the basis of omnibus allegations.

7. Per contra, Mr. A.D. Wange, learned APP and Mr. R.T. Deshmukh, learned advocate for respondent No.2 vehemently opposes application contending that narration in the FIR clearly stipulates the role of each of the applicants in commission of offence. The incident dated 18.2.2021 was reported to police by respondent No.2. Now charge sheet has been filed and trial is at the stage of evidence. Hence, the applicants be relegated to trial without entertaining the present application.

8. We have considered the submissions advanced by learned advocates appearing for respective parties. We have minutely perused the contents of the FIR and charge sheet. It can be observed that applicant No.1 and respondent No.2 had a love marriage. Both of them were working at Khultabad and residing in a rented accommodation. Apparently, some dispute arose between applicant No.1 and respondent No.2. Consequently, they lodged report against each other. Respondent No.2 lodged NC No. 119 of 2021 dated 19.2.2021, however, in said

report no allegation of demand and ill-treatment is made. The contents report merely refers to incident dated 28.2.2021, wherein, omnibus allegations regarding ill-treatment are made. All the applicants are named and alleged to have assaulted the respondent No.2. The reason of such assault is not specifically mentioned. Particularly, there are no allegations about assault in pursuance to the demand of money. Presence of applicant Nos. 4 to 5 at Jalna who are residents of Paithan is not explained in report. In view of aforesaid observations, there is reason to believe that this is a case of over implication.

8. 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.”

9. 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.

10. 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."

11. In the light of aforesaid observations by Supreme Court of India, we have minutely considered the scrutinized charge sheet. It contains the statements of father, brother, mother and sister of respondent No.2. All the statements are stereo type. Apparently, the allegations of demand and ill-treatment are omnibus. When it was a love marriage of applicant No.1 and respondent No.2 and they resided together at Khultabad in a rented premises, there is no possibility that applicant Nos. 2 to 5 would ill-treat her in pursuance of demand.

Consequently, on the basis of contents of FIR and charge sheet, no cognizable offence can be made out against the applicants. Hence, we are inclined to exercise our inherent powers under Section 482 and allow the application. Hence, the following order :

ORDER.

- [i] The Criminal Application is partly allowed;
- [ii] FIR in Crime No. 117 of 2021, registered with Taluka Jalna Police Station, District Jalna for the offences punishable under Sections 307, 498-A, 323, 504 r/w. 34 of IPC and consequential proceeding bearing RCC No. 887 of 2021 pending in the court of JMFC, at Jalna is hereby quashed and set aside to the extent of applicant Nos. 2 to 5.
- [iii] R.C.C. No. 887 of 2021 to continue as against applicant No.1 in accordance with law.
- [iv] Criminal application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-