



(This order is corrected as per speaking to minutes order dated 16.10.2024.)
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1226 OF 2021

1. Amol S/o Balu Sarode, (Husband of complainant)
Age: 25 years, Occup.:,
R/o: Mahankal Wadgaon,
Tq: Shrirampur, Dist: Ahmednagar.
2. Balu S/o Ambadas Sarode, (Father-in-law of complainant)
Age: 49 years, Occup: Majuri,
R/o: Mahankal Wadgaon,
Tq: Shrirampur, Dist: Ahmednagar.
3. Latabai W/o Balu Sarode, (Mother-in-Law of complainant)
Age: 48 years, Occup: Majuri,
R/o: Mahankal Wadgaon,
Tq: Shrirampur, Dist: Ahmednagar.
4. Gajanan S/o Balu Sarode, (Brother-in-Law of complainant)
Age: 22 years, Occup: Majuri
R/o: Mahankal Wadgaon,
Tq: Shrirampur, Dist: Ahmednagar.
5. Mangal W/o Bhausahab Shedge, (sister-in-law of complainant)
Age: 27 years, Occup: Majuri,
R/o: Wangi, Tq: Shrirampur,
Dist: Ahmednagar.
6. Bhausahab S/o Tukaram Shedge, (Husband of applicant no.5)
Age: 29 years, Occup: Majuri,
R/o: Wangi, Tq: Shrirampur,
Dist: Ahmednagar.

..Applicants

Versus

1. The State of Maharashtra
Through: The Police Inspector,
Shilegaon Police Station,
Gangapur, Tal. Gangapur,
District: Aurangabad.
2. Mrs Vaishali W/o Amol Sarode,
Through: Ganpath Ramaji Vairal
Age: 22 years, Occup. Housewife,
R/o: Varkhed, Tq: Gangapur,
Dist: Aurangabad.

..Respondents

...
Mr. A. B. Chormal, Advocate for the Applicants.
Mrs. P. R. Bharaswadkar, APP for Respondent-State..
Mr. G. J. Karne, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 03rd OCTOBER, 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.102/2021 dated 06.05.2021 registered with Shilegaon Police Station, Tal. Gangapur, Dist. Aurangabad for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code. During the pendency of this application, charge-sheet came to be filed before learned Judicial Magistrate First Class at Gangapur. Consequently, applicants have added prayer to quash and set aside charge-sheet and consequential criminal proceeding pending before Judicial Magistrate First Class at Gangapur.

2. The respondent no.2 herein lodged FIR dated 06.05.2021 alleging that on 14.02.2020 she has been married with applicant no.1. After marriage she started residing at matrimonial home. She was treated well for initial six months. Later on, in-laws raised demand of Rs.10,00,000/- to release land that has been mortgaged and also to secure employment for her husband. During her visit to maternal home in festival season, she gave idea of the ill-treatment given to her. However, her parents advised her to bear it for some time. It is alleged that after some days, she started residing at Wangi alongwith her husband and worked in the field of one Gaikwad. The sister-in-law Mangal Shedge was residing in that village alongwith her husband. She used to visit

the field where they were working and instigate husband to raise demand of money from parents of informant. In pursuance of such instigation, her husband used to beat her. Meanwhile, she conceived pregnancy, but it was terminated. Thereafter, she came back to village Mahakal Vadgaon alongwith her husband. However, her in-laws continued ill-treatment towards her in pursuance of demand. Her parents made an attempt of conciliation. However, there was no change in behaviour of in-laws. On 30.04.2021, she was assaulted in pursuance of demand by her husband, then dropped her at village Varkhed on 02.05.2021. Even, when she was at maternal home, her husband abused her and her mother then left saying that unless amount is paid, he will not take her back. On 03.05.2021 again her parents made an attempt of conciliation, but in-laws did not allow her to reside at matrimonial home in pursuance of demand and continued physical and mental ill-treatment to her. In pursuance of aforesaid information, offence has been registered against all the applicants.

3. On 30.06.2021, on the request of the learned Advocate appearing for the applicants, the application to the extent of applicant no.1-Amol Balu Sarode (husband of respondent no.2) has been dismissed as withdrawn.

4. Mr. Chormal, learned Advocate appearing for the applicants submits that applicants have been falsely implicated in aforesaid crime. The respondent no.2 hardly resided at shared accommodation alongwith other applicants. The grievance of respondent no.2 appears to be only against her husband. However, applicant nos.2 to 6 have been falsely implicated. Mr. Chormal would invite attention of this Court to the legal notice dated 04.06.2021 issued by applicant no.1 to respondent no.2 for

restitution of conjugal rights. He would further submit that respondent no.2 hardly resided alongwith her in-laws. She resided at village Wangi alongwith her husband in the field of one Gaikwad. In this background, on the basis of omnibus allegations, no case for offence under Section 498-A of the Indian Penal Code can be made out against applicants. He would, therefore, urge to quash and set aside FIR and consequential criminal proceeding against the applicants.

5. Per contra, Mrs. Bharaswadkar, learned APP appearing for the respondent-State and Mr. Karne, learned Advocate appearing for respondent no.2 vehemently opposed the prayer in the application contending that contents of the FIR and statements of witnesses recorded during the course of investigation makes out sufficient case for trial and no interference is required in exercise of inherent powers of this Court.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely gone through the contents of FIR and statements of witnesses cited in the charge-sheet. Evidently, respondent no.2 married on 14.02.2020 with applicant no.1. Thereafter, she was treated well for six months. Admittedly, all the family members had worked at Ashok Nagar Sugar Factory for harvesting sugarcane. Thereafter, respondent no.2 alongwith her husband resided in the field of one Gaikwad at village Wangi. All these circumstances clearly shows that respondent no.2 never resided with her in-laws in shared accommodation. Perusal of FIR would show that allegations against all the applicants are omnibus. No specification as regards to the ill-treatment or overtact at the hands of any applicant is narrated. The contents of the FIR are

bereft of necessary particulars to make out any offence against the applicants.

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:

“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

¹ (2010) 7 SCC 667.

² (2022) 6 SCC 599.

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. In light of the legal position explained in aforesaid judgment, we have also considered statements of witnesses cited in the charge-sheet. On perusal we find that statements of parents, grandmother and paternal aunt are recorded. All the statements are of stereotype and omnibus in nature. Even from those statements no case can be made out against applicant nos.2 to 6 to bring home ingredients of Section 498-A of the Indian Penal Code. The stipulations in the FIR and statements of witnesses would show that ingredients of offences punishable under Sections 323, 504, 506 of the Indian Penal Code are only against applicant no.1. In that view of the matter, we are of the considered view that continuation of prosecution against applicant nos.2 to 6 would be abuse of process of law. Hence, we deem it appropriate to invoke our inherent powers under Section 482 of the Criminal Procedure Code and quash the FIR and consequential criminal proceeding as against applicant nos.2 to 6. Consequently, we proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.102/2021 dated 06.05.2021 registered with Shilegaon Police Station, Tal. Gangapur, Dist. Aurangabad for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code as well as consequential criminal proceeding

pending before Judicial Magistrate First Class at Gangapur, is hereby quashed and set aside to the extent of applicant nos.2 to 6.

c. Criminal Application to the extent of applicant no.1 is rejected and criminal proceeding pending before Judicial Magistrate First Class at Gangapur to continue against applicant no.1.

d. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE