



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

CRIMINAL APPLICATION NO. 2050 OF 2023

1. Meer Akbar Ali S/o. Meer Inayat Ali
2. Meer Inayat Ali S/o. Vayaz AliPetitioners

Versus

1. The State of Maharashtra
2. Meer Sakina Mohatashim Ali D/o.
Meer Mohatashim AliRespondents

....

Advocate for Applicants : Mr. K.N. Farooqui

APP for Respondent No. 1 : Mr. P.V. Diggikar

Advocate for Respondent No. 2 : Mr. Z.H. Farooqui h/f. Mr. Khizer Patel

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

Reserved on : 14 MARCH 2024

Pronounced on : 21 MARCH 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

1. Heard both the sides for final disposal at the admission stage.
2. Applicants are seeking quashment of FIR bearing C.R. No. 96 of 2023 registered with Vedant Nagar Police Station, Taluka and District Aurangabad, under Sections 269, 498-A read with 34 of the Indian Penal Code, consequential Charge-sheet no. 61 of 2023 and RCC

No. 1670 of 2023 pending before the learned Chief Judicial Magistrate, Aurangabad.

3. According to the prosecution, applicant no. 1 is husband of respondent no. 2 – informant. Their marriage took place on 27.10.2022 as per Muslim rights. Applicant no. 2 is father-in-law of informant. Respondent no. 2 cohabited with applicant no. 1 from 27.10.2022 till 19.02.2023. On 19.02.2023, couple dissolved their marital ties by executing 'Khula-Nama'. Thereafter, on 19.05.2023, respondent no. 2 lodged report which is registered as impugned FIR against the applicants.

4. The gist of the allegations of the compliant is that the marriage was performed by spending huge money by father of informant with all pomp and show. At the time of marriage, the applicant no. 2 was hospitalized because of brain hemorrhage and everything was looked after by father of the informant. It is further contended that the marriage could not be consummated because applicant no. 1 disclosed that he was suffering from highly contagious disease tinea cruris. Applicant no. 1 told her that the ailment was chronic and likely to be fatal and it was not possible to have physical contact. She was shocked by fraud played by the applicants. Raising a demand of Rs. 5 Lakh, she was subjected to harassment. Informant and her father tried to extend medication but that

was refused by the applicants. Ultimately, informant was constrained to end the marital ties by executing 'Khula-Nama' on 19.02.2023.

5. Learned counsel for the applicants submits that it would be abuse of process of law as no offence under Section 498-A can be made out. Marital ties between them have been severed. By way of rejoinder, it is being submitted that the proceedings for restitution of conjugal rights filed by the informant before the Family Court were dismissed by order dated 11.10.2023 holding that there was no marital tie between the parties.

6. It is further contended that false complaint has been lodged to dodge repayment of Rs. 30 Lakhs to applicant no. 2. It is being submitted that respondent no. 2 filed frivolous and successive proceedings not only in the Court at Aurangabad, but a crime was registered in the Langer House Police Station, District Hyderabad, State Telangana.

7. Learned APP and learned counsel for respondent no. 2 would repel the submissions made on behalf of the applicants. Respondent no. 2 has filed affidavit-in-reply to oppose the application. It is contended that the proceedings for restitution of conjugal rights under Section 281 (1) of Muslim Law was filed before Family Court by

applicant no. 1. Informant also filed proceedings before Judicial Magistrate First Class, Aurangabad for various reliefs under Protection of Women from Domestic Violence Act.

8. Learned counsel for the applicants refers to judgments in the matter of *Kahkashan Kausar Versus State of Bihar*, **(2022) 6 SCC 599**, *Rukmini Narvekar Versus Vijaya Satardekar and others*, **AIR 2009 Supreme Court 1013** and *Sadhana Versus Hemant*, **2019 0 ALL MR (Cri) 2299**.

9. Learned counsel appearing for respondent no. 2 would submit that there are specific allegations and incriminating material is collected during the course of investigation. It is further submitted that considering statements the complicity of the applicants is apparent. Learned counsel for respondent no. 2 vehemently submits that ill-treatment stated in the complaint was of the period when the marriage was subsisting. The supplementary statement of the informant corroborates material on record. He would submits that there is *prima facie* material against the applicants. He would rely upon judgment of Single Judge of Gujarat High Court at Ahmedabad in the matter of *Rameshbhai Danjibhai Solanki and others Versus State of Gujarat and another*, passed in Criminal Misc. Application No. 3259 of 2016 on 18.08.2023.

10. We have considered rival submissions of the parties. We have gone through the relevant papers of investigation to assess as to whether alleged offence can be made out against the applicants. Undisputedly, informant married with applicant no. 1 on 27.10.2022. Thereafter, they executed 'Khula-Nama' on a stamp paper on 19.02.2023. The text of 'Khula-Nama' and its translation is on record. It is specifically mentioned that "..... due to the skin ailments that were hidden at the time of marriage, it was rather not possible to continue present relationship. Hence, I seek Qula (Divorce) from Meer Akbar Ali as per Islamic Laws".

11. Learned counsel for the applicants has questioned FIR on the count that once the marital ties have been severed between the couple on 19.02.2023, offence under Section 498-A cannot be attracted. For that purpose, reliance is placed on the judgment of learned single judge in the matter of *Sadhna* (supra).

12. We have considered First Information Report, supplementary statements, 'Khula-Nama' and the statements recorded during the course of investigation. We find that there are allegations of physical and mental harassment caused to the informant by the applicants after she started residing with the applicants. Both the applicants appear to have ill-treated informant for demand of Rs. 5 Lakh.

It is also apparent that informant was devastated and felt deceived because of the suppression of serious ailment. It would amount to ill-treatment to the informant as the marriage has not been consummated due to ailment of the husband. Supplementary statement recorded on 21.05.2023 would make out a case of ill-treatment more prominently.

13. We find that the allegations of ill-treatment are specific against the applicants and incriminating material is available to proceed against them. 'Khula-Nama' executed between the couple corroborates the mental agony suffered by the informant. We have no hesitation to hold that a case is made out to proceed against the applicants under Section 498-A of IPC.

14. Now turning to the decision in *Kahkashan Kausar* (supra) unlike in the present matter, there were no specific allegations against the applicants and even incriminating material revealing their complicity. Law laid down by the Supreme Court will not be applicable. Next judgment is of *Rukmini Narvekar* (supra) is also distinguishable on facts. In the present matter, the question posed is attraction of ingredient of Section 498-A when the marriage stood dissolved. This judgment is also of no help to the applicants.

15. Crucial issue raised in this application is as to whether a divorced wife can maintain complaint for offence under Section 498-A

against her ex-husband and his relatives. In the matter of *Sadhana* (supra) learned Single Judge was dealing with matter in which the couple had approached Family Court for dissolution of marriage and on 30.06.2008, by decree of the Court, marriage was dissolved. In the next year i.e. 2009 the proceedings under Domestic Violence Act was initiated by wife which was resisted by husband. The maintainability of the proceedings was questioned on the ground that there was no marital relationship between the parties. It was ultimately held by learned Single Judge that the proceedings initiated by wife were not maintainable because she was not wife and there was no domestic relationship between them.

16. We are not prepared to follow the ratio laid down by the learned Single Judge in above matter for more than one reason. Firstly, because it was a proceeding under Domestic Violence Act where as this one is under Section 498-A of IPC. Present case is required to be considered in view of the Section 498-A of IPC. Secondly, in the present matter the overt act of the applicants is of the period when marriage was still subsisting.

17. Learned counsel for respondent no. 2 refers to judgment of learned Single Judge of Gujarat High Court in the matter of *Rameshbhai Danjibhai Solanki* (supra). In that matter also though the parties were

not Muslim, there was decree of divorce granted on 25.02.2014 by Family Court, Bandra. FIR was filed on 26.12.2015 for offence under Section 498-A of IPC. It was challenged by husband contending that the marriage was not subsisting on the date of the FIR and Section 498 – A of IPC would not be attracted. It is useful to refer to paragraph no. 14 of the judgment which reads as follows :

“14. The plain reading of sections 498A of the IPC shows that expression used therein referred to the accused are “the husband” and “relatives of the husband”. The expression being “the husband” and “relatives of the husband” in ordinary parlance would come “in capacity as husband” or “is being husband”. The expression is reflective for the proposition that for levelling the allegation u/s 498A of the IPC, the status of “the husband” or “relatives of the husband” must exist. The simple meaning is that for levelling the allegations of offence, the accused must be “the husband” or “relatives of the husband” or he could be “in capacity of the husband” or “in capacity of relatives of the husband”. This expression does not include “former husband” or “ex-husband” or “relative of the former husband or ex-husband.” The Legislature while using expression “the husband” or “relatives of the husband” in section 498A of the IPC, used the word “woman” and not “wife”. Meaning thereby, allegations of the offence u/s 498A of the IPC even can be maintained at the instance of the

divorcee wife, provided that she alleges the incident of harassment and cruelty which could have been meted out while marriage was subsisting. However, she cannot file complaint alleging offence u/s 498A of the IPC putting allegation of an incident, which could have been taken place subsequent to the divorce. Once the competent Court passed the decree of divorce, the marital status of the husband and wife is snapped and the pre-requisite condition of section 498A of the IPC “being the husband” or “relatives of the husband” disappears. In the present case, when the FIR was filed alleging offence punishable u/s 498A read with allied offences, the status of the complainant and the petitioner No. 1 i.e. being husband and wife was snapped by divorce decree passed by the competent Court. Admittedly, the petitioner No. 1 was not the husband of the complainant nor other petitioners are relatives of the husband. On reading the FIR, what emerges that the complainant has not alleged harassment and cruelty for the time period the marriage was subsisting. No specific incident of harassment and cruelty has been indicated in the FIR when the marriage was subsisting. What appears from the bare reading of the FIR is that the complainant was aggrieved on the ground that the petitioner No.1 remarried subsequent to divorce decree. The allegations levelled therein for harassment and cruelty could be said to have been made for the time period subsequent to the divorce.”

18. We are in agreement with the view taken by learned Single Judge of Gujarat High Court. In this regard, it is necessary to refer to Section 498-A of IPC which is as follows :

498-A. Husband or relative of husband of a woman subjecting her to cruelty. -- *Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation. - For the purpose of this section, 'cruelty' means -

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

19. A victim of harassment contemplated by Section 498-A is a 'woman'. The intention of the legislature to use word 'woman' and not 'wife' could be to enable even a divorcee to maintain proceedings in respect of harassment suffered by her when the marriage was subsisting.

Conversely, if a divorcee wife makes allegations of ill-treatment extended to her after dissolution of marriage, the proceedings under Section 498-A of IPC, would not lie.

20. In this regard, a useful reference can be made to judgment of the Supreme Court in the matter of *Mohammad Miyan and others Versus State of Uttar Pradesh and another*, **(2019) 13 Supreme Court Cases 398**. In that matter before the Supreme Court, the parties were Muslim. Their marriage was dissolved before four years of filing of complaint by the wife under Sections 498 – A, 323, 325, 504, 506 of IPC. Pertinently, the offence pitted against husband was committed on 15.02.2012. FIR was filed on 18.02.2015 in respect of the incident of 15.02.2012. In that context, the following observations are made by Supreme Court.

“5. We find much substance in the submission made by Mr. Das, learned Senior Counsel appearing for the appellant-accused. Even in the FIR dated 18-8-2015, the complainant-wife has stated that her divorce had taken place about four years back. It is not possible to accept the contention made by learned counsel appearing on behalf of complainant-wife that she made the statement in ignorance of Sharia law. She is a Headmistress and must be credited with due knowledge of her meritorious status. In view of her own averment that she was divorced four years ago,

we are of the view that the prosecution is not sustainable under Section 498-A IPC and Sections 3/4 of the Dowry Prohibition Act, 1961.

6. Section 498-A IPC opens with the words “Whoever, being the husband or the relative of the husband of a woman....” Therefore, where the complainant approaches with a case that there has been a divorce long back i.e. four years ago before filing of the FIR, Section 498-A of IPC in terms would not be attracted. We accordingly consider it appropriate to quash the prosecution against all the accused persons under Section 498-A of IPC and Sections 3/4 of the Dowry Prohibition Act, 1961. Ordered accordingly.”

21. Above judgment reveals that prosecution under Section 498-A would not be sustainable for the overt act or the ill-treatment caused after dissolution of marriage. In case in hand, the situation is otherwise. The ill-treatment has been caused when the marriage was subsisting.

22. It reveals that the alleged demand of dowry and harassment attributed to the applicants is of a period prior to dissolution of marriage on 19.02.2023. The allegations for offence under Section 498-A of IPC are not post ‘Khula-Nama’ or post dissolution of marriage. When the

informant was residing with the applicants, she was subjected to cruelty as contemplated by Section 498-A of IPC.

23. For the reasons recorded above, we have no hesitation to hold that this is not a fit case to exercise jurisdiction under Section 482 of Cr.P.C. We, therefore, reject Criminal Application.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]