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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2143 OF 2023

1. Rajesh Radhakisan Jadhav
Age 33 years, Occ. Service .. Husband.
2. Radhakisan Lalsing Jadhav,
Age 63 years, Occ. Retired. ..Father in law
3. Parwatibai Radhakisan jadhav
Age 55 years, Occ. Household, ..Mother in law
All r/o. Naiknagar, Beed-by-pass,
Aurangabad.
4. Seema Sainath Pawar,
Age 35 years, Occ. Household .. Sister in law
R/o. Indewadi, Jalna,
Ta. Jalna, Dist. Jalna.
5. Mukesh Radhakisan Jadhav
Age 39 years, Occ. Private Service. .. Brother in law.
6. Anita w/o. Mukesh Jadhav. Wife of applicant No.5
Age 34 years, Occ. Houssehold,
Both r/o Naiknagar, Beed-by-pass
Aurangabad now residing at USA.
7. Sheshrao s/o. Kadu Rathod,
Age 45 years, Occ. Agri.
r/o .Shambhunagar, Sootgirni,
Aurangabad.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through Police Inspector,
Chikhalthana Police Station, Aurangabad,
Tq. And Dist. Aurangabad.

2. Yogita w/o. Rajesh Jadhav,
Age 22 years, Occ. Household,
R/o Dongaon, Tekadi Tanda,
Tq. Paithan, Dist. Aurangabad.

.. RESPONDENTS.

Mr. G.V. Ghuge, Advocate for the applicants.
Mr. N.R. Dayama, APP for respondent State.
Mr. S.R. Bhagal, Advocate for respondent No.2.

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

DATE : 19th SEPTEMBER, 2024.

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

1. The applicants have approached this court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the FIR bearing crime No. 166 of 2022 registered with Police Station, Chikhalthana, Dist. Aurangabad as well as criminal proceeding in RCC No. 531 of 2023 pending before JMFC, Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC.

2. Mr. G.S. Ghuge, learned advocate appearing for the applicants submits that the applicant has already been withdrawn so far as applicant No.1 is concerned as such, he would restrict the submissions in respect of applicant Nos. 2 to 7.

3. Respondent No.2 herein, lodged report dated 4.5.2022 alleging that on 12th May, 2019, she got married with applicant No.1 as per the Hindu rights and customs. After marriage she resided alongwith

her in-laws. She was treated well by in-laws for a month. However, thereafter, they started teasing her for the reason that she is not well educated. The marriage was not performed as per the status. Gift articles were not as per their standard. She is not a suitable match for applicant No.1. They demanded an amount of Rs. 10 Lakhs for purchasing house at Mumbai. She was assaulted doubting the character. The sister in law, brother in law, co-sister etc. were instigating applicant No.1 to insist for demand of Rs. 10 Lakhs from parents of respondent No.2. After she conceived pregnancy, she had been to her maternal house. She delivered a male child. However, the ill-treatment continued. Lastly, she was sent to her maternal home. Hence, she filed complaint against the in-laws.

4. Mr. G.V. Ghuge, learned advocate appearing for the applicant submits that the applicant Nos. 2 to 7 are falsely implicated in aforesaid crime. There was dispute between the applicant No.1 and esp No.2. The allegations in the FIR do not make out any offence under Section 498-A. He would submit that the falsity in the allegations is writ large. The applicant Nos. 5 and 6 are residing in USA. Applicant No.4 resides at Jalna. Applicant No.7 is not family member of applicant Nos. 1 to 3. He would further submit that applicant No.1 filed petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for divorce on the ground of cruelty against respondent No.2 on 8.7.2021. The present FIR is filed after service of notice of said petition. He would therefore urge that the FIR and consequential proceeding is liable to be quashed and set aside.

5. Per contra, Mr. N.R. Dayma, learned APP and Mr. S.R. Bagal learned advocate for respondent No.2 vehemently oppose the prayer in the application contending that the allegations in the FIR coupled with

the statements of witnesses recorded during investigation are sufficient to make the charged offences. AS such, there is triable case against the applicants.

6. We have considered the submissions advanced by learned advocates for respective parties. We have perused the statement of witnesses which are part of the charge sheet. A minute reading of the FIR shows that the allegations are vague and omnibus. There are no specific stipulations against applicant Nos. 2 to 7. General allegations are made that all the applicants have teased the respondent No.2 on various counts and also raised doubt about her character. Lastly, allegation is made that the demand was raised to bring amount of Rs. 10 Lakhs for purchase of house at Mumbai. No date, period or any particulars of cruelty is mentioned. No overt acts against applicant Nos. 2 to 7 are attributed. Statement of witnesses cited in charge sheet are also omnibus, without particulars of so called demand or cruelty.

7. It is trite that to make out an offence under Section 498-A, ill-treatment in pursuance of demand of dowry or ill-treatment of such a nature that will drive the woman to suicide are absent in present case. The contents of FIR and charge sheet are bereft of making out case as against the applicants.

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. When we apply the aforesaid principles of law in the facts of the present case, we notice that apart from omnibus allegations in the FIR and charge sheet there is nothing to justify the prosecution of applicant Nos. 2 to 7. As rightly pointed by Mr. Ghuge, learned advocate for the applicant, applicant Nos.5 and 6 are residents of USA. The statement of witness, namely, Anil Kaduba Rathod clearly depicts that after attending the marriage of applicant No.1 with respondent No.2, they left for USA within a period of one month. Thereafter, they did not return back to India. Applicant No.4 is the married sister in law of applicant No.1, she resides at Jalna. No specific role is attributed against applicant No.7.

12. In the facts of this case, we deem it appropriate to exercise our inherent powers under Section 482 of Cr.PC. Accordingly, we proceed to pass the following order :-

ORDER

[i] Criminal application is partly allowed;
[ii] FIR in Crime No. 166 of 2022 registered with police station, Chikhalthana, Dist. Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC and consequential criminal proceeding bearing R.C.C. No. 531 of 2023 pending before learned Judicial Magistrate First Class, Aurangabad, is hereby **quashed and set aside to the extent of applicant Nos. 2 to 7 herein.**

[iii] The application stands disposed of as withdrawn to the extent of applicant No.1.

[iv] The application stands disposed of.

[S.G. CHAPALGAONKAR, J] [SMT. VIBHA KANKANWADI, J]
grt/-