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2258.23 CRAPLN (1).odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2258 OF 2023

1. Awej Ahmed Shaikh (Husband)
Age 31 years, Occ. Labour Work,
R/o. Mali Galli, Near Masjit,
Latur.
2. Shafika w/o. Ahmed Shaikh (mother in law)
Age 64 years, occ. Household,
R/o. Arafat Chowk, Narkat Nagar, Latur.
3. Ahemad Rasul Shaikh (father in law),
Age 70 years, Occ. Business,
R/o. Arafat Chowk, Barkat Nagar, Latur.
4. Altmas s/o. Ahemad Shaikh (brother in law)
Age 36 years, Occ. Business,
R/o. Labour Colony, Near Blind School, Latur.
5. Arshad s/o. Ahemad shaikh (brother in law),
Age 25 years, Occ. Education,
R/o. Arafat Chowk, Barkat Nagar, Latur.
6. Afan s/o. Ahemad Shaikh (brother in law)
Age 22 years, Occ. Education,
R/o. Arafat Chowk, Barkat Nagar, Latur.
7. Marium w/o. Altmas Shaikh (wife of brother in law)
Age 36 years, Occ. Business,
R/o. Labour Colony, near Blind School, Latur.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through Police inspector,
Gandhi Chowk Police Station,
Latur, Tq. & Dist. Latur.

2. Minaj Begum w/o. Awej Shaikh,
Age 28 years, Occ. Service,
R/o. In front of Govt. Hospital,
Bole Galli, Patel chowk,
Gandhi Chowk, Latur,
Tq. And Dist. Latur.

.. RESPONDENTS.

Mr. Yogesh R. Shinde, Advocate h/f. Mr. H.P. Jadhav, Advocate for applicants.

Mr. A.V. Lavte, APP for respondent State.

Mr. A.U. Peche, Advocate for respondent No.2. (appointed)

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

DATE : 20th SEPTEMBER, 2024.

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

1. The applicants have approached this court under Section 482 of Cr.PC., thereby praying to quash and set aside the FIR dated 28.4.2022, in Crime No. 201 of 2022 registered with Gandhi Chowk police station, Dist. Latur for the offences punishable under Sections 498-A, 323, 504 r/w. 34 of IPC and consequential criminal proceeding in RCC No. 1212 of 2022 pending before the Chief Judicial Magistrate, Latur.

2. When the matter was taken up for hearing on 26.7.2023 before this Court, learned advocate appearing for the applicant withdrew the application to the extent of applicant No.1 husband. Further, during the course of today's hearing, learned advocate for the applicant, on instructions, withdrew the application to the extent of applicant No. 2 and requested to consider the prayer in the application to the extent of

applicant Nos. 3 to 7.

3. Respondent No.2 reported to Police Station, Gandhi Chowk that on 19.1.2020, she married with applicant No.1 Awej Ahmed Shaikh as per the Muslim rites and customs. Her parents had gifted Rs. 1 Lakh alongwith gold and silver ornaments. She resided in her matrimonial home, she was treated well for initial period of 2 months. Thereafter, she was being ill-treated for trifle reasons. On 15.11.2020, her mother in law reprimanded her on account of household work. The informant lost her consciousness. When she was taken to hospital, it was revealed that she was carrying pregnancy. On 17.11.2020 her husband, mother in law, suspected her character and raised questions regarding her early pregnancy. When she narrated the incident to her brother, her parents and brother requested in-laws, not to torture her. However, they were insisting to terminate the pregnancy. Thereafter, when conciliation was attempted, in-laws raised demand of Rs. 3 Lakhs for purchase of flat, otherwise, gave threat to perform second marriage of her husband. On 28.8.2021, she gave birth to the girl – Rida. In-laws never visited to see her. Consequently, she alleges that the in-laws (applicants) are guilty of offence as charged.

4. The investigation progressed in pursuance of aforesaid report. Finally, charge sheet has been filed in the Court of C.J.M., Latur in RCC /No. 1212 of 2022.

5. Mr. Yogesh R. Shinde, learned advocate appearing for the applicants submits that the applicants have been falsely implicated in aforesaid crime. The applicant Nos. 4 to 7 have no concern with the

family affairs of the applicant Nos. 1 and 2. However, they have been implicated in aforesaid crime on the basis of omnibus and palpably false statement. He would further submit that on the basis of vague and omnibus statements in the FIR, no offence can be made out against the applicants. By inviting attention of this court to the contents of the FIR and statement of witnesses in the charge sheet, he would submit that stereo type version of the incident is carried forward, which is without substance. The FIR is lodged in the year 2022, whereas, respondent No.2 is residing at her maternal home since long i.e. 1.1.2021. therefore, he urges to allow the application and quash and set aside the FIR and consequential criminal proceeding against the applicant Nos. 3 to 7.

6. Per contra, Mr. A.V. Lavte, learned APP and learned advocate Mr. A.U. Peche appearing for respondent No.2 vehemently oppose the prayer in the application, contending that the FIR specifically stipulates ill-treatment in pursuance of demand of money at the hands of in-laws. The applicants were residing in shared accommodation alongwith respondent No.2 and all of them have mentally tortured her. Therefore, they are liable to be prosecuted for the offence as charged. They would also urge that now the charge sheet is filed which contains triable material. Hence, this is a fit case for decision on trial.

7. We have considered the submissions advanced by the learned advocates appearing for respective parties. We have minutely considered the FIR and material in the charge sheet i.e. statements of witnesses recorded under Section 161 of Cr.P.C. during the course of investigation. Apparently, the marriage between respondent No.2 and applicant No.1 was solemnized on 19.1.2020. The respondent No.2

alleges that she was treated well for initial two months. Thereafter, she was ill-treated for trifling reasons by her mother-in-law. The specific narration of incident dated 15.11.2020 and 17.11.2020 is given. However, allegations are restricted only against applicant Nos. 1 and 2 i.e. husband and mother-in-law. The allegation is made that amount of Rs. 3 Lakh was demanded for purchase of flat by husband and his family members. However, no specifications of such demands are stipulated. From entire FIR, no specific averments are discernible against applicant Nos. 3 to 7 that would constitute an offence. The record shows that respondent No.2 had filed proceeding under Section 125 of Cr.P.C. against husband seeking maintenance. She specifically states that from 1.1.2021, she is residing at parental home since respondent husband refused to cohabit with her. It clarifies that respondent No.2 has resided in matrimonial home, hardly for a period of 3 months after marriage. Petition No. E-179 of 2021 appears to have been filed before the Family court at Latur on 5.8.2021, whereas, the FIR is lodged on 28.4.2022. All these circumstances clearly depict that applicant No.3 to 7 are implicated in the crime only with intention to pressurize the applicant No.1.

8. We have perused the contents of the charge sheet, particularly, the statement of witness recorded during the course of investigation. However, it can be observed that all statement of witnesses are stereotype and omnibus and bereft to make out a specific case against applicant Nos. 3 to 7.

9. 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.”

12. 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.”

13. 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.”

14. Keeping in mind aforesaid observations of the Supreme Court of India, particularly, in the light of allegations in the FIR and material in charge sheet, we find that none of the ingredients of section 498-A would be attracted against applicant Nos. 3 to 7. The possibility of their false implication also can not be ruled out. The applicant No.3 is the father in law of respondent No.2. However, there is absolutely no material to bring home his complicity in the commission of offence. Same is the case as regards applicant Nos. 4 to 6, who are brothers in law and applicant No.7 who is wife of applicant No.4. The contents of FIR makes omnibus reference of their names in the concluding part with the allegation that they were equally responsible for the acts committed by husband and mother in law. However, such statement would not be sufficient to make even a prima facie case against applicant Nos. 3 to 7. In that view of the matter, we are of the firm view that this is a fit case to exercise our inherent powers under Section 482 of Cr.P.C. and quash and set aside the FIR and consequential criminal proceeding as against applicant Nos. 3 to 7. Hence, we pass the following order :-

ORDER

[i] The criminal application is partly allowed;

[ii] FIR in crime No. 201 of 2022 dated 28.4.2022 registered with Gandhi Chowk Police Station, Latur, Dist, Latur for the offence punishable under Sections 498-A, 323, 504 r/w. 34 of IPC and consequential criminal proceeding bearing R.C.C. No. 1212 of 2022 pending before Chief Judicial Magistrate, Latur is hereby **quashed and set aside as against applicant Nos. 3 to 7.**

[iii] The application stands disposed of as **withdrawn to the extent of applicant No. 1 and 2.** The proceeding in R.C.C. No. 1212 of 2022 to continue against them.

[iii] Mr. A.U. Peche, learned advocate is appointed by this Court to represent respondent No.2, his remuneration is quantified at Rs. 7000/- to be paid through Maharashtra Legal Services Authority, Sub-Committee, Aurangabad.

[iv] Criminal application is disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-