



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
CRIMINAL APPLICATION NO.2266 OF 2023**

1. Rahul Bhaurao suryawanshi,  
Age: 35 years, Occu: Advocate,  
R/o: Gevrai, Tq. Gevrai, Dist. Beed. (Husband)
2. Jijabai Bhaurao Suryawanshi,  
Age: 53 years, Occu: Housewife,  
R/o: Gevrai, Tq. Gevrai, Dist. Beed. (Mother-in-law)
3. Bhaurao Dadarao Suryawanshi,  
Age: 63 years, Occu: Agri.,  
R/o: Gevrai, Tq. Gevrai, Dist. Beed. (Father-in-law)
4. Gorakh Bhaurao Suryawanshi,  
Age: 33 years, Occu:  
R/o: Gevrai, Tq. Gevrai, Dist. Beed. (Brother-in-law)
5. Avinash Bhaurao Suryawanshi,  
Age: 34 years, Occu:  
R/o: Gevrai, Tq. Gevrai, Dist. Beed. (Brother-in-law)  
...Applicants

Versus

1. The State of Maharashtra  
Through, In-charge of Police Inspector,  
Badnapur Police Station,  
Tq. Badnapur, Dist. Jalna.
2. Chaya W/o Rahul Suryawanshi,  
Age: 42 years, Occup.: Service (Professor),  
C/o: Kisan Dnyanoday Mandal, Gudhe  
Sanchalit Nanasaheb, Dr. Uttamrao Mahajan,  
Shikshan Shashtra Mahavidyalaya,  
Kargaon, Tq. Chalisgaon, Dist. Jalgaon. ..Respondents

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Mr. S. R. Sapkal, Advocate for the Applicants.  
Mr. N. R. Dayama, APP for Respondent No.1.  
Mr. S. R. Andhale, Advocate for Respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.  
DATED : 20<sup>th</sup> SEPTEMBER, 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.175/2023 dated 09.05.2023 registered with Badnapur Police Station, Tal. Badnapur, Dist. Jalna for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, 1961 as well as consequential criminal proceeding in pursuance of charge-sheet bearing no.125/2023 filed before Judicial Magistrate First Class, Badnapur.

2. The respondent no.2 filed report to the police station alleging that on 13.09.2020 she married with applicant no.1-Rahul Suryawanshi as per Hindu rites and customs. She was treated well for initial period of four months. However, thereafter accused persons ill-treated her for trifling reasons. They doubted her character and also raised demand of Rs.3,00,000/- for purchase of plot. Due to ill-treatment, she went to her maternal home at Kinhola and informed parents about ill-treatment. Her parents attempted convocation with in laws. However, there was no change in their behaviour. Consequently, she reports complaint against in-laws.

3. On the basis of aforesaid information, Crime No.175/2023 came to be registered with Badnapur Police Station. The investigation progressed. Finally charge-sheet has been filed in the Court of Judicial Magistrate First Class, Badnapur against in all five accused persons for aforesaid offences.

4. Mr. Sapkal, learned Advocate appearing for applicants submits that applicants have been falsely implicated in aforesaid crime. The allegations in the FIR are omnibus, unspecific and does not reveal ingredients of offences as alleged. He would submit that respondent no.2 voluntarily left matrimonial home. The applicant no.1 issued a legal notice for restitution of conjugal rights to

respondent no.2 in the month of February 2023. After service of notice, FIR has been lodged on 09.05.2023 only with intention to create evidence to defend proceeding for restitution of marriage. Mr. Sapkal would also invite attention of this Court to representation made by applicant to the Superintendent of Police dated 23.01.2023 by which he has complained about mis-behaviour of respondent no.2 and her family members. He would, therefore, urge that impugned FIR and consequential criminal proceeding be quashed and set aside.

5. Per contra, Mr. Dayama, learned APP appearing for respondent-State and Mr. Andhale, learned Advocate appearing for respondent no.2 vehemently opposed the application.

6. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have minutely considered contents of FIR and statements of witnesses recorded during the course of investigation. Apparently, respondent no.2 married with applicant no.1 on 13.09.2020. The record indicates that respondent no.2 was in service at Dr. Uttamrao Mahajan College of Education at village Kargaon, Tq. Chalisgaon, Dist. Jalgaon as in-charge Principal. The respondent no.2 hardly resided in her matrimonial home at Gevrai, Dist. Beed. In this background, if allegations in the FIR are considered, it can be noticed that for initial four months she was treated well. Thereafter, alleges ill-treatment for the reasons that she don't know household work and demand of Rs.3,00,000/-. Except aforesaid stipulation in the FIR, there are no specific allegations against any accused. Apparently when respondent no.2 was serving as in-charge Principal in College and applicant no.1 is an Advocate, the general allegation that she was ill-treated on account of demand of Rs.3,00,000/- without particulars of any event relating

to such ill-treatment, allegations appears to be made up and improbable. Although names of applicants are stated in the FIR, no stipulation is employed that would constitute offences as charged.

7. The record shows that applicant no.1 had issued legal notice dated 01.02.2023 to respondent no.2 asking her to resume matrimonial relationship. Similarly on 23.01.2023 a detailed complaint regarding mis-behaviour of respondent no.2 and her family members has been made by applicant no.1. Thereafter FIR is lodged by respondent No. 2 against all the applicants. On completion of investigation of this crime, charge-sheet is filed in the Court of Judicial Magistrate First Class, Badnapur, which contains statements of mother, father and brother of respondent no.2. All the statements are stereotyped and sans material particulars to make out charged offences.

8. 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***<sup>1</sup>, 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.*

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<sup>1</sup> (2010) 7 SCC 667.

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 judgment in case of ***Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others***<sup>2</sup>, 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 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 ***Sushil Kumar Sharma vs. Union of India and others***<sup>3</sup>, 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*

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<sup>2</sup> (2022) 6 SCC 599.

<sup>3</sup> (2005) 6 SCC 281.

*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 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. Keeping in mind aforesaid observations, we find that respondent no.2 was residing at Kargaon, Dist. Jalgaon in pursuance of her job. The applicant nos.1 to 5 are resident of Gevrai, Dist. Beed. Therefore, respondent no.2 hardly resided in shared accommodation with her in-laws. As observed in aforesaid paragraphs, the allegations in the FIR nowhere stipulates that there was any agreement of dowry at the time of marriage. So called demand of Rs.3,00,000/- is allegedly raised for the purchase of plot after marriage. Except this stipulation, there is nothing in the FIR that would constitute ingredients of offence under Section 498-A of the Indian Penal Code or offences under Sections 3 and 4

of the Dowry Prohibition Act. Even ingredients of offences under Sections 323, 504 and 506 are not discernible from the contents of FIR. In absence of requisite stipulations in the FIR to constitute cognizable offence, neither FIR could have been registered nor prosecution against accused persons would be permissible. On over view of the matter, we find that this is a fit case to exercise jurisdiction under Section 482 of the Criminal Procedure Code and quash impugned FIR and consequential proceeding. Hence, we proceed to pass following order:

**ORDER**

- a. Criminal Application is allowed.
- b. The FIR in Crime No.175/2023 dated 09.05.2023 registered with Badnapur Police Station, Tal. Badnapur, Dist. Jalna for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, 1961 as well as consequential criminal proceeding in pursuance of charge-sheet bearing no.125/2023 filed before Judicial Magistrate First Class, Badnapur are hereby quashed and set aside.
- c. Criminal Application is disposed of.
- d. Since Mr. S. R. Andhale, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2 as per schedule.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**