



{1}

crapIn 2209.20 R.odt

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

CRIMINAL APPLICATION NO. 2209 OF 2020

1. Rajkumar S/o.Bharat Surwase,
Age 27 years, Occ. Agri and business
R/o. Mali Compound,
Veer Hanuman Nagar Road,
New R.B.I. Quarteres, Kandarpada,
Dahisar West, Mumbai 400 068.
2. Bharat s/o. Parasram Surwase,
Age 67 years, Occ. Agri.,
R/o. Indapur, Tq. Washi,
Dist. Osmanabad.
3. Mirabai Bharat Surwase,
Age 62 yearse, Occ. Household,
R/o. As above.
4. Rahul s/o. Bharat Surwase,
Age 34 years, Occ. Business
R/o. Ahmad Chawl, Dattapada Road,
Near Hanuman Temple, Rajendar Nagar,
Borivali East, Mumbai, 400 066.
5. Rupali w/o. Rahul Surwase,
Age 29 years, Occ. Household,
R/o. As above.
6. Radha w/o. Prabhakar Bhosle,
Age 39 yearse, Occ. Household,
R/o. Manjri Road, Near Datta Mandir,
Survey No. 159, Kunjir Wasti,
Manjri Budruk, Pune 412 307.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra

through Police Inspector,
Police Station, Yermala,
Ta. Kallamb, Dist. Osmanabad.

2. Pragati W/O. Rajkumar Surwase,
Age 23 years, Occ. Household,
R/o. Indapur, Tq. Washi, Dist. Osmanabad,
At present R/o. Kadaknathwadi,
Tq. Washi, Dist. Osmnabad.

.. RESPONDENTS.

Mr. G.J. Kore, Advocate for the applicants,
Mr. S.A. Gaikwad, App for respondent State.
Mr. V.B. Kulkarni, Advocate for respondent No.2.

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

DATE : 18th 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 in Crime No. 183 of 2019 dated 27.9.2019 registered with Police Station, Yermala, Taluka Kallamb, Dist. Osmanabad as well as consequential criminal proceeding in RCC No. 91 of 2019 pending before JMFC, Kallamb for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC.

2. The respondent No.2 lodged report dated 27.9.2019 alleging that on 10.7.2019 she has been married with applicant No.1 as per Hindu rites and customs. After marriage, she resided alongwith her in-laws. However, after 3-4 months of marriage, her husband, mother in

law, father in law, co-sister Rupali and brother in law-Rohit, started teasing and abusing her. She was also driven out of the house. However, on intervention of her parents, dispute was pacified and she continued to reside with in-laws. Thereafter, when she conceived pregnancy her in-laws doubted character and continued with ill-treatment. She delivered a male child at maternal home. However, her in-laws did not visit to her or see the child. When her parents persuaded in-laws to take her back, they raised demand of Rs. 2 Lakhs for establishment of a shop. Hence, she made complaint to the police.

On the basis of such information Crime No. 183 of 2019 has been registered with Police Station, Yermala. On completion of investigation charge sheet has been filed against in all 6 accused persons for aforesaid offences. Consequently, RCC No. 91 of 2019 has been registered and pending for trial.

3. Mr. G.J Kore, learned advocate appearing for the applicants, on instructions, sought permission to withdraw the application to the extent of applicant Nos. 1 to 3 and canvassed submissions limited to the extent of applicant Nos. 4 to 6. **Consequently, application is considered to the extent of applicant Nos. 4 to 6.**

4. Mr. G.J. Kore, would submit that applicant No.4 is the brother in law of respondent No.2 and resides at Boriwali, Mumbai alongwith his wife Rupali (applicant No.5) Applicant No.6 is sister in law of respondent No.2 . She is married and resides with her family at Manjra Bk. Pune. The applicant Nos. 4 to 6 have no concern with the internal family affairs of applicant Nos. 1 to 3 and respondent No.2. There are differences between applicant No.1 and respondent No.2. She

left the matrimonial home and started residing with her parents. The applicants have been falsely implicated on the basis of omnibus allegations only with intention to pressurize the applicant Nos. 1 to 3. He would submit that on the basis of contents of FIR, or the material in charge sheet, no offence can be made out against applicant Nos. 4 to 6. Therefore, he urges to quash and set aside the FIR and consequential criminal proceeding.

5. Per contra, Mr. S.A. Gaikwad, learned APP vehemently opposes the prayers in the application. He would submit that the respondent No.2 was treated well only for the period of two months after the marriage. Thereafter applicants have consistently ill-treated respondent No.2. There are specific allegations in the FIR as against all the applicants. He would further submit that the charge sheet contains the statement of witnesses which corroborates with the narration in the FIR. After filing charge sheet, the Regular Criminal Case is registered. Triable material is available against the applicants. As such, inherent powers under Section 482 of Cr.P.C. need not be exercised in the facts of the present case. Hence, he urges to reject the application.

6. We have considered the submissions advanced on behalf of respective parties. We have minutely considered the stipulations in the FIR and statements of witnesses named in the charge sheet. A minute reading of the FIR shows that respondent No.2 has made omnibus allegations against the accused persons. So far as applicant Nos 3 to 6, there is common allegation that they were teasing respondent No.2 for one or the other reason. Again, in the last portion of the FIR, omnibus allegations is made against all accused including the applicants that they were teasing and ill treating for demand of Rs. 2 Lakh for establishment

of a shop.

7. In FIR, particulars as regards to the nature of ill-treatment, time, date and month of such ill-treatment, the particulars of overt acts against applicants are absent. The charge sheet contains the statement of parents, brother, maternal uncle and maternal aunt and a neighbour at matrimonial home have been recorded. The contents of the statements are stereo-type, omnibus and bereft of the relevant particulars, to make out the charged offence as against the applicants.

11. 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. If we apply the aforesaid para-meters of law in the facts of the case, it is discernible that the respondent No.2 has her grievance against her husband or at the most against mother and father in law. Although names of applicant Nos. 4 to 6 have been mentioned in the FIR alongwith other accused persons, we find that this is a futile attempt to implicate all family members of the husband in the crime. The applicant No.4 is brother in law who resides at Mumbai alongwith his wife – applicant No.5. Applicant No.6 is sister in law of respondent No.2 and she resides at Pune. Copies of Aadhar card are placed before us in

support of such contentions. If the applicant Nos. 4 to 6 were not residing in the shared accommodation with respondent No.2, the allegations incorporated against them appears to be palpably false and impossible. Even assuming that the allegations in the FIR are true and correct, looking to the ingredients of Section 498-A and the nature of ill-treatment, no offence can be made out against applicant Nos. 4 to 6. So far as charge under Section 323 and 504 is concerned, in absence of specific averments to bring home the ingredients of aforesaid offences, we find no reason to permit continuation of prosecution against applicant Nos. 4 to 6, for any of the offences. In the facts of this case, we deem it appropriate to exercise our inherent powers under Section 482 of Cr.P.C. . Accordingly, we proceed to pass the following order :-

ORDER

[I] Criminal application is partly allowed;

[ii] FIR in Crime No. 183 of 2019 registered with police station, Yermala, Taluka Kallamb, Dist Osmanabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC and consequential criminal proceeding bearing No. 91 of 2019 pending before JMFC, Kallamb, is hereby **quashed and set aside to the extent of applicant Nos. 4 to 6 herein.**

[iii] The application to the **extent of applicant No. 1 to 3 stands disposed of as withdrawn.**

[iv] Application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-