



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

CRIMINAL APPLICATION NO. 2945 OF 2023

1. Irshad Mohiuddin S/o. Quasi Rashidoddin,
Age 64 years, Occ. Retd. Teacher,
R/o. Hussain Manzil, Khan Building,
Dargah Road, Parbhani,
Tq. And Dist. Parbhani.
2. Sayyda Ayesha Begum W/o. Irshad Mohiuddin Quazi,
Age 61 years, Occ. Household,
R/o. Hussain Manzil, Khan Building,
Dargah Road, Parbhani,
Tq. And Dist. Parbhani.
3. Quazi Mariya D/o. Irshad Mohiuddin,
Age 29 years, Occ. Household,
R/o. Hussain Manzil, Khan Building,
Dargah Road, Parbhani,
Tq. And Dist. Parbhani.
4. Asma Fatima Mohd. Fazzaur Rehman Shah
Age 34 years, Occ. Household,
R/o. Near Naal Saheb Masjid, Kacchi Bazar,
Parbhani, Tq. & Dist. Parbhani,
Now residing at :
Flat No. 601, 6th Floor, Bldg. No. B, Essensia,
Kondhwa Budruk, Pune 411 048.
5. Irfan Mohiddoin S/o. Irshad Mohiuddin,
Age 39 years, Occ.,
R/o. Station Road, Behind Shahi Masjid,
Mangawara, Parbhani,
Now residing at :
Flat No. 601, 6th Floor, Bldg. No. B, Essensia,
Kondhwa Budruk, Pune 411 048.

APPLICANTS.

VERSUS

- 1] The State of Maharashtra,
Through Police Station, Kotwali, Parbhani,
Tq. & Dist. Parbhani.
- 2] Quazi Farah W/o. Imran Quazi,
Age 31 years, Occ. Household,
R/o. Hussain Manzil, Khan Building,
Dargah Road, Parbhani,
Tq. & Dist. Parbhani,
At present R/o. Inayat Nagar,
Opp. Janapurkar Hospital Parbhani,
Tq. & Dist. Parbhani.

.. RESPONDENTS.

Mr. P.N. Kalani, Advocate for applicants
Mr. A.R. Kale, APP for respondent No.1 State
Mr. Y.M. Khan, Advocate for respondent No.2.

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

DATE : 11TH OCTOBER, 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 FIR in Crime No. 157 of 2023, registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 498-A, 323, 504 r/w. 34 of IPC.
2. Since during the pendency of the present application, charge sheet has been filed, the petitioners have added prayer for quashment of the proceeding in RCC No. 876 of 2023 pending before the 4th JMFC, at

Parbhani.

3. Mr. P.N. Kalani, learned advocate for applicants, on instructions, seeks permission to withdraw the application to the extent of applicant Nos. 1 and 2 and restricted his submissions for applicant Nos. 3 to 5.

4. Respondent No.2 lodged report dated 13.6.2023, alleging that on 1st January, 2021, she married with applicant No.1 Irshad Quazi as per the Muslim rites and customs. Immediately after marriage, she went to matrimonial home at Hussain Manzil, Khan Building, Dargah Road, Parbhani. She was treated well for 3 weeks. On 31.01.2021, her husband went to Dubai in pursuance of his job. On 09.03.2021, he returned from Dubai and informed that he had second marriage and he would be maintaining both wives. He instructed her to stay at Parbhani alongwith parents for taking their care and he would continue to visit Parbhani. Her husband used to quarrel with her while use to reside at Pune alongwith second wife. Her in-laws were ill-treating her on instigation of her husband. Her in-laws were saying that her job was to serve them at Parbhani. Sister in law was making her to do household work. Her husband was not providing for her expenses. On 27.06.2022, her husband raised demand of Rs. 2 Lakh and on her refusal to bring amount from parents, she was beaten. Thereafter she left home and presently residing with her brother. On 21.01.2023, she made a complaint with Women Grievance Redressal Cell at Superintendent of Police office, Parbhani. However, her husband refused to maintain her.

In pursuance of aforesaid report, Crime No. 157 of 2023 has

been registered with Kotwali Police station against accused persons. After completion of investigation, charge sheet has been filed and now proceeding is pending in RCC No. 876 of 2023 before the JMFC, Parbhani.

5. Mr. P.N.Kalani, learned advocate for applicants submits that applicants are falsely implicated in aforesaid crime. They are unconcerned with family affairs of applicant No.1 and respondent No.2. The allegations in the FIR are baseless, hypothetical and palpably false. Respondent No.2 implicated the applicants deliberately and with intention to pressurize the husband to bow down to her demands. He would submit that at the most, there are some allegations against husband. In fact, the respondent No.2 has also visited Dubai alongwith her husband. Applicant Nos. 4 and 5 are residing at Pune. They never shared accommodation with respondent No.2. There are omnibus allegations against applicant No.3. He would, therefore, urge to quash the FIR and consequential criminal proceeding as against applicant Nos. 3 to 5.

6. Per contra, Mr. A.R. Kale, learned APP and Mr. S.U. Shaikh h/f. Mr. Y.M. Khan, learned advocate for respondent No.2 vehemently opposes the application contending that the allegations in the FIR coupled with the statement of witnesses recorded during the course of investigation are sufficient to make out offences against all the applicants. They need to be tried by the Court before whom the criminal case is pending.

7. We have considered the submissions advanced by learned

advocates for respective parties. We have perused the FIR and statement of witnesses, who are made part of the charge sheet. Apparently, respondent No.2 married with applicant on 1.1.2021. Applicant No.1 had a job in Dubai. He had second wife residing at Pune. Pertinently, there was a dispute between respondent No.2 and her husband. She alleges that she was made to reside with the in-laws at Parbhani and serve them, whereas, husband used to stay at Pune with second wife. The allegations of demand of money are unspecific, omnibus and without particulars. So far as the applicants are concerned, applicant No.3 is the sister in law. The only allegation employed against her is that she was asking the respondent No.2 to do all types of household works. So far as applicant Nos. 4 and 5 are concerned, they are residents of Pune. Their presence at the matrimonial house of respondent No.2 is not explained. Albeit, there are no allegations, particularly, to attract offences punishable under Sections 498A, 323, 504, 506 of IPC.

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. In the light of aforesaid observations by Supreme Court of India, we examined the contents of the charge sheet. Except omnibus

statements of relatives of respondent No.2, there is nothing to bring home the complicity of applicants in commission of offence. On perusal of contents of charge sheet, we find this to be case of over-implication and no foundation can be laid to bring home the charge against the applicants on the basis of material employed in charge sheet.

12. Hence we deem it proper to exercise our inherent powers under Section 482 of Cr.P.C. and allow the application to the extent of applicant Nos. 3 to 5.

Resultantly, we pass the following order

ORDER

[I] The Criminal Application is partly allowed;

[II] FIR in Crime No. 157 of 2023, registered with kotwali Police Station, District Parbhani for the offences punishable under Sections 498-A, 323, 504 r/w. 34 of IPC and consequential proceeding bearing RCC No. 876 of 2023 pending in the court of 4th Jt. JMFC, at Parbhani is hereby quashed and set aside to the extent of applicant Nos. 3 to 5.

[III] Application stands disposed of as withdrawn to the extent of applicant Nos. 1 and 2.

[III] R.C.C. No. 876 of 2023 to continue as against applicant Nos. 1 and 2 in accordance with law.

[IV] Criminal application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-