



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2992 OF 2023

1. Jabbar Abubakar Thara,
age-71 years, Occ. Business.
2. Shahenaj w/o Jabbar Thara,
age 65 years, Occ. Household.

Both R/o. House No.4-7-175, Mahaveer Nagar,
Purna, Tq. Purna, District Parbhani.

Applicants.

Versus

1. The State of Maharashtra,
through Police Inspector Purna
Police Station, District Parbhani
2. Mrs. Ujama Shikur Thara,
age 28 years, Occ. Household.
R/o Mastanpura, Purna,
Tq. Purna, District Parbhani.

..Respondents..

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Mrs. Gauri Kulkarni h/f Mr. S.S. Panale, Advocate for applicants.
Mr. V. K. Kotecha, APP for respondent no.1 State.
Ms. N.P. Thole, Advocate for respondent No.2 (Appointed)

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

DATE : 24th SEPTEMBER, 2024.

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

1. The applicants have approached this Court under Section 482 of the Code of Criminal Procedure praying for quashment of the FIR in crime no.73 of 2023, dated 9.4.2023, registered with police station

Purna, District Parbhani for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the IPC and consequential proceeding in RCC No.130 of 2023, pending before Judicial Magistrate First Class, Purna.

2. Respondent No.2 lodged a report dated 9.4.2023 with police station Purna alleging that on 29.9.2014, she married with Shikur s/o Yasin Khan. After marriage, she resided at matrimonial home. She was treated well for initial 9 years. Out of matrimonial relationship, couple is blessed with two children and she had conceived third pregnancy. It is alleged that since last two years, she has been harassed by her husband, mother-in-law and father-in-law saying that they do not like her. She has no sense of behaviour. Consequently, she was insulted and assaulted. She was not allowed to use mobile phone. She was not permitted to participate in any programmes. Her in-laws used to take children to Gujrat where her sister-in-law resides. Her cousin father-in-law i.e. applicant no.1 was asking her to take divorce from her husband and used to offer money for that purpose. Her husband was asking her to terminate pregnancy, doubting her character. On 21.1.2023 she was beaten by her husband and hence she filed complaint against him. Thereafter, her father-in-law issued legal notice to her. On the basis of aforesaid report, crime no.73 of 2023 has been registered against in all seven accused persons including the applicants. Consequently, investigation progressed and charge-sheet no.73 of 2023 has been filed in the Court of J.M.F.C., Purna. Eventually, RCC No.130 of 2023 is pending for trial.

3. Mrs Gauri Kulkarni h/f Mr. S.S. Panale, learned advocate appearing for the applicants submits that applicant no.1 is cousin father-in-law, applicant no.2 is cousin mother-in-law of respondent no.2. They have been falsely implicated in the aforesaid crime. There are disputes

between respondent no.2 and her husband. However, to bring pressure against him, she implicated relatives of husband including the applicants. The applicants are unconcern with family affairs of respondent no.2 and her husband. By inviting attention of this Court to contents of FIR, she would submit that respondent no.2 married on 29.9.2014 and resided in matrimonial home for more than nine years . presently she is residing with her parents. From contents of the FIR or even from statements recorded during course of the investigation, no offence can be made out against the applicants. She would therefore urge to quash the FIR and consequential proceedings.

4. Per contra, Mr. V.K. Kotecha, learned APP appearing for respondent no.1-State and Ms. Namita Thole, learned advocate for respondent no.2 vehemently opposes the application contending that contents of the FIR are sufficient to make out triable case against the applicants.

5. We have considered the submissions advanced by learned advocates appearing for respective parties. We have minutely considered contents of the FIR and statements of the witnesses recorded during the course of the investigation. Apparently, respondent no. 2 married more than nine years prior to lodging of the FIR. She has two children out of the matrimonial relationship with her husband. She stated that she was treated well for nine years. However, in recent past she has been ill-treated. Nature of the ill-treatment is stated to be teasing on the ground that she has no sense of behaviour or she was not permitted to use mobile phone or she was not permitted to public function. She states that on 21.1.2023 she was driven out of home by her husband. Consequently, she had filed a complaint.

6. If stipulations in the FIR are considered on its face value, there is no allegation of demand of amount. The trifling differences are alleged against husband and mother-in-law. Allegation of assault is made only against husband. Charge-sheet contains statement of parents of respondent no.2 and her brother. All three statements are stereotypical and do not constitute ingredients required to make out offence under section 498-A of the IPC. So far as the applicants are concerned, they are distant relatives of respondent no.2.

7. At this stage, reference can be given to the observations made by the Supreme Court of India in the matter of ***Preeti Gupta and another Vs. State of Jharkhand and another, reported in (2010)7 SCC 667*** 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.

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.”

8. In yet another matter of ***Kahkashan Kausar alias Sonam and others Vs. State of Bihar reported in (2022)6 SCC 599***, 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 analyzing 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”.

9. Similarly, in the case of ***Sushil Kumar 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 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 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 per-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.”

10. In light of the aforesaid observations if we look to contents of the FIR, particularly nature of allegations against applicant no.1 it is limited to the extent that, he offered money to respondent no.2 and asks her to divorce husband. So far as applicant no.2 is concerned, no specific allegation is incorporated. Her name is included alongwith other accused persons with omnibus allegations. We find that the implication of the applicants as accused is for obvious reasons. Since none of the ingredients of charged offences can be made out from contents of the FIR and charge-sheet, we deem it appropriate to exercise powers under section 482 of the Criminal Procedure Code and quash and set aside the FIR and consequential proceeding as against the applicants. Hence, we proceed to pass the following order.

ORDER

- [i] Criminal application is **allowed**.
- [ii] The First Information Report in crime no.73 of 2023 dated 9.4.2023 registered with police station Purna, District Parbhani for the offences punishable under

Sections 498-A, 323, 504, 506 r/w 34 of the IPC and consequential proceeding in RCC No.130 of 2023 pending before the learned Judicial Magistrate First Class, Purna is hereby quashed and set aside **to the extent of applicants herein.**

[iii] Criminal application stands **disposed of** accordingly.

[iv] Fees of the learned advocate appointed for respondent no.2 is quantified at Rs.5,000/- (Rs. Five Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[S.G. CHAPALGAONKAR, J.]

[SMT. VIBHA KANKANWADI, J.]

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