



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1283 OF 2023

1] Sagar Dheeraj Shinde
2] Pooja Sagar Shinde .. Petitioners

Versus

1] The State of Maharashtra
Through Tamalwadi Police Station,
Tal : Tuljapur, Dist. Osmanabad
2] Sureshani Abhijeet Shinde .. Respondents

**WITH
WRIT PETITION NO. 1292 OF 2023**

Anjali Dheeraj Shinde .. Petitioner

Versus

1] The State of Maharashtra
Through Tamalwadi Police Station,
Tal. : Tuljapur, Dist : Osmanabad
2] Sureshani Abhijeet Shinde .. Respondent

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Advocate for petitioners : Mr. Rahul A. Tambe (Cri.W.P./1283/2023)
Advocate for petitioner : Mr. Abhijeet C. Darandale (Cri.W.P./1292/2023)
APP for the respondent – State : Mrs. V.N. Patil – Jadhav
Advocate for respondent no. 2 in both Petitions : Mr. N.B. Jadhav
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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 30 APRIL 2024

ORDER (MANGESH S. PATIL, J.) :

These are separate writ petitions preferred by different accused seeking quashment of the same crime being Crime no. I-104 of 2023 of Tamalwadi Police Station, Taluka – Tuljapur, District – Dharashiv for the offences punishable under section 498-A, 323, 504

and 34 of the Indian Penal Code registered at the instance of respondent no. 2 and consequent Regular Criminal Case no. 344 of 2023 pending before the learned Judicial Magistrate First Class, Tuljapur.

2. Writ petition no. 1283 of 2023 is preferred by respondent no.2's husband's brother and brother's wife whereas the other writ petition has been preferred by the mother of the husband.

3. At the joint request of the parties, both the matters are heard simultaneously and finally.

4. The allegations as can be made out from the chargesheet are to the effect that respondent no.2's marriage was solemnized on 16-06-2021. She cohabited in the matrimonial home at Chinchwad barely for 54 days. During that time, the husband and other petitioners subjected her to physical and mental harassment. Respondent no. 2 got to know that her husband was having an affair. When she questioned him about it, he assaulted her. Her mother in law and the sister in law made her to perform the domestic chores calling her maid. Brother in law also used to abuse her. One day, she was driven out and the husband and these petitioners locked the door and went away without disclosing the destination. She went back to her parental home at Pimpala Budruk, Taluka – Tuljapur. Lastly, it is alleged that on 13-04-2022, her brother, paternal uncle and brother in law tried to meet

her husband and the petitioners to convince them, however, they flatly declared that they were no longer interested in allowing her to cohabit. The FIR was lodged on 11-07-2023.

5. Learned advocates for the petitioners would vehemently submit that it is yet another instance revealing as to how pursuant to a matrimonial dispute, the destitute try to rope in all the relatives of the husband just to wreak vengeance. They would submit that respondent no. 2 cohabited in the matrimonial home only for 23 days. They would point out that she had served the husband with a notice reply dated 17-09-2021 through her advocate in response to the notice served to her by her husband. Copy of both these are produced in writ petition no. 1283 of 2023.

6. Learned advocates would submit that it is only after such exchange of the notice reply that the FIR has been lodged as an afterthought. They would also submit that according to her reply notice, the marriage was solemnized on 16-06-2021 and she was sent back to parental home on 08-07-2021 and it does not expressly mention about she having ever returned to the matrimonial home thereafter. The notice reply merely states that when she telephoned her husband on 16-07-2021, her husband initially promised to take her back on 20-07-2021, however, he did not turn up. When she again tried to contact him, he did not respond. It was informed that he was

admitted in a hospital and all the petitioners abused her when she reached the matrimonial home on 29-07-2021 it was found locked. When she called her husband, he refused to allow her to resume cohabitation. She then reached the police station but the husband did not oblige. They would thus point out that respondent no.2 had cohabited in the matrimonial home barely for 23 days.

7. Learned advocates for the petitioners would also advert our attention to the copy of the complaint filed by the mother-in-law, the petitioner in writ petition no. 1292 of 2023, to the police commissioner dated 05-08-2021 complaining about mental harassment due to the quarrel between respondent no. 2 and her husband. They would, therefore, submit that all the allegations are against the husband and the petitioners have been falsely roped in without there being any material. They would, lastly, submit that statements of the witnesses are stereotyped and do not make out precise and specific allegations against any of the petitioners in subjecting respondent no.2 to cruelty.

8. Per contra, learned APP and learned advocate for respondent no. 2 would strongly oppose the petitions. They would submit that *prima facie* there are allegations attributing specific role to each of these petitioners. Chargesheet has been filed and the prosecution deserves to be extended an opportunity to substantiate the charge by leading evidence. It is not a matter of false implication.

9. We have considered the rival submissions and perused the papers.

10. Admittedly, respondent no.2's marriage was solemnized on 16-06-2021. According to the FIR and the statements of the witnesses, she cohabited with the husband in the matrimonial home for 54 days. However, a copy of the notice reply sent by her to her husband in response to the notice expressly mentions that she was sent back to the parental home on 08-07-2021 and there is absolutely nothing in the notice reply as to when thereafter she could resume cohabitation in the matrimonial home. This being a copy of notice reply sent by her, the genuineness of which has not been controverted by her by filing any counter affidavit, we have no reason to discard this copy of the notice reply purportedly issued by her through her advocate, being a material of impeccable character. It is, therefore, abundantly clear that respondent no. 2 cohabited with the husband in the matrimonial home not even for a month.

11. Once it is borne in mind and is abundantly clear that the respondent no. 2 could have shared the house with these petitioners barely for few days, less than a month, the allegations in the FIR and the statements of the witnesses who happen to be her father, mother, sister Sumitra and brother in law Vitthal Jaidev Kate, which are in verbatim the same, do not attribute any precise and specific role to these petitioners. Though it has been vaguely mentioned that the

mother in law and the sister in law were making her work like a maid and the brother in law was hurling abuses, in our considered view, the period for which respondent no. 2 cohabited with these petitioners under the same roof was so less, that there should have been specific and precise date and time when the ill-treatment was meted out. When the period was barely of 23 days, it is also highly improbable and, therefore, unbelievable that all these petitioners could have subjected her to any cruelty or could have taken part in any harassment meted out to her.

12. It needs to be borne in mind that even according to the FIR and the statements of the witnesses, respondent no. 2 got to know that her husband was having an affair and when she questioned him, he had assaulted her. This seems to be the genesis for the marital discord. If that be so, in our considered view, there is sufficient room to believe that respondent no.2 and her parental side relatives have ensured that even these petitioners who are the mother in law, brother and brother's wife of respondent no.2's husband are put to some harassment, to wreak vengeance. These are matters squarely covered by ***Preeti Gupta V. State of Jharkhand; (2010) 7 SCC 667***, ***Geeta Mehrotra V. State of U.P.; (2012) 10 SCC 741*** and ***Kahkashan Kausar V. State of Bihar; (2022) 6 SCC 599*** and it would be abuse of the process of law to make the petitioners face the prosecution with the quality of material in the chargesheet as discussed herein-above and

the cases of the petitioners fit in the parameters laid down in the matter of ***State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335.***

13. Both the petitions are allowed.

14. Crime no. I-104 of 2023 of Tamalwadi Police Station, Taluka – Tuljapur, District – Dharashiv for the offences punishable under section 498-A, 323, 504 and 34 of the Indian Penal Code registered at the instance of respondent no. 2 and consequent Regular Criminal Case no. 344 of 2023 pending before the learned Judicial Magistrate First Class, Tuljapur are quashed and set aside to the extent of the present petitioners.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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