



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3325 OF 2023

1. Usha w/o Harischandra Gaikwad,]
Age: 63 years, Occ.: Household,]
R/o. C/o. B-104, Dhruva Residency]
Pashan Road, Wangni (West),]
Tq. Karjat, Dist. Raigad.] (Mother-in-law of Resp.No.2 Complainant)
2. Harischandra s/o Gaikwad,]
Age : 64 years, Occ.: Pensioner,]
R/o. C/o. B-104, Dhruva Residency]
Pashan Road, Wangni (West),]
Tq. Karjat, Dist. Raigad.] (Father-in-law of - Resp.No.2 Complainant)
3. Riya w/o Vishal Kadam,]
Age :37 years, Occ. : Pvt. Service,]
R/o. Near Teachers Colony, Khar,]
Mumbai-51.] (Sister-in-law of - Resp.No.2 Complainant)
4. Vishal s/o Sharad Kadam,]
Age : 40 years, Occ. : Business,]
R/o. Near Teachers Colony, Khar,] (Husband of the Sister-in-law
Mumbai-51.] of Resp.No.2 Complainant)
5. Priya d/o Harischandra Gaikwad,]
Age :42 years, Occ.: Household,]
R/o. Building No.30, Pragati Apartment,]
Bandra (East), Mumbai-51.] (Sister-in-law of Resp.No.2 Complainant)
6. Ravindra s/o Bhakare,]
Age :50 years, Occ.: Service,]
R/o. Ambedkar Chowk, Nagapur MIDC,] (Cousin Father-in-law of
Tq. & Dist. Ahmednagar] Resp.No.2 Complainant)
7. Nandu s/o. Yadav Nikam,]
Age : 52 years, Occ.: Rickshaw Driver] (Maternal uncle of
R/o. R-1/406, Shiv-Vatika Apartment] husband of Resp. No.2 complainant)
Badlapur (West), Dist. Thane]

... APPLICANTS

VERSUS

1. The State of Maharashtra,]
Through Shrirampur City Police]
Station, Tq. Shrirampur,]
Dist. Ahmednagar]
(F.I.R. / Crime No. 0841]
dated 08.08.2023)]
2. Swati w/o. Priyesh Gaikwad,]
Age : 32 years, Occu. : Household,]
R/o. B-104, Dhruva Residency,]
Pashan Road, Wangni (West),]
Tq. Karjat, Dist. Raigad]
At present : Residing at Gondhawani,]
Ward No.1, Shrirampur,]
Tq. Shrirampur, Dist. Ahmednagar.]

... RESPONDENTS.

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Mr. Darshan D. Pokharkar, Advocate for Applicants.

Mr. A. M. Phule, APP for Respondent No.1 – State.

Mr. Mahesh K. Bhosale, Advocate for Respondent No.2 (Through V.C.).

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 9th AUGUST, 2024

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. By instant application, in-laws of respondent no.2, who registered FIR for commission of offence punishable under sections 498-A, 420 and 406 r/w section 34 of Indian Penal Code (IPC) have prayed for quashment of FIR.

2. In support of relief, learned counsel for applicants would submit that, apparently there is false implication on afterthought concocted version. That, it is a clear attempt to implicate the entire family.

Taking this court through the FIR, it is pointed out that, marriage is of December 2022 and FIR is registered in August 2023, alleging that, informant has been cheated by suppressing alleged mental ailment of husband. That, husband is not applicant herein. It is further pointed out that, allegations are also raised regarding demand of Rs.10,00,000/- for purchase of a flat by issuing threats to not to allow her to cohabit. That, apparently, there are no allegations of harassment or cruelty either physical or mental, and therefore, ingredients of neither section 498-A, nor 420 or 406 are available. It is further pointed out that, all applicants are residents of distinct places, but still they are roped in with ulterior motive. That, legal notice was issued by husband for cohabitation. That, husband has instituted proceedings under section 9 of Hindu Marriage Act. That, even otherwise, present applicants, who have no concerned with the relations of domestic affairs of husband and wife and false report is lodged with sole intention to harass entire family. Therefore, according to learned counsel, there is abuse of process of law and so relief as prayed is sought to be granted.

3. In answer to above, learned counsel appearing for respondent no. 2 as well as learned APP, both submitted that, apparently husband was of unsound mind. His such mental state condition was suppressed by applicants till marriage was performed. Informant

experienced about husband's mental state later on and when she confronted family members, only then they informed her about husband meeting an accident resulting into mental illness. It is clear cheating. That, there are also allegations of demand of Rs.10,00,000/-. Therefore, necessary ingredients being available for trial, relief is opposed.

4. Heard both sides. Perused the FIR at Exh.'A'. It is emerging that marriage of informant - respondent no.2 was performed with non applicant husband on 29.12.2022. According to informant, since she went to cohabit with husband, she experienced that husband indulged in soliloquy i.e. talking to himself on irrelevant topic. Therefore, she questioned her in-laws and then they told that he was being given treatment. She also reported that there was no intimacy or physical contact between herself and husband. She has levelled allegations against mother-in-law for demanding Rs.10,00,000/- for purchasing a flat, then she has named present applicant nos.3 to 7, who are relatives, for also putting up above demand of money. When she demanded her *Streedhan*, it was refused to be returned and so she lodged report.

5. In a landmark case of ***Girdhar Shankar Tawade v. State of Maharashtra***, (2002) 5 SCC 177, the Hon'ble Apex Court gave succinct enumeration of the object and ingredients of Section 498-A IPC as under :

“3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A.”

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008)

15 SCC 582, the Hon'ble Apex Court has observed that, *“Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC”.*

6. Taking the entire tenor of FIR into consideration, it is clearly seen that, there are allegations against parents-in-law i.e. applicant nos.1 and 2 for making demand, but there is no material against them for subjecting informant to any sought of mental or physical cruelty so as to attract section 498A of IPC. However, there are allegations of cheating by suppression and committing breach of trust of informant. As regards to

rest of the applicants i.e. applicant nos. 3 to 7, there are no allegations of any sought except alleging they too put up demand of Rs.10,00,000/-. Title clause shows that, applicant nos.3 to 7 are residents of distinct places. Neither their roles are defined distinctly nor any instances of any of the offence to connect them are reflected in the FIR. Implication as regards to applicant nos.3 to 7 is apparently without any material or allegations. There are general, vague and omnibus allegations as against them and “cruelty” as contemplated under law and as enumerated in ***Girdhar Shankar Tawade*** (supra) being not *prima facie* available, in the considered opinion of this Court, this case falls in the category spelt out in the case of ***State of Haryana and others v. Ch. Bhajan Lal*** ; AIR 1992 SC 604.

7. Resultantly, the FIR to the extent of 498A of IPC only with regard to applicant nos.1 and 2 is required to be quashed and set aside. Entire FIR as regards to applicant nos.3 to 7 is required to be quashed and set aside. Hence, we proceed to pass the following order :-

ORDER

- (i) The criminal application is partly allowed.
- (ii) The F.I.R. vide Crime bearing No.841 of 2023, dated 08.08.2023 registered with Shrirampur City Police Station, Tq. Shrirampur, District Ahmednagar is quashed and set aside to the extent of offence punishable under section 498-A of IPC only as against applicant nos.1 and 2.

iii) The entire F.I.R. vide Crime bearing No.841 of 2023, dated 08.08.2023 registered with Shrirampur City Police Station, Tq. Shrirampur, District Ahmednagar for the offences punishable under sections 498-A, 420, 406 r/w section 34 of Indian Penal Code is quashed and set aside to the extent of applicant Nos.3 to 7.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

Tandale