



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3654 OF 2022**

1. VIKAS HANMANT BANDUKE
Age: 39 years, Occu: Service,
R/o: Permanent address:
House No.2046, Shrikrushna Nagar,
Taroda (Bk), Nanded (Husband)
2. ANTESHWARABAI HANMANT BANDUKE
Age: 76 years, Occu: Household,
R/o: House No.2046, Shrikrushna Nagar,
Taroda (Bk), Nanded (Mother-in-law)
3. HANMANT MHAISAJI BANDUKE
Age: 77 years, Occu: Nil,
R/o: As above. (Father-in-law)
4. SAVITA GANGADHAR DUDHANE
Age: 42 years, Occu: Household,
R/o: Near Hanuman Mandir,
At Wanegaon, Post Waghi,
Taluka and District Nanded (Sister-in-law)
5. GANGADHAR SATVAJI DUDHANE
Age: 43 years, Occu: Teacher
R/o: As above (Husband of sister-in-law)
6. VILAS HANMANT BANDUKE
Age: 39 years, Occu: Service,
R/o: Borhate Vasti, Chandan Nagar,
Kharadi, Pune (Brother-in-law)
7. VIJAY HANMANT BANDUKE
Age: 45 years, Occu: Service,
R/o: Borhate Vasti, Chandan Nagar,
Kharadi, Pune (Brother-in-law)
8. RAJLAXMI VIJAY BANDUKE
Age: 16 years, Occu: student
R/o: As above (Daughter of applicant
No.7 & minor)
..Applicants

Note: Minor represented through her natural guardian,
father i.e. applicant No.7 Vijay Banduke.

Versus

1. STATE OF MAHARASHTRA
Through Police Station Officer,
Jalkot Police Station, Latur,
District Latur
2. YOJANA VIKAS BANDUKE
Age: 26 years, Occu: Household,
R/o: Umardara, Taluka Jalkot
District Latur
Mobile: 7350890031 ..Respondents

...
Mrs. Rani Bharuka-Bora h/f Mr. S. S. Bora, Advocate for the Applicants.

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

Mr. M. G. Biradar, Advocate for Respondent No.2.

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

DATED : 23rd SEPTEMBER, 2024.

ORDER (Per S. G. Chapalgaonkar, J):-

1. The applicants have approached this Court under Section 482 of the Criminal Procedure Code thereby praying to quash and set aside FIR in Crime No.168/2022, dated 01.10.2022, registered with Jalkot Police Station, Dist. Latur for offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code as well as charge-sheet bearing no.127/2022 dated 22.11.2022 and consequential criminal proceeding in R.C.C. No.415/2022 pending before Judicial Magistrate First Class, Udgir.

2. Mrs. Rani Bora, learned Advocate appearing for the applicants, on instruction, seeks permission to withdraw application to the extent of applicant no.1. Consequently, application is disposed as withdrawn to the extent of applicant no.1 and considered for applicant nos.2 to 8.

3. The respondent no.2 lodged report dated 01.10.2022 with Jalkot Police Station, Dist. Latur alleging that on 29.07.2016 she married with Vikas Hanmant Banduke resident of Maisur Colony, Nanded. No agreement as regards dowry was entered at the time of marriage. She resided alongwith her husband at Pune since he was serving as Software Engineer. She was treated well for initial period of one year. Out of matrimonial relations, couple is blessed with daughter namely Kadambari. It is further alleged that her husband raised demand of Rs.5,00,000/-, since dowry was not paid at the time of marriage. In pursuance of his demand, he assaulted her. Consequently, she lodged police report dated 05.09.2019. She was treated for injuries at Civil Hospital at Thane. Thereafter, she started residing at Nanded. However, her in-laws instigated husband for ill-treatment towards her. When she complained about mis-behaviour of her husband to father-in-law, he did not respond. Although her relatives from maternal side tried to reconcile dispute, there was no change in behaviour of in-laws and they continued with demand of Rs.5,00,000/- for purchase of vehicle and household articles. Lastly, she was driven out of home, therefore, since last three years she is residing with her parents at village Umardara.

4. On the basis of aforesaid report, Crime No.168/2022 has been registered with Jalkot Police Station, Dist. Latur against in all eight accused persons including applicants.

5. Mrs. Rani Bora, learned Advocate appearing for applicants submits that applicants have been falsely implicated in aforesaid crime. The contents of FIR are vague and omnibus. The stipulations as against applicants are not sufficient to make out any offence. She would submit that respondent no.2 has instituted

numerous proceedings against her husband at various police stations during stay at Pune and Khandeshwar, Mumbai. She would invite attention of this Court to the particulars of such proceedings enlisted in paragraph no.(f) of application. She would submit that only applicant nos.1 to 3 are charge-sheeted after investigation, as no evidence was found against applicant nos.4 to 8. She would, therefore, urge that FIR and charge-sheet bearing no.127/2022 filed against applicant nos.2 and 3 in R.C.C. No.415/2022 pending before Judicial Magistrate First Class, Udgir needs to be quashed and set aside.

6. Per contra, Mr. Phule, learned APP appearing for respondent-State and Mr. Biradar, learned Advocate appearing for respondent no.2 vehemently opposes application contending that FIR stipulates specific role against applicant nos.1 and 2. They were instrumental for demand of money and consequential ill-treatment. After investigation, sufficient material has been made part of charge-sheet to make out triable case against applicant nos.2 and 3.

7. We have considered submissions advanced on behalf of learned Advocates appearing for respective parties. We have perused FIR and statements of witnesses recorded during course of investigation. Pertinently, respondent no.2 married on 23.07.2016 with Vikas Hanmant Banduke. Out of matrimonial relationship, couple is blessed with daughter. Her husband was employed as Software Engineer, initially at Pune then at Panvel. The respondent no.2 resided with her husband at the places of his employment. The applicant nos.2 and 3 are resident of Taroda (Bk.) Dist. Nanded. As rightly pointed out by Mrs. Bora, respondent no.2 has instituted several criminal proceedings during

the period from 2017 till 2022 against her husband, which is sufficient to conclude that respondent no.2 has serious dispute with her husband. In this background, if we look to the contents of FIR, there are only two stipulations against applicant No. 2 and 3 that father-in-law never supported her, when her husband had raised assault and mother-in-law prevented her from second pregnancy. Other part of the FIR is omnibus and unspecific, particularly no offences as alleged can be made out against applicant No. 2 and 3 from the contents of the same. On perusal of statements recorded during course of investigation, we find that all statements are omnibus, unspecific and bereft to constitute offences as alleged.

8. At this stage, reference can be given to the observations made by the Supreme Court in case of ***Preeti Gupta and Another and Another Vs. State of Jharkhand and Another***¹, 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.”

¹ (2010) 7 SCC 667.

9. In yet another judgment in case of ***Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others***², 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 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 ***Sushil Kumar Sharma vs. Union of India and others***³, the Supreme Court observed in paragraph no.19 as under :-

“19. The object of the provision is prevention of the dowry meance. 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

² (2022) 6 SCC 599.

³ (2005) 6 SCC 281.

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 light of aforesaid principles of law, on perusal of material in charge-sheet, we find that no case can be made out against applicant nos.2 to 8. Even police have charge-sheeted only three accused i.e. husband and applicant nos.2 and 3. However, as observed by us in aforesaid paragraphs, material in charge-sheet is not sufficient to make out triable case against applicant nos.2 and 3. We, therefore, inclined to allow application and quash and set aside FIR and consequential criminal proceeding in respect of applicant nos.2 to 8 in exercise of inherent powers under Section 482 of the Criminal Procedure Code. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is partly allowed.
- b. The FIR in Crime No.168/2022 dated 01.10.2022 registered with Jalkot Police Station, Dist. Latur for offences punishable

under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code, to the extent of applicant nos.2 to 8, is quashed and set aside.

c. Similarly, charge-sheet bearing no.127/2022 dated 22.11.2022 as well as consequential criminal proceeding in R.C.C. No.415/2022 pending before Judicial Magistrate First Class, Udgir is also quashed and set aside as against applicant nos.2 and 3.

d. In view of withdrawal and disposal of application to the extent of applicant No. 1, criminal proceeding in R.C.C. No.415/2022 pending before Judicial Magistrate First Class, Udgir to continue against applicant no.1-Vikas Hanmant Banduke in accordance with law.

e. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE