



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3199 OF 2021

1. Suresh Namdeorao Pawade,
age 39 years, Occ. Agri. withdrawn.
2. Namdeo Babarao Pawade,
age 70 years, Occ. Agri.
3. Gayabai Namdeorao Pawade,
age 66 years, Occ. Household.

All R/o. Sai Nagari, Unit No.III,
Kabra Nagar, Nanded, Tq. & Dist. Nanded.

4. Shobhna Janak Bagal,
age 41 years, Occ. Household,
R/o Umare, Tq. Rahuri,
District Ahmednagar. Applicants.

Versus

1. The State of Maharashtra,
Through Police Inspector,
Bhagyanagar Police Station,
Nanded, Tq. & Dist. Nanded. Complainant
2. Minakshi Suresh Pawade,
age 35 years, Occ. Household,
R/o. Digras (Kondhur),
Tq. Kalamnuri, Dist. Hingoli. Respondents.

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Advocate for Applicants : Mr. A.I. Deshmukh
APP for Respondent no.1 : Mr. A D Wange
Advocate for Respondent no.2 : Mr. R B Narwade Patil

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

Dated : 21st October, 2024.

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

1. The applicants have approached this Court under section 482 of the Criminal Procedure Code seeking quashment of the FIR in Crime No.343 of 2021 registered with police station Bhagyanagar, Nanded for the offences punishable under section 498-A, 323, 504, r/w 34 of the Indian Penal Code (for short IPC).

2. During pendency of this application, charge-sheet has been filed. Consequently, the applicants have incorporated prayer clause “D” thereby seeking quashment of the charge-sheet in RCC No.1193 of 2021 pending before the Additional Chief Judicial Magistrate, Nanded.

3. The application was posted for hearing before this Court on 24.3.2022. Learned advocate for the applicants, on instructions, withdrawn this application to the extent of applicant no.1 Suresh Namdeorao Pawade-husband of respondent no.2. Consequently, it has been dismissed.

4. The respondent no.2 had lodged a report dated 10.10.2021 alleging therein that on 26.5.2009 she married with Suresh Pawade as per Hindu Rites and customs. She has one daughter namely Gunjan and a son namely Samarth out of the said matrimonial relationship. After marriage, she was residing with her mother-in law, father-in law, sister-in-law and husband in a shared accommodation. Her husband is engaged in the business of Grocery Shop. She was treated well for initial four years. It is further alleged that, when she delivered

a Girl child, the expenses of Rs.25,000/- to Rs.30,000/- were incurred by her husband. However, he was asking to bring that amount from her father. Due to persistent demand, her father paid Rs.15,000/-. However, in-laws were ill-treating her in pursuance of balance of the amount. Her father, brother, uncle made attempt to reconcile. However, such attempts were failed. On 8.9.2021 she was driven out of the house. Since then, she is residing with her parents at Digras, Tq. Kalamnuri. Consequently, she had given an application dated 29.9.2021 to the Women Desk at Nanded. Attempts of re-conciliation were made, but due to persistent demand of Rs.15,000/- settlement could not have arrived. Eventually, crime no.343 of 2021 is registered against in all four accused persons for the aforesaid offences. Investigation progressed and finally charge-sheet has been filed in RCC No.1193 of 2021.

5. Mr. A.I Deshmukh, learned advocate appearing for the applicants submits that marriage between the applicant no.1 and respondent no.2 has been solemnized on 26.5.2009. Thereafter, she resided at her matrimonial house till 2021. But on account of some dispute with husband, she left the matrimonial home and residing at her maternal home with parents. He would submit that allegations in the FIR are vague and omnibus. The applicants are falsely implicated. Therefore, he urges to quash and set aside the FIR and consequential proceeding.

6. Per contra, Mr. A.D. Wange, learned APP appearing for the respondent no.1-State and Mr. Narvade Patil learned advocate appearing for respondent no.2 vehemently

opposed the application. By inviting attention to the contents of the FIR and charge-sheet, they would submit that triable case is made out against all the applicants. Hence, this is not a fit case to exercise inherent powers under section 482 of the Criminal Procedure Code.

7. We have considered the submissions advanced by the learned advocates appearing for the parties. We have minutely perused contents of the FIR. We have gone through statements of the witnesses cited in the charge-sheet. Apparently, since 2009 the respondent no.2 resided with applicant nos.1 to 3 in a shared accommodation. She had two children out of the matrimonial relations. She alleges that in the year 2021 she was beaten and driven out of the home. Alleged reason behind such incident is that balance Rs.15,000/- spend at the time of her delivery of first child is not paid by her father. Apparently, such reason appears palpably unconceivable. The respondent no.2 has two children out of the marriage. Her daughter is aged about 8 years. She alleges that for balance of medical expenses incurred 8 years ago she was beaten which cannot be accepted. Even statements regarding assault to her is omnibus. No particulars or individual role of the accused persons are stipulated. Pertinently, applicant no.2 is aged about 70 years and applicant no.3 appears to be 66 years of age. Applicant no.4 is a married sister-in-law and as per the material placed before this Court, she resides at village Umare, Tq. Rahuri, District Ahmednagar i.e. more than 200 kms away from the matrimonial home of the respondent no.2.

8. At this stage, reference can be given to the observations made by the Supreme Court 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 para. 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.”

9. 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.

“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”.

10. 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.”

11. In light of the aforesaid observations of the Supreme Court, we have gone through 161 statements of parents of respondent no.2 recorded during investigation. Those are stereo type and sans particulars of individual act of the applicants to make out the offence under section 498-A. On careful scrutiny of the material in the charge-sheet, we find that this is a case of over implication. No case for trial can be made out against the applicants on the basis of material in the charge-sheet. Hence, we deem it appropriate to exercise inherent powers to avoid the abuse of process of law. Hence, we proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report in FIR in Crime No.0343 of 2021 dated 10.10.2021 registered with police station Bhagyanagar, Nanded for the

offences under section 498-A, 323, 504, r/w 34 of the Indian Penal Code and consequential proceeding in R.C.C. No.1193 of 2021 pending before the Additional Chief Judicial Magistrate, Nanded is hereby quashed and set aside to the extent of applicant nos. 2 to 4 herein only.

- iii. Since the application is already dismissed as withdrawn as regards to applicant no.1- Suresh Namdeorao Pawade, the proceeding in R.C.C.No.1193 of 2021 pending before the Additional Chief Judicial Magistrate may be continued as against him in accordance with law.
- iv. Criminal application stands **disposed off**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

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