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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3555 OF 2019

- 1] Naim s/o. Rashid Maniyar,
age 50 years, Occ. Business,
resident of Sanjaynagar, Kopargaon,
Talukar Kopargaon, Dist. Ahmednagar.
- 2] Rasheed s/o. Abdul Razzak,
age 70 years, Occ. Business,
R/o. As above.
- 3] Khursheedbee Rasheed Maniyar,
age 65 years, Occ. Business,
resident of as above.
- 4] Abdul Haneef Rasheed Maniyar,
age 54 years, Occ. Business,
resident of Lasalgaon, Ganeshnagar,
Niphad, Nasik.
- 5] Zahedabi w/o. Naim Maniyar,
Age 40 years, Occ. Household,
resident of Sanjay Nagar, Kopargaon,
Dist. Ahmednagar.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through City Police Station, Chalisgaon,
District Jalgaon.
2. Noore-Shama w/o. Naik Rasheed Maniyar,
age 35 years, Occ. Household,
resident of Islampura, Behind Chajed
Oil Mill Chalisgaon, Taluka Chalisgaon,
Dist. Jalgaon.

.. RESPONDENTS.

Ms. A.N. Ansari, Advocate for applicants.
Mrs. P.R. Bharaswadkar, APP for respondent State,
Mrs. Rashmi S. Kulkarni, Advocate h/f. Mr. S.S. Kulkarni, Advocate for
respondent No.2

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

DATE : 4th SEPTEMBER, 2024.

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

1. The applicants have approached this court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the F.I.R. in Crime No. 224 of 2019 dated 7.7.2019 registered with City Police Station, Chalisgaon for offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC as well as consequential proceeding in RCC No. 321 of 2019 pending before the JMFC, Chalisgaon.

2. Respondent No.2 herein lodged a report dated 7.7.2019 alleging that on 6.12.1999 she is married with applicant No.1 as per the Muslim rites and customs. After marriage, she resided in the matrimonial home alongwith her husband, father in law, mother in law and brother in law. She was treated well for six months. Thereafter, her husband, brought his first wife, namely, Jayeda alongwith her daughter Shagufta to home. When the informant objected for the same, she was asked to leave the home. However, she continued to reside in the matrimonial home and gave birth to daughter Ruksar. Thereafter, her husband raised demand of Rs. 1.5 Lakhs from her parents. The in-laws were harassing her in pursuance of such demand. Meanwhile, she gave

birth to two more children out matrimonial relationship with husband. It is further alleged that on 28.4.2016, Shagupta, daughter of her husband from his first wife fled away with one Shafik Pathan. The in-laws blamed informant alleging that she is behind the incident. Consequently, she was assaulted, abused and lastly on 26.8.2016 driven out of the home. Since then, she is residing at her maternal home. On 10.6.2018, again, her husband, father in law, mother in law and brother in law abused her and asked her to bring Rs. 3 Lakhs from the parents. On the basis of aforesaid information, crime No. 224 of 2019 came to be registered with police Station, Chalisgaon against in all 5 accused persons for offence punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC. In pursuance of aforesaid crime, the investigation progressed and charge sheet has been filed in the Court of JMFC at Chalisgaon. Consequently, RCC No. 321 of 2019 is registered and pending for trial.

3. Ms. A.N. Ansari, learned advocate appearing for the applicants during the course of submissions sought permission to withdraw the application to the extent of applicant No.1 Naim Rashid and applicant No.5 Vahedabi and restricted her submissions to the extent of applicant Nos. 2 to 4 only. She would submit that applicant Nos. 2 and 3 are old aged persons. They are father and mother in law of respondent No.2. Applicant No.4 is the brother in law of respondent No.2. By inviting attention of this Court to the contents of the FIR, she would urge that respondent No.2 married with applicant No.1 in the year 1999. The complaint as regards to the demand of amount and consequential ill-treatment has been first time raised in the FIR dated 7.7.2019. The respondent No.2 has three children out of matrimonial relationship with her husband. In the year 2016, she left the matrimonial home on her own accord and filed present complaint in the year 2019. Ms. Ansari

further submits that the allegations against the applicant Nos. 2 to 4 are general and omnibus. The particulars of overt acts to attract the charged offences are not stipulated. Respondent NO.2 may have her grievance against her husband and applicant No.5 i.e. first wife of her husband. However, all the family members have been falsely implicated in the present crime. According to her, present FIR and criminal proceeding is abuse of process of law. Hence, she urges to quash and set aside the FIR and consequential criminal proceeding.

4. Mrs. P.R. Bharaswadkar, learned APP and Mrs. Rashmi Kulkarni, learned advocate for respondent No.2 vehemently oppose the prayer in the application contending that respondent No.2 was consistently ill-treated by her in-laws who were residing in shared accommodation. However, since she was driven out of the home in the year 2016, she is residing with parents. Thereafter, on 10.6.2018, the in-laws assaulted respondent No.2 in pursuance of demand of Rs. 3 Lakhs . The incident was witnessed by independent persons. The charge sheet contains the statement of witnesses. As such, there is sufficient material to proceed with trial against all accused / applicants.

5. We have considered the submissions advanced by learned advocates appearing for respective parties. We have carefully perused the contents of the FIR and charge sheet. Apparently, respondent No.2 married with applicant No.1 in the year 1999 and resided in matrimonial home till 2016. The present FIR is lodged after 20 years of marriage. Respondent No.2 has three children out of the matrimonial relationship with applicant No.1. The allegation is made that after six months of the marriage, first wife of applicant no.1 alongwith her daughter was brought at home. Still, respondent No.2 continued her matrimonial

relationship with applicant No.1. The omnibus allegation is made about demand of Rs. 1.5 Lakhs and ill-treatment in pursuance of such demand. The allegations in the FIR are vague and un-specific. No instance of ill-treatment or the period of demand has been specified. Perusal of the charge sheet shows that statements of father, mother, grandfather, uncle and some others relatives are recorded. All the statements are stereotype. From the contents of such statements, no individual role or complicity of applicant Nos. 2 to 4 is discernible except the omnibus statement that applicant Nos. 2 to 4 alongwith other accused persons have harassed her or assaulted her in pursuance of so called demand.

4. At this stage, reference can be given to the observations made by the Supreme Court in the matter of ***Preeti Gupta Vs. State of Jharkhand, 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.”

12. In yet another matter of ***Kahkashan Kausar 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 para. 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 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.

13. Similarly, in the case of ***Sushilkumar 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 ignominy 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 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.”

5. Keeping in mind aforesaid observations of the Supreme Court of India, we find that on the basis of contents of FIR and charge sheet no case can be made out against respondent Nos. 2 to 4 to proceed with trial. The applicant Nos. 2 and 3 are old age persons. Applicant No.4 appears to be an independent person engaged in his business and unconcerned with the matrimonial affairs or dispute between respondent No.2 and applicants Nos. 1 and 5. In such a situation, possibility of false implication of the applicant Nos. 2 to 4 in present crime cannot be ruled

out. Even otherwise, in absence of specific allegations in the FIR or charge sheet no offence under Section 498-A, 323, 504, 506 r/w. 34 of IPC can be made out against applicant Nos. 2 to 4. Consequently, we are inclined to exercise our powers under Section 482 of Cr.P.C. to prevent abuse of process of law. Hence, we pass the following order.

O R D E R

[I] Criminal application is partly allowed;

[ii] Crime No. 224 of 2019 dated 7.7.2019 registered with City Police Station, Chalisgaon for offence punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC as well as proceeding in RCC No. 321 of 2019 pending before the JMFC, Chalisgaon is **hereby quashed and set aside to the extent of applicants Nos. 2 to 4 herein.**

[iii] The application stands dismissed as withdrawn to the extent of applicant Nos. 1 and 5. Hence, trial may proceed against them.

[iv] The application is disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-