

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO. 1037 OF 2023**

1. Ashvajeetkumar Babasaheb Nisargan,
Age:33 years, Occu.:Service,
R/at:Kendriya Vidyalaya No. 2,
Staff Quarters Type-3, C-3,
Ordinance Factory, Dehu Road,
Pune – 412 101.
2. Sulawatibai Babasaheb Nisargan,
Age:72 years, Occu.:Household.
3. Ashitkumar Babasaheb Nisargan,
Age:35 years, Occu.:Service.
4. Sonali Ashitkumar Nisargan
@ Sonali Manikrao Kamble,
Age:34 years, Occu.:Household.

Nos. 2 to 4 R/at:

Flat No. C-1, Pitajivivek, Barshi Road,
Bhagwanbaba Pratistan, Beed – 431 122.

5. Ashwini Prashant Kedari,
Age:37 years, Occu.:Household,
R/at:Samrat Ashok Nagar,
Near Z. P. School, Taluka – Mulshi,
Pirangut, Pune – 412 108.
6. Sanghmitra Dayanand Khandagle
@ Sanghmitra Babasaheb Nisargan,
Age:38 years, Occu.:Service,
R/at:Quarter No. 3/3P,
Staff Quarter, Kendriya Vidyalaya,
Aurangabad Cantonment – 431 002.

.....Applicants

Vs.

1. The State of Maharashtra
Through Senior Police Inspector,
Jodbhavi Peth Police Station,
Solapur City, Solapur – 413 002.
2. Rajnandini Ashvajeet Nisargan,
Age:22 years, Occu.:Household,
R/at:House No. 05, Bhavani Peth,
Jamma Vasti, Solapur – 413 002.

.....Respondents

Mr. Niranjan Kandade for the Applicants.

Smt. Madhavi H. Mhatre, A.P.P. for the Respondent-State.

Mr. Prathamesh Naik a/w Mr. Meghashyam Kocharekar for Respondent No. 2.

**CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.**

RESERVED ON : 9th AUGUST 2024.

PRONOUNCED ON : 14th AUGUST 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

- 1) Rule. Rule is made returnable forthwith. With the consent of the parties the Application is heard finally.
- 2) The Applicants seek to quash R.C.C. No. 935 of 2023 pending before the J.M.F.C. Court at Solapur, arising out of First Information Report (F.I.R.) No. 42 of 2023, dated 27th January 2023, registered with the Jodbhavi Peth Police Station, Solapur, for the offenses punishable under Sections 498-A, 504 & 506 read with Section 34 of the Indian Penal Code, 1860 (I.P.C.).
- 3) Applicants are the husband, mother-in-law, brother-in-law, his wife, and sisters-in-law of the Respondent No. 2 (first informant)

respectively.

4) Facts in brief:

4.1) It is discerned from the F.I.R. that, the Applicant No. 1 and informant were married on 18th October 2021. Her parents spent an amount of Rs. 4,00,000/- as per the demands of the Applicants. After the marriage she resided at her matrimonial home in Beed. Her husband is a Teacher in Kendriya Vidyalaya No. 2, Dehu Road, Pune. The Respondent No. 2 states that, the Applicants have inflicted tremendous amount of mental and physical cruelty on her. She has narrated several such incidents in the F.I.R.

4.2) It is stated that, just after 4-5 days of marriage Respondent No 2's father-in-law expired. The Applicants taunted her that, she was jinxed and was responsible for her father-in-law's death. The mother-in-law abused her by saying that her parents did not give any gold in the marriage and did not make proper arrangements for the same. The Applicant No.2/mother-in-law also quarreled with the Respondent No. 2's father. Her husband used to tell her that he did not like her and had married her reluctantly only on the wishes of his father. That, the Applicant No. 1 avoided conjugal relations with her and used to abuse her on the ground that her parents had not given her satisfactory dowry. That, the Applicants were trying to create disturbance in her married life.

4.3) It is her allegation that, her husband and Applicant No. 5/

sister-in-law used to sit for hours together in their bedroom and chat behind locked doors of their room and not allow the Respondent No. 2 to enter. She also states that, her husband used to smoke, drink and chat on his mobile phone for hours together. When she asked him as to his behavior, he always avoided answering her properly. On 26th April 2022 she had gone to Solapur to appear for her 3rd year internal exams of B.Com. Two days after her exam, her husband called her to Beed. When she went to Beed on 3rd May 2022 accompanied by her father, nobody opened the door for 15 minutes. Finally, when the door opened, her mother-in-law started abusing her father saying that they had not given enough dowry. She was thus compelled to return to Solapur with her father. In this manner, her husband has refused to resume cohabitation with her and his relatives viz. the Applicants No. 2 & 5 encouraged him to misbehave with her. The Applicants No. 1, 2 & 5 have persistently harassed her and her family members for not giving enough dowry in the marriage and not satisfying their demands for cash and valuables. It is for this reason that the Applicant No. 1 egged on by the Applicants No. 2 & 5 refused cohabitation with her. Hence, she has filed the present F.I.R.

5) Mr. Niranjana Kandade, learned counsel appears for the Applicants. Mr. Kocharekar, learned counsel appears for the Respondent No. 2 and Smt. Mhatre, learned A.P.P. represents the State.

6) Mr. Kandade submits that, the allegations in the F.I.R. are

vague and baseless and do not satisfy the requirement of offenses as alleged. The offenses punishable under Sections 504 & 506 of I.P.C. are not made out as there is neither any intention to insult nor any act of criminal intimidation. He further states that, there is no common intention under Section 34 of the I.P.C. since no specific allegation has been attributed to the Applicants. The Applicants No. 5 & 6 are not concerned with the offenses since they are not residing with the Applicant No. 1 and the Respondent No. 2. Hence Mr. Kandade submits that, no offense is made out in the F.I.R. warranting the continuance of the criminal proceedings against the Applicants.

7) At the very outset, Mr. Kocharekar submits that, the Applicant No. 2 & Applicants No. 3 to 6 have filed separate discharge applications in respect of the complaint made by the Respondent No. 2 under the provisions of Domestic Violence Act, 2005. The said applications are not yet allowed. He reiterates the allegations made by the Respondent No. 2 in her F.I.R. He also draws to our attention to the statements of the Applicant's father, her mother, her brother, and the person who arranged the marriage of the parties. There is also a statement of one Ramchandra Gaikwad, who resided near the vicinity of the maternal house of Respondent No. 2. All these persons have corroborated the story of ill-treatment narrated by the Respondent No. 2. Thus Mr. Kocharekar contends that, the narration of Respondent No. 2 is believable and the F.I.R.

discloses commission of the cognizable offenses as alleged by her and therefore the said crime may not be quashed.

8) Ms. Mhatre strongly opposes the Application and supports the arguments of the Respondent No. 2.

9) We have heard all the counsels and perused the record with their assistance.

9.1) A plain but careful reading of the F.I.R. reveals that, the Applicant No. 1-husband, his mother, and sister Ashwini Kedari have ill-treated the Respondent No. 2 and treated her with utmost mental and physical cruelty. Specific roles are attributed to these Applicants. Continual and persistent taunts of being jinxed and responsible for the death of Applicant No. 1's father caused considerable trauma to the Respondent No. 2. There are categorical descriptions of the Applicants No. 1, 2 & 5 harassing the Respondent No. 2 by demanding valuables and cash from her parents. The act of Applicants No. 1 & 2 in abusing the Respondent No. 2's father for not giving enough dowry when he had come to drop his daughter back to the matrimonial house speaks of cruelty of such nature as to cause reasonable apprehension of injury and danger in her mind regarding her life and limb. This conduct amounts to harassment with a view to coerce her and her parents to meet unlawful demands of these Applicants.

10) *Per-contra*, allegations against the Applicants No. 3, 4 & 6 are not categorical and certain. Moreover, the Applicant No. 3 is the husband of

Applicant No. 4 has no concern with the Respondent No. 2. We find that the allegations against the Applicants No. 3, 4 & 6 are quite general and vague. Allowing prosecution against the Applicants No. 3, 4 & 6 in the absence of clear allegations against them would simply result in an abuse of the process of law. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused-Applicants, it would be unjust if these Applicants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the victims' husband are forced to undergo trial.

11) It has been highlighted by the Apex court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged. At the same time, allegations against the Applicant No. 1-husband, Applicant No. 2-mother-in-law and Applicant No. 5-sister-in-law are specific and *prima-facie* believable. The contents of the F.I.R. *prima-facie* discloses commission of the offenses as alleged against the Applicants No. 1, 2 & 5 only.

12) The scope of exercise of power under Section 482 of the Criminal Procedure Code, 1973 and the categories of cases where the High Court may exercise its power under it relating to cognizable offenses to prevent abuse of process of any court or otherwise to secure the ends of

justice were set out in some detail by the Supreme Court in the case of *State of Haryana And Others Vs. Bhajan Lal And Others*¹. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by the Supreme Court are as follows:

“(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety does not prima-facie constitute any offence or make out a case against the accused.*

(2) ...

(3) *Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same does not disclose the commission of any offence and make out a case against the accused.*

(4) ...

(5) *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused...”*

13) Considering the facts in the present case and the settled legal position, we are of the view that, the contents of the F.I.R. *prima-facie* constitute a cognizable offense insofar as the Applicants No. 1, 2 & 5 are concerned. At the same time, allegations against the Applicants No. 3, 4 & 6 are general, vague, and omnibus. We find that the case against the

1. 1992 Supp (1) Supreme Court Cases 335.

Applicants No. 3, 4 & 6 falls within the categories culled out in the judgment by the Supreme Court in the case of *Bhajan Lal (supra)*.

14) In this view of the matter, we are not inclined to exercise jurisdiction under Article 226 of the Constitution of India to quash proceedings against the Applicants No. 1, 2 & 5.

14.1) However, the R.C.C. No. 935 of 2023 pending before the J.M.F.C. Court at Solapur, arising out of F.I.R. No. 42 of 2023, dated 27th January 2023, registered with the Jodbhavi Peth Police Station, Solapur as against Applicants No. 3, 4 & 6 are quashed and set aside.

14.2) The Application is partly allowed in the above terms.

14.3) Rule is accordingly partly made absolute.

(DR. NEELA GOKHALE, J.)

(A. S. GADKARI, J.)

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