

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 909 OF 2021

**1. Mr. Prakash Hotchand Bhatia
2. Mr. Hotchand Kimatrai Bhatia
3. Ms. Krittika Prakash Bhatia**

...Petitioners

Versus

**1. The State of Maharashtra
2. Mrs. Urmila Prakash Bhatia**

...Respondents

....

Ms. Swapna Kode, Advocate for the Petitioners.

Mrs. M. M. Deshmukh, APP for Respondent No.1-State.

Ms. Urmila P. Bhatia, Respondent No.2 in person.

PSI Rohidas Omase and Bajrang Desaid, Samata Nagar Police
Station are present.

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**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 4th MARCH, 2024

P.C.:-

1. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and inherent powers under Section 482 of Cr.P.C. challenging the FIR dated 4th October 2020 registered with Samata Nagar Police Station, Mumbai vide C.R. No. 1201 of 2020 for offences under Sections 498-A, 323, 504 read with 34 of the Indian Penal Code, 1860.

2. The respondent No.2 is the complainant. The petitioner No.1 is husband of Respondent No.2. Petitioner No.2 is father of petitioner No.1. Petitioner No.3 is daughter of petitioner No.1 and step daughter of respondent No.2.

3. The brief facts as spelt out in the impugned FIR are as under:-

The marriage of respondent No.2 was performed with Arun Kumar Roy on 21st May 1994. On account of differences between them, they started residing separately from 2010 onwards. Out of the said wedlock, the complainant has two daughters. The complainant initiated the proceedings for divorce against her husband in the Family Court at Bandra, Mumbai. The marriage was dissolved with decree of divorce vide order dated 26th February 2013. The custody of the daughters was given to the complainant. Her daughters were studying in the school at Kandivali. One of her daughter was friendly with petitioner No.3. The complainant used to visit the school to pick up her daughter. In February 2012, she had visited school to collect the results of her daughter. She got introduced to the father of petitioner No.3 (petitioner No.1). They became good friends. The petitioner No.1 informed the complainant that, he has two daughters. He has differences with his wife. The petitioner No.1 obtained divorce from his first wife on 30th October 2013. The custody of his daughters were with him. The petitioner No.1 and respondent No.2 fell in love. Respondent

No.2 decided to perform marriage with petitioner No.1. They performed marriage on 28th November 2014. Prior to marriage, the petitioner No.1 got writing from respondent No.2 that, after the marriage, daughters of respondent No.2 would not have any rights on the property of petitioner No.1. The respondent No.2 refused to sign such document. Under compulsion, she signed the agreement. After the marriage, petitioner No.1 and respondent No.2 started residing together at Kandivali, Mumbai. The father-in-law and mother-in-law of respondent No.2 started residing at Mahavir Nagar, Kandivali. Petitioner No.3 was taking her education in medicine and she was residing in the hostel at D.Y. Patil college at Vashi. The petitioner No.2 and 3 were instigating petitioner No.1 against respondent No.2. She was ill-treated. Petitioner No.3 was demanding money. Respondent No.2 was treated with cruelty. There was demand of costly articles. Respondent No.2 spent money on the education of petitioner No.3. She purchased valuable articles in the house. The petitioner No.3 used to abuse respondent No.2. Petitioner No.1 and Petitioner No.3 used to charge at respondent No.2. Petitioner No.1 started business by using Aadhar and Pan card of Respondent No.2. He obtained loan of Rs.10 lakhs in her name. She was required to spent money towards household expenses, education fees, school fees, college fees etc. On 22nd February 2019, petitioner No.1 assaulted respondent No.2. She was threatened. She took treatment for injuries suffered by her. The younger

daughter of respondent No.2 is taking education in South Korea. Respondent No.2 had requested the petitioner No.1 to send money for expenditure to her daughter. Since the petitioner No.1 had lied that he sent money. She questioned him. She was assaulted. On 30th October 2019, she had taken treatment with Doctor. She was continuously harassed and ill-treated. Respondent No.2 lodged the complaint with police. Her ornaments are in custody of petitioner No.1. Petitioner No.1 used to visit dance bar. He had received obscene messages from women. Petitioner No.1 had withdrawn money with the help of petitioner No.3 from the bank account of his first wife. Respondent No.2 had lodged the complaint with the police. Complaints were recorded. Petitioner No.1 had assaulted respondent No.2 on several occasions. Non-cognizable complaints were filed by her. Petitioner No.1 had sent huge money towards education of his daughters. He sold the property.

4. Learned Advocate for petitioners submitted that, the FIR is false. There is no elements of cruelty. The registration of FIR is afterthought. The petitioner No.1 had filed divorce petition before the Family Court. FIR was lodged subsequently. Petitioner No.2 is 77 years old person. He is residing separately. He has been dragged into the complaint. The petitioner No.3 is the step-daughter of respondent No.2. She has been deliberately impleaded in the FIR. There has been delay in lodging the FIR. The allegations are

vague. Petitioner No.1 had instituted divorce petition in September 2020 on the ground of cruelty. FIR was registered on 4th October 2020. Respondent No.2 was not forced to signed any agreement. Petitioner No.3 was MBBS student. She was residing in hostel. The allegations levelled against petitioner No.3 are false and baseless. Petitioner No.3 has been implicated so that, her medical license is cancelled. The petitioner No.3 does not reside together with petitioner No.1 and respondent No.2. Petitioner No.2 is residing at Mahavir Nagar. He has been staying separately from petitioner No.1 since last several years along with his wife and his younger son.

5. Learned Advocate for petitioner has relied upon the decision in the case of Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.¹.

6. Learned APP submitted that, pursuant to registration of FIR, the investigation proceeded. Statement of witnesses are recorded. She has brought to our notice statement of witnesses and investigation papers and submitted that, the investigation is over. Charge-sheet could not be filed in view of order dated 3rd March 2021 passed by this court.

7. Respondent No.2 has appeared in person. She has filed reply to the petition along with several documents. It is submitted that, the petitioners

¹ (2022) 6 SCC 599

have not made out any case for quashing the FIR. Specific role has been attributed to the petitioners. Petitioner No.1 has blackmailed the complainant. Petitioner No.1 has abused and assaulted her. Petitioner No.3 used to frequently visit the matrimonial home of respondent No.2. The respondent No.2 had lodged written complaint on 5th September 2020 against all the petitioners. Complaint is produced in the compilation. She has produced several documents. She has relied upon the compilation of document in support of her complaint. Complaint dated 5th September 2020 is part of said compilation. Complaint was made to Senior Inspector of Police, Samata Nagar Police Station. It is submitted that, the photographs annexed to the reply would corroborate the factum of assault by petitioner No.1. She has relied upon the medical report dated 7th June 2018 wherein it is mentioned that, she has been examined and she has suffered injuries on lower back, belt marks across flank area. The medical case paper dated 22nd February 2019, 30th October 2019, 29th July 2019 and 29th September 2020 and photographs are annexed to this application. These documents are at page Nos. 172, 174, 176, 179, 180, 181, 183, 185 of her reply. The respondent No.2 has relied upon the N.C. complaints which are at page Nos.186 to 198 etc. It is submitted that, there are photographs on record to show that, the petitioner No.3 is visiting matrimonial home of complainant. There is corroborative evidence to show that, the petitioner No.1 had assaulted her.

8. Respondent No.2 has relied upon the following decision of this Court in the case of Sunita Kumari and Ors. Vs. State of Maharashtra².

9. From the documents on record it is apparent that, the petitioner No.1 and respondent No.2 had performed marriage on 28th November 2014. Both of them got acquainted in the school of petitioner No.3. The Respondent No.2 has two daughters from the first marriage. Petitioner No.1 has two daughters from his first marriage. Petitioner No.3 is one of the daughter from the first marriage of petitioner No.1. Petitioner No.2 is the father-in-law of respondent No.2. Petitioner No.3 was student at the relevant time. She was pursuing her study in medicine. She was residing in the hostel at Vashi. It is alleged that, petitioner No.2 and 3 used to visit the matrimonial home of complainant. They were instigating petitioner No.1 against respondent No.2. The allegations against petitioner No.2 and 3 are omnibus and vague. However, the contents of the FIR and the documents produced by respondent No.2 would indicate that, the petitioner No.1 has not made out any case to quash the impugned FIR.

10. We have perused the investigation papers produced by Investigating Officer through learned APP. Statement of the witnesses recorded during investigation indicate that, one of the witness is working with respondent No.2 as maid servant. She has referred to quarrel between petitioner No.1

² 2022 SCC OnLine Bom 7438

and respondent No.2. Respondent No.2 was assaulted by petitioner No.1. From the tenor of the said statement it is apparent that, the overt-act is attributed to petitioner No.1. The additional compilation produced by learned Advocate for petitioners refers to the copy of hostel receipt of 2014 to 2019 and the leave and license agreement dated 27th May 2021 executed between the owner of the premises and the tenant including petitioner No.3 indicate that, she was occupying the said premises with other while pursuing her medical studies.

11. Considering the aforesaid circumstances, the impugned FIR registered against the petitioner Nos. 2 and 3 is required to be quashed and set aside whereas no ground is made out to quash the FIR qua petitioner No.1.

12. In the case of **Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.** (supra) the Apex Court has observed that, the courts should be careful in proceedings against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths and must keeping in view that the relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

13. In the case of **Sunita Kumari and Ors. Vs. State of Maharashtra** (supra) this Court had observed that, although the applicants appear to be residing at some distant places than the marital residence of non-applicant but, the allegations contained in the FIR and also statements of witnesses indicate that there used to be several occasions, when all these applicants or some of them had gathered together and had opportunities to talk personally or on telephone with non-applicant and they subjected her to humiliation, harassment and cruelty. The allegations in the FIR and statement of the witnesses prima facie indicate that the complainant was subjected to harassment and cruelty contemplated under Section 498-A of the IPC. The cruelty under Section 498-A of IPC is not only physical, it also takes within its fold several other forms of cruelty, including mental cruelty. The mental cruelty is an abstract concept and it is a matter of experience for a person who is subjected to cruelty. Many times certain taunts are made against another person but depends upon the manner in which the person takes those remarks or responds to them. Sometimes, the taunts might be seen to be innocuous by one person, while they may not be necessarily so perceived by another person. There are also certain derogatory remarks, which have been held by Supreme court to be presumptively constituting cruelty within the meaning of Section 498-A of the IPC. There was sufficient material which is indicative of mental cruelty. The meaning of the word “relative” would depend upon the nature of status

of persons which would be of those persons who are related by blood, marriage or by adoption.

14. In the present case, we do not find any prima facie material/evidence against the petitioner No.2 and 3 indicating physical and mental cruelty to prosecute them for the alleged offences. This Court is empowered to exercise the powers under Article 226 of the Constitution of India and or inherent powers under Section 482 of Cr.P.C. to quash the FIR or proceedings in the event it is found that it would be an abuse of process of law to continue investigation or prosecute the person in the absence of any cogent material. General and omnibus allegations cannot be manifest and situation where the relative of complainant/husband are forced to undergo trial. The Apex Court in the case of **Kahkashan Kausar @ Sonam and Ors.** (supra) had observed that, criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.

15. In view of the above, we pass the following order:-

ORDER

- (i) Criminal Writ Petition No. 909 of 2021 is partly allowed;
- (ii) The prayer for quashing the FIR dated 4th October

2020 registered with Samata Nagar Police Station, Mumbai vide C.R. No. 1201 of 2020 qua petitioner No.1 is rejected.

(iii) The FIR dated 4th October 2020 registered with Samata Nagar Police Station, Mumbai vide C.R. No. 1201 of 2020 is quashed and set aside qua petitioner Nos.2 and 3.

(iv) The Investigating Agency is at liberty to file charge-sheet against petitioner No.1 before the appropriate Court on completion of investigation.

(v) Petition stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)