IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3936 OF 2021

1. Sandesh Madhukar Salunkhe
2. Abhishek Amrit Salunkhe .... Petitioners

v/s.

The State of Maharashtra and anr. .... Respondents

Mr. Umesh Mankapure for the Petitioners.
Ms. M.M. Deshmukh, APP for the State.
Mr. Dilip Shinde for the Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI AND
N.R. BORKAR, JJ.

DATED : 04th JANUARY, 2024.

P. C. :-

. With consent, heard finally at the stage of admission.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners seek to quash the FIR No.0009/2021 registered with Bhilawadi Police Station, Dist. Sangli and consequent charge sheet being RCC Case No.86/2021 pending before the learned Joint Civil Judge, Junior Division, Palus for offences punishable under sections 406, 498-A, 504, 506 r/w. 34 of the Indian Penal Code.

3. Heard learned counsel for the Petitioners, learned APP for the State and learned counsel for the Respondent No.2. We have perused the records and considered the submissions advanced by the learned counsel for Respondent No.2.

4. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No.2. The marriage of the Respondent No.2 and Amol Amrit Salunkhe was solemnized on 13/07/2020. The Respondent No.2 claims that she was driven out of her matrimonial home in November, 2020. She lodged the FIR on 09/01/2021 alleging that her husband – Amol Salunkhe was unable to establish conjugal relationship with her since the date of her marriage. She has further alleged that her in-laws use to taunt and insult her. The Petitioner No.1 is the brother-in-law of the Respondent No.2. The only allegation levelled against these Petitioners being the brother and cousin of the husband of Respondent No.2 are that they commented that the Respondent No.2 does not know how to cook and that her parents have not taught her anything.

5. Needless to state that petty quarrels do not constitute cruelty within the meaning of Section 498-A of IPC. In order to constitute an offence under Section 498-A, there must be prima facie material to

prove (a) willful conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman ; (b) that they had harassed her with a view to coerce her to satisfy unlawful demand of dowry. It has to be established that the woman has been subjected to cruelty continuously or persistently or at least in close proximity of time of lodging the complaint. Reliance is placed on the decision of the Apex Court in ***Manju Ram Kalita v/s. State of Assam (2009) 13 SCC 330.***

6. In the instant case, the only allegation levelled against these Petitioners is that they had commented that Respondent No.2 does not know how to cook. Such comment does not constitute 'cruelty' within the meaning of the Explanation to Section 498-A of the Indian Penal Code.

7. In ***State of Haryana and others v/s. Ch. Bhajan Lal and others AIR 1992 SC 604,*** the Apex Court has set out by way of illustration the broad categories of cases in which the inherent powers under Section 482 of Cr.P.C. could be exercised. The illustrations relevant to decide the case in hand are :

> *"102. (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 do not prima facie constitute any offence or make out a case against the accused.*
>
> *…*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

8. In ***Geo Verghase v/s. State of Rajasthan and Anr., AIR 2021 SC 4764,*** the Apex Court has reiterated that :-

> *" 34. … Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent powers vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed."*

9. Having considered the nature of the accusations against the Petitioners, this is a fit case to quash the FIR by exercising power under

Article 226 of the Constitution and even under Section 482 of Code of Criminal Procedure. Hence, the Petition is allowed. FIR No. 0009/2021 registered with Bhilawadi Police Station, Dist. Sangli and consequent charge sheet being RCC Case No.86/2021 pending before the learned Joint Civil Judge, Junior Division, Palus stands quashed, qua the Petitioners.

10. Petition stands disposed of in above terms.

(N.R. BORKAR, J.) **(SMT. ANUJA PRABHUDESSAI, J.)**

PREETI HEERO JAYANI

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