

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 805 OF 2023

Premlata Satish Sharma and ors.	 Applicants
v/s.	
The State of Maharashtra and anr.	 Respondents

Mr. Aslam Khan i/b. Hemakshi Gandhi for the Applicants.
Ms. Rutuja Ambekar, APP for the State.
Mr. Akshay Dunde for the Respondent No.2.

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

DATED : 12th JANUARY, 2024.

JUDGMENT (Per :- Smt. Anuja Prabhudessai, J.)

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

2. By this Application filed under Section 482 of the Criminal Procedure Code, the Applicants seek to quash the FIR No. I-106/2023 registered at Vashi Police Station, Navi Mumbai and Charge Sheet No.I-152/2023 in R.C.C.No.1273/2023 pending on the file of learned Metropolitan Magistrate, Vashi, Belapur, Navi Mumbai for offences punishable under sections 323, 406, 498-A, 504 r/w. 34 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the FIR lodged by Respondent No.2. The Applicant No.1 is the mother-in-law and Applicant Nos.2 and 3 are the married sisters-in-law of Respondent No.2. The facts narrated in the FIR reveal that the marriage of Respondent No.2 and Nitin Sharma, the son of the Applicant No.1, was solemnized on 08/08/2022. This was their second marriage and each of them has a child from the previous marriage. The Respondent No.2 claims that at the time of wedding ceremony, her husband and his family members demanded several valuable gold items and cash as 'shagun' (good luck). When they visited Dehradun after their marriage, instead of staying in her matrimonial home, they stayed in a hotel. Her husband made her spend Rs.1,50,000/- to purchase laptop for his son and she was made to buy gold bangles for Applicant Nos.2 and 3 on their visit to Jagannathpuri.

4. Respondent No.2 alleged that her husband is alcoholic and would abuse and assault her. He has also retained her two mangalsutra, diamond earrings, diamond ring, diamond nose pin and two gold bangles. She claims that even when she was living separately with her husband, he would not spend enough time with her but would rather

spend time with his family. She has levelled allegations of cruelty against her husband and his family members including his minor son from the previous marriage. On the basis of the aforesaid allegations, crime was registered against the husband of the Respondent No.2 and his family members and upon completion of the investigation, charge sheet has been filed for the offences as stated above.

5. Learned counsel for the Applicants submit that the allegations in the FIR as well as the other material which form part of the charge sheet, do not disclose cognizable offence, much less an offence under section 498-A of IPC. He submits that the Respondent No.2 has collected her jewelry (*streedhan*). He submits that the FIR does not disclose commission of cognizable offence and hence, this is a fit case to exercise discretion under Section 482 Cr.P.C. to prevent an abuse of the process of law.

6. Per contra, learned APP and learned counsel for Respondent No.2 submit that the facts narrated in the FIR clearly indicate that the Applicants herein had demanded gold jewelry and cash in the form of shagun. The material on record also reveals that the Applicants herein had subjected Respondent No.2 to physical and mental cruelty. The

FIR discloses commission of cognizable offence, and hence, this is not a fit case to exercise discretion under section 482 of Cr.PC.

7. We have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. The Applicants have invoked the powers under section 482 of Cr.PC., which can be exercised (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of the Court, and (iii) to otherwise secure the ends of justice. In ***State of Haryana and others v/s. Ch. Bhajan Lal and others, AIR 1992 SC 204***, the Apex Court has set out by way of illustrations the broad categories of cases in which the inherent powers under Section 482 of Cr.PC. can be exercised. The illustrations relevant to decide the present case 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.

...

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same, do not disclose the commission of any offence and 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.”

9. 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.”

10. In this backdrop, the only question for our consideration is whether the FIR and the other material on record which forms part of the charge sheet, discloses commission of a cognizable offence.

11. The Applicant No.1 is the mother-in-law and the Applicant No.2 is the married sister-in-law of Respondent No.2. These Applicants are alleged to have subjected Respondent No.2 to cruelty and thereby committed offence under section 498-A of IPC. The term 'cruelty' for the purpose of Section 498-A of the IPC has been specifically defined. In order to constitute an offence under section 498-A, there must be *prima facie* material to prove that the Applicants by their willful conduct of such a nature had driven the Respondent No.2 to commit suicide or caused grave injury or danger to her life, limb or health or that they had harassed her with a view to coercing her to satisfy unlawful demand of dowry. In ***Mahalaxmi v/s. The State of Karnataka, 2023 Live law (SC) 1041***, the Apex Court has held that '*one instance unless portentous, in the absence of any material evidence of interference and involvement in the marital life of the complainant, may not be sufficient to implicate the person as having committed cruelty under section 498-A of the IPC.*' "

12. In the instant case, the Respondent No.2 and Nitin Sharma, the son of the Applicant No.1, met through a matrimonial website. They decided to marry and solemnized their marriage on 04/08/2022 with

consent of their family members. The only allegations against the Applicants are that (i) the husband of Respondent No.2 had made her give gold ornaments and cash to the Applicants as *shagun* (good luck), (ii) she had purchased gold bangles for the Applicant No.2 at her instance, (iii) the Applicant No.1 abused her when she expressed inability to incur household expenditure.

13. There are no allegations that these Applicants had coerced her to meet the unlawful demand and/or they had subjected Respondent No.2 to cruelty for not meeting the unlawful demand. Similarly, isolated incident of abuse or bad behaviour cannot be classified as ‘cruelty’ under section 498-A of the Indian Penal Code. Hence, in our considered view, the allegations levelled against the Applicants, even if accepted at their face value, do not constitute ‘cruelty’ as defined in the Explanation to section 498-A. There are no specific allegations against these Applicants for having retained or misappropriated the gold and diamond jewelry of the Respondent No.2. On the contrary, it is on record that in the course of mediation process, the gold and diamond ornaments have been returned to Respondent No.2.

14. It would be relevant to refer to the decision of the Apex Court in

Kahkashan Kausar alias Sonam and others v/s. State of Bihar and others, (2022) 6 SCC 599, wherein the Apex Court referred to several previous decisions and observed that “ *this Court has at numerous instances expressed concern over the misuse of section 498-A 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 manifests 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 warned the Courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them. ”*

15. In the present case, the Respondent No.2, has gone to the extent of levelling allegations against the minor son of her husband from the 1st marriage. She has dragged her mother-in-law, a 77 year old lady and the married sister-in-law in a matrimonial dispute without there being any material against them to show their involvement in the offence in question. Under such circumstances, compelling these Applicants to face criminal trial would be a sheer abuse of the process

of the Court.

16. For the reasons stated above, the Application is allowed. FIR No. I-106/2023 registered at Vashi Police Station, Navi Mumbai and Charge Sheet No.I-152/2023 in R.C.C.No.1273/2023 pending on the file of learned Metropolitan Magistrate, Vashi, Belapur, Navi Mumbai, stands quashed qua the Applicants.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
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JAYANI**

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