

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

CRIMINAL APPLICATION NO. 619 OF 2019

1. Amarlal Hasomal Lalwani
2. Inderlal Hasomal Lalwani
3. Ashok Hasomal Lalwani
4. Raju Hasomal Lalwani
5. Durga I. Lalwani
6. Sita Ashok Lalwani

..Applicants

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Ganesh Gole a/w. Vivek Sharma, Virat Shelatkar, Ajeet Shirodkar,
Bhavin Jain i/b. Ritesh Ratnam for the Applicants.

Ms. Heena Mistry, advocate appointed for Respondent No.2.

Mrs. M.M.Deshmukh, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, &
N. R. BORKAR, JJ.
DATED : 18th JANUARY, 2024.**

JUDGMENT (PER ANUJA PRABHUDESSAI, J.).

1. With the consent of parties, heard finally at the stage of admission.
2. This is an application under Section 482 of Cr.P.C. to quash Crime No. 100 of 2019 dated 29.03.2019 registered with Gandhinagar Police Station, Kolhapur for offences punishable under Section 498A, 323, 504, 506 r/w. 34 of the Indian Penal Code.

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3. The aforesaid crime was registered pursuant to the FIR lodged by

respondent no.2. The marriage of respondent no.2 and applicant no.1 was solemnized in the year 2001. The applicant and respondent no.2 have a son from the said wedlock. Respondent no.2 left the matrimonial home in the year 2014, She lodged the FIR in the year 2019 alleging that since about six months from the date of her marriage her husband and his family members had subjected her to physical and mental cruelty. She has also alleged that her husband had forced her to get a car and cash of Rs.1 Lakh from her parents, and had abused and assaulted her for not meeting the unlawful demand. She has stated that she was thrown out of the house in the year 2014 at 2.00 a.m. Since then, she is residing at her parental home. It is on the basis of these allegations that the aforesaid crime came to be registered.

4. Shri Gole, learned Counsel for the applicant states that there is considerable delay in lodging the FIR. He submits that the respondent left the house in the year 2014. Hence applicant no.1 filed divorce proceedings in December 2015. He submits that pursuant to the order passed by the Family Court, Kolhapur, as well as by the learned JMFC, in 125 proceeding, the applicant has been paying maintenance to respondent no.2 as well as to the child. He submits that the respondent has been lodging several complaints before various authorities. On 26.12.2018 she had lodged a similar complaint before the Dy. Superintendent of Police, Kolhapur by suppressing the fact that several

proceedings were pending between the parties. Learned Counsel for the petitioner further states that the divorce decree has been granted in the month of January 2024. He has further stated that on 5.1.2019 the respondent no.2 came to his shop and created ruckus, for which applicant no.1 had lodged a N.C. Complaint. He submits that she has roped the entire family of the applicant on the basis of omnibus allegations. He submits that the allegations in the FIR even if accepted in their entirety, the same do not disclose commission of any cognizable offence.

5. Per contra, learned Counsel for the respondent submits that respondent no.2 was thrown out of the house in the year 2014. She further submits that the applicant did not have any intention to take back respondent no.2, which is evident from the fact that he had filed a suit for divorce within a few months from the date of issuing notice for restitution of conjugal rights. She further submits that the allegations in the FIR disclose an offence under Section 498A, which is a serious offence.

6. We have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

7. In the instant case, the records reveal that the marriage of

petitioner no.1 and respondent no.2 was solemnized in the year 2001. It is not in dispute that the respondent no.2 is living in her parental home since the year 2014. The first information report is lodged in the year 2019 in respect of the alleged incidents from 2001 to 2014. In ***Hasmukhlal D. Vora & Anr. vs. The State of Tamil Nadu 2022 SCC Online SC 1732***, the Apex Court has observed that :

“26. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

27. While this court does not expect a full-blown investigation at the stage of a criminal complaint, however, in such cases where the accused has been subject to the anxiety of a potential initiation of criminal proceedings for such a length of time, it is only reasonable for the court to expect bare-minimum evidence from the Investigating Authorities.

28. At the cost of repetition, we again state that the purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law, is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.

29. ... While it is true that the quashing of a criminal

complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.”

8. In the instant case respondent No.2 has not offered any plausible explanation for such inordinate delay in lodging the FIR. It is not in dispute that the applicant had by notice dated 25.06.2015 called upon respondent no.2 to resume the matrimonial ties. Respondent no.2 neither replied to the said notice, nor did she join the matrimonial home. It is also on record that applicant no.1 had filed a divorce petition in the year 2015. Respondent no.2 had also filed an application for maintenance before the Family Court as well as before the Magistrate, and that pursuant to the orders passed by the Family Court and the Magistrate, the applicant has been paying maintenance. In all these years, respondent no.2 did not lodge the report against the petitioners alleging cruelty. The First Information Report reveals that on 5.1.2019 respondent no.2 had visited the shop of the petitioner, and the petitioner had lodged a complaint against her for creating a ruckus. It is only thereafter that the respondent no.2 had lodged the FIR. The aforesaid circumstances indicate that the FIR is not bonafide and is filed with

oblique motive.

9. Be that as it may, the Applicants have invoked the powers of this Court under Section 482 of Cr.P.C. to quash the first information report. It may be mentioned that Section 482 of Cr.P.C. confers inherent powers on the Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. In ***State of Haryana and others v/s. Ch. Bhajan Lal and others AIR 1992 SC 694*** 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 :

“108. ... (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.”

10. 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.”

11. In this backdrop, the only question for consideration is whether the FIR discloses commission of offence under Section 498A of IPC. It may be noted that cruelty is the essence of an offence under Section 498A 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.

12. In ***Manju Ram Kalita v/s. State of Assam (2009) 13 SCC 330***, the Apex Court while considering the meaning of ‘cruelty’ held thus:-

“ 21. In *Girdhar Shankar Tawade v/s. State of Maharashtra, AIR 2002 SC 2078*; this Court held that ‘cruelty’ has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

22. ‘Cruelty’ for the purpose of Section 498-A I.P.C. is to be established in the context of S.498-A as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as

‘cruelty’ to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty. ”

13. Reverting to the facts of the case, the allegations in the FIR are that (i) at the time the marriage respondent no.2 was informed that the applicant no.1 was a non smoker and that he did not consume alcohol. However, within six months from the marriage he started consuming alcohol, over which there used to be altercation between them; (ii) her sisters-in-law, respondent nos.5 and 6 would compel her to cook and do other household work during her pregnancy; (iii) they would not give her adequate medical treatment and did not allow her to visit her parents on festivals; (iv) her husband forced her to get a car and cash of Rs.1 lakh from her parents and when she refused to meet the unlawful demand, he abused and assaulted her.

14. Apart from making a vague statement that her husband had demanded a car and cash from her parents, she has not given any further details, particularly the year in which such demand was made. This was relevant in view of the delay in lodging the FIR. The other incidents narrated in the FIR had occurred within a period of six months from the date of marriage. As noted above, in all these years the respondent no.2 had not lodged any FIR alleging cruelty, and the allegations made in the

FIR are stale. The allegation leveled in the FIR, even if accepted in totality, do not disclose commission of cognizable offence. In such circumstances, compelling the petitioners to face criminal trial will amount to an abuse of process of the Court. Hence the application is allowed.

. Crime No.100 of 2019 dated 29.03.2019, registered with Gandhinagar Police Station, Kolhapur, is hereby quashed.

(N.R.BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)