

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

CRIMINAL APPLICATION NO. 1414 OF 2023

Neha Pandurang Dupare

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Abhishek Kulkarni a/w. Mr. Sagar Wakale for the Applicant.

Mr. Amol Gatne for the Respondent.

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

**CORAM : ANUJA PRABHUDESSAI, &
N. R. BORKAR, JJ.**

DATED : 18th JANUARY, 2024.

P.C.

1. With consent of learned Counsel for the respective parties, heard finally at the stage of admission.

2. This is an application under Section 482 of Cr.P.C. filed by the aforesaid applicant to quash Crime No. 169 of 2022 registered with Surgana Police Station, Nashik Rural, for the offences punishable under Section 498A, 406, 323, 504, r/w. 34 of the Indian Penal Code.

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

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by the respondent no.2. A perusal of the FIR reveals that the marriage of the respondent no.2 and Ajinkya Ulhas Dabhade was solemnized on 12.07.2016. The respondent no.2 lodged FIR on 16.12.2022 alleging that her husband and his family members subjected her to physical and mental cruelty.

4. It is not in dispute that the applicant herein is not a relative or family member of Ajinkya Dabhade-husband of the respondent no.2. The allegations in the FIR are that Ajinkya Dabhade is having extra marital relationship with the applicant which has led to frequent quarrels between them. She claims that her husband receives whats app messages from the applicant and that he intends marrying her.

5. In ***U Suvetha vs. State By Inspector of Police & Anr. (2009)***

6 SCC 757 the Hon'ble Supreme Court has held thus:

“5. Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-..

The word "cruelty" has also been defined in the Explanation appended thereto. It is in two parts.

(a) of the said explanation refers to a conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical);

(b) provides for harassment of the woman, where such harassment, is with a view to coercing for her or any person related to her to meet any unlawful demand for any property or valuable security. It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

...

9. The word "cruelty" having been defined in terms of the aforesaid Explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498-A of the Penal Code, An offence in terms of the said provision is committed by the persons specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to cruelty within the aforesaid provision

...

18. By no stretch of imagination would a girlfriend or even a concubine in any etymological sense be a “relative” . The word “relative” brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.”

6. As noted above, the applicant is not a relative of the husband of respondent no.2. The only allegation against the applicant is that she is having extra marital affair with the husband of the respondent no.2 and that he has been pressurizing respondent no.2 to give divorce in order to marry the applicant. There are no allegations of abetment as against the applicant. The allegations in the FIR even if accepted in entirety, do not disclose any cognizable offence qua the applicant. In such circumstances, subjecting the applicant to face criminal prosecution will be an abuse of process of law.

7. Hence the application is allowed in terms of prayer clause (a).

. Crime No.169 of 2022 registered with Surgana Police Station, Nashik Rural, is quashed, qua the applicant.

(N.R.BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)