

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

CRIMINAL WRIT PETITION NO.393 OF 2024

1. Prabhakar Lakshman Kate, &
2. Pratibha Prabhakar Kate.

.....Petitioners

Versus

The State of Maharashtra
and another

.....Respondents

Mr. Moinuddin Cutlerywala, Advocate for the Petitioners.

Smt. Madhavi H. Mhatre, APP for the Respondent No.1-State.

**CORAM : SARANG V. KOTWAL &
DR.NEELA GOKHALE, JJ.**

DATE : 07th OCTOBER, 2024

P.C. :

1. This Petition is filed for quashing of the FIR registered vide C.R. No.522/2023 dated 16.9.2023 registered with Panvel City Police Station, Navi Mumbai for the offences punishable under Sections 498-A, 354 read with 34 of IPC.

2. Heard Mr. Moinuddin Cutlerywala, learned counsel for the Petitioners and Smt. Madhavi Mhatre, learned APP for the Respondent No.1-State.

3. The record shows that vide order dated 2.7.2024,

notice was issued to the Respondent No.2, who was the original first informant. Vide the same order dated 2.7.2024, ad-interim relief was also granted, which was in the nature of restraining the investigating agency from filing the charge-sheet against the Petitioners. As per the office noting, the notice issued to the Respondent No.2 is served, however, nobody appears for the Respondent No.2. Therefore, we have proceeded to hear the matter on merits.

4. Before proceeding further a reference has to be made to the development in this case. After the order dated 2.7.2024 was passed restraining the investigating agency to file the charge-sheet, the charge-sheet came to be filed against all the accused, including the present Petitioners on 5.7.2024 before the Judicial Magistrate, First Class, Court No.6, Panvel. The investigating officer API Sushma Patil has tendered a report addressed to the Public Prosecutor of this Court. That report is dated 6.10.2024. It is mentioned that after the order was passed by this Court on 2.7.2024, the concerned APP had informed the investigating agency regarding the said order. On

6.7.2024, said order was actually uploaded on the Website of this Court. In the meantime, because of miscommunication the charge-sheet came to be filed on 5.7.2024. Realizing this mistake, the investigating officer produced a copy of the order passed in this Petition before the learned Magistrate. With the result, the learned Judicial Magistrate, First Class, Court No.6 vide the order dated 5.10.2024 observed that according to the investigating officer, the charge-sheet was not against the accused Nos.2 & 3 and prayed that their names be dropped from the charge-sheet. The learned Judge observed that return of charge-sheet only against the Petitioners, who were described as accused Nos.2 & 3, was not permissible. By observing this, learned Magistrate observed that the process was issued only against the accused Nos.1 and 4 under Sections 498A, 406, 354 of IPC read with 34 of IPC. It was specifically observed that the names of the accused Nos.2 & 3 i.e. the present Petitioners were struck down from the charge-sheet.

5. Learned APP could not justify the operative part of the order of striking down certain names from the charge-

sheet. She submitted that as of today, the situation is that the charge-sheet stands only against the accused Nos.1 & 4 and not against the present Petitioners. She further submitted that the investigating agency always has the opportunity to investigate the matter further under Section 173(8) of Cr.P.C. and file a supplementary charge-sheet, if found necessary.

6. Considering these submissions, learned counsel for the Petitioners expressed his apprehension that in future the investigating agency may again file charge-sheet against the Petitioners and they may have to face the trial. Therefore, he submitted that he may be permitted to make submissions on merits of the matter.

7. In this view of the matter, we have heard learned counsel for the Applicants on merits of the matter and we have also perused the charge-sheet which is now filed only against the accused Nos.1 & 4.

8. Learned counsel for the Applicant submitted that even bare reading of the FIR does not make out any of the

offences against the present Petitioners, who are father-in-law and mother-in-law of the first informant. The main allegations are directed against the accused No.1, who is the husband of the first informant and the accused No.4, who is the brother-in-law of the first informant. He submitted that there are only vague and general allegations made against all the accused wherein there is a reference to the names of the Petitioners as well. In any case, those allegations also do not attract the provisions of the aforesaid sections.

9. Learned APP submitted that the statements in the FIR against the Applicants satisfy the ingredients of those provisions. She also relied on the statements of the parents and brother of the informant recorded during the investigation.

10. We have considered these submissions and we have perused the FIR as well as the statements recorded during the investigation.

11. The FIR mentions that on 22.12.2018 she got married with the Petitioners' son Prathamesh. The informant's

father spent for the expenses. He gave gold ornaments as a gift. After marriage, she started residing with the Petitioners and their two sons i.e. accused Nos.1 & 4. There are allegations against the brother-in-law i.e. the other son of the Petitioners about outraging the informant's modesty. On one occasion, though the brother-in-law of the informant had outraged her modesty, both the Petitioners did not support her. There are general allegations that the Petitioners and their son Paresh harassed her mentally and physically. However, no details of any specific instances are mentioned. The other allegation is that in March, 2019, the Petitioner No.1 dropped the informant to her parents' place and told her not to enter their house. The FIR thereafter goes on to mention various allegations against the Petitioners' son Prathamesh i.e. the informant's husband. There is only one more allegation against the present Petitioners in respect of one incident when the Petitioners, their sons and the informant were travelling in a car and there was some argument as Prathamesh was driving the car very fast. There is a general allegation that the Petitioners,

Paresh and his wife started beating her. The informant got down from the car and went home in a rickshaw. The other allegations after that are only against her husband. Thus, it can be seen that the allegations against the Petitioners are absolutely vague. No specific instances are mentioned. As far as the incident in the car is concerned, there are general allegations against everybody in the car which is difficult to believe and there are no specific allegations against the Petitioners as such.

12. Considering these aspects, the ingredients of Sections 498-A and 354 of IPC are not made out against the Petitioners at all.

13. As far as the statements recorded during the investigation are concerned, the parents and the brother of the informant had given their statements. We have perused those statements. Even in those statements there are no specific allegations against the Petitioners. Those allegations are only repetitions of the allegations made in the FIR in respect of the general allegations. There is absolutely no specific allegation

against either of the Petitioners in those statements.

14. Considering these circumstances, continuation of proceedings against the Petitioners would be abuse of process of law and, therefore, those proceedings need to be quashed and set aside.

15. Hence, the following order:

:: O R D E R ::

- i. The FIR registered at Panvel City Police Station, Navi Mumbai vide C.R. No.522/2023 under Sections 498-A, 354 and 34 of IPC and consequent proceedings against the Petitioners are quashed and set aside.
- ii. It is made clear that this order is pertaining only to the present Petitioners and shall not affect the proceedings against the other co-accused.
- iii. The Petition is disposed of accordingly.

(DR.NEELA GOKHALE, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
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PRADIPKUMAR
PRAKASHRAO
DESHMANE
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