



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.509 OF 2021

- 1) Sumit s/o Gajanan Gavhale,
Aged about 33 years, occu; private job,
r/o Shivnagar, Telhara, Dist. Akola.
- 2) Shri Gajanan s/o Namdeo Gavhale,
Aged about 61 years, occu; retired
teacher, r/o Naya Andura, Tq. Balapur,
Dist. Akola.
- 3) Shri Sachin s/o Gajanan Gavhale,
Aged about 35 years, occu:-Teacher,
r/o Shivnagar, Telhara, Dist. Akola.
- 4) Smt. Meera w/o Gajanan Gavhale,
Aged about 55 years, occu: housewife,
r/o Naya Andura, Tq. Balapur, Dist.
Akola.
- 5) Smt. Vidya @ Preeti w/o Sachin
Gavhale, Aged about 30 years, occu:
service, r/o Shivnagar, Telhara, Dist.
Akola.
- 6) Shri Ramdas s/o Haribhau Gavhale,
Aged about 45 years, occu:- cultivator,
r/o Sainagar, Telhara, Dist. Akola

.... Applicant(s)

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- 1) State of Maharashtra,
Through Police Station officer, Telhara,
Dist. Akola.

- 2) Smt. Sneha w/o Sumit Gavhale,
Aged about 32 years, occu: computer,
r/o Amrapalinagar, Shegaon, Tq.
Shegaon, Dist. Buldhana.

.... Non-applicant(s)

Mr. C.F. Bhagwani, Advocate for the applicants
Mr. Anup Badar, AGP for the Respondent/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 18.07.2024.

ORAL JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. C.F. Bhagwani, learned Advocate for the applicants and the learned APP for the State.
2. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the learned Advocates for the parties.
3. The present application has been filed invoking inherent powers of this Court under Section 482 of CrPC for quashing the FIR vide C.R. 133 of 2021 dated 31.03.2021, registered with Police Station, Telhara, District Akola for the offence punishable under Section 498A read with Section 34 of the IPC, at the behest of the

present non-applicant No.2. In view the filing of the charge-sheet during the pendency of the application, a prayer has been amended and now the proceeding in RCC No.57 of 2021 pending before the learned Judicial Magistrate First Class, Telhara, District Akola, is prayed to be quashed and set aside.

4. The applicant No.1 is the son of applicant Nos.2 and 4 and brother of applicant No.3. The applicant No.5 is the wife of applicant No.3 and applicant No.6 is the parental uncle of applicant No.1. The applicants are contending that the applicant No.1 never married with non-applicant No.2, but they were knowing each other since 2012. They were friends and non-applicant No.2 used to disclose personal life with him. The non-applicant No.2 was in need of money and the applicant No.1 had provided financial assistance in cash to her. Sometime she had repaid that amount also by transferring the same in the account of the applicant No.1. When she was in need of amount of Rs.1 Lakh, asked the applicant No.1 to give, but it was refused. On account of which, the non-applicant No.2 got irritated and started giving

threats that she would upload anti-social messages over the Facebook in the name of the applicant No.1. She also gave threats to implicate the applicant No.1 and his family members in some cases. The non-applicant No.2 had forcefully garlanded him and now it is contended by her that there is a marriage between them. Due to fear and threats, the amount has been transferred by the applicant No.3 keeping in view of the family reputation. In fact, the non-applicant No.2 had issued legal notice to applicant No.1 on 21.09.2020, stating that there is no consummation of marriage between the applicant No.1 and herself. Thereafter, she also made a report to the Telhara Police Station on 11.01.2021, wherein she has similarly stated that there is non-consummation of marriage. The applicant No.1 is not taking her for cohabitation but still she managed to get FIR C.R. 133 of 2021 registered for the offence punishable under Section 498A read with Section 34 of the IPC on 31.03.2021. It is not only based on a concocted story and does not attract the ingredients of the offence. The learned Advocate for the applicants, by giving all the above said details, submits that it would be futile exercise to ask the applicants to face the trial in view of the

fact that there is no consummation of marriage and as per the contention of the non-applicant No.2, she was never taken for cohabitation by the applicant No.1, therefore, it does not amount to cruelty on any count.

5. The learned APP strongly opposes the application and submits that now the investigation is over and the charge sheet is filed, therefore, let the applicants to face the trial.

6. The non-applicant No.2 appeared through learned Advocate, however, after noting that she is absent on 18.04.2024, this Court passed a specific order that if she remains absent on the next date, the matter will be heard in her absence. The matter got adjourned on 30.04.2024 to 18.07.2024 and on that day also none appeared for the non-applicant No.2 and there was no attempt to file reply on her behalf.

7. If we consider the notice, which was issued by the Advocate Pravin Palhade on behalf of the non-applicant No.2 i.e. Annexure-II, the contents of which would show that though it is stated that there was marriage between the non-applicant No.2 and the

applicant No.1, yet taking into consideration the lock down, it was decided that she would resume cohabitation afterwards. In spite of lapsing two months as the applicant No.1 has not taken her for cohabitation and even the efforts have not been taken to restore the marriage, the said notice was given. Further the complaint which was filed on her behalf with Telhara Police Station on 11.01.2021 is also on the same line. It does not show that she had ever resided with the applicants. She had then, filed application with Mahila Samupdeshan Kendra (Women's Counseling Centre) Police Station, Akot, District Akola on 20.01.2021, stating that she had lodged the complaint on 11.01.2021 with Police Station, Telhara and she is ready to go for cohabitation, but the present applicants are not ready to take her and therefore, she lodged FIR for the offence punishable under Section 498A of the IPC thereby, she reiterates that she had given the complaint dated 11.01.2021 with Police Station Telhara. Now all of a sudden, it appears that she lodged FIR on 31.03.2021 contending that she was treated properly for one and half to two months at her matrimonial home by the husband and in-laws and thereafter, the husband started demanding

amount to be brought from her parents house and the other applicants started harassing her. This is in total contradiction to what she had said in her legal notice and earlier complaint dated 11.01.2021. It appears that the applicant No.1 had given the complaint against the non-applicant No.2 on 19.03.2021 with Telhara Police Station.

8. If we consider the statements of the witnesses, then it is mainly of relatives and the friends. The important point to be noted is that in their statements, it is said that exchanging of garlands, thereby amounting to marriage was performed on 18.07.2020 in a cloth shop by name Spotlight which has been questioned by the applicants. Even if we accept for a moment that there was any such marriage, yet in the legal notice as well as the complaint dated 11.01.2021 the respondent No.2 has stated that she was never taken to matrimonial home and the marriage is not consummated. Under such circumstance, it will not give rise to the offence punishable under Section 498A of the IPC. Section 498A of the IPC requires that the wife should be subjected to cruelty by

the husband and/or his relatives. The word 'cruelty' has been defined in Explanation to Section 498A of the IPC and it consists of (a) and (b) with word in between 'or'. For proving the cruelty as contemplated under Section 498A, Explanation (a), prosecution should prove willful conduct which is 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 (whether mental or physical) of the woman. That means conduct should be of such nature that a woman should feel that she has been left with no option but to commit suicide or it amounts to cause grave injury or danger to life, limb or health of the woman. There are no such averments in the FIR. Further for proving the cruelty, as defined in Explanation (b) to Section 498A of the IPC, the prosecution should prove that a woman is subjected to harassment of such a nature to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Though at a later point of time, in the FIR, the non-applicant No.2 says that she has given some amount to the applicant No.1, but her earlier complaint

dated 11.01.2021 and the legal notice, do not contain any such contents and mere demand will not amount to cruelty, but coercive acts done for fulfillment of such demand would amount to cruelty.

9. Here the non-applicant No.2 was never residing with the applicants, as is appearing from legal notice and earlier complaint. The demand and inaction on the part of the applicant No.1 to take her for cohabitation cannot be so tagged together so as to interpret the offence as contemplated in Explanation (b) of Section 498A of the IPC. Hence, this is a fit case where we should exercise our inherent powers under Section 482 of the IPC. It would be futile exercise to ask the applicants to face the trial. Hence, we pass following order:

- (i) The application is **allowed**.
- (ii) The FIR C.R. No.133 of 2021 dated 31.03.2021 lodged with Police Station Telhara Police Station District Akola for the offence punishable under Section 498A read with Section 34 of the IPC and the entire proceedings, arising out of the said FIR, i.e. RCC No.57 of 2021 pending before the learned

Judicial Magistrate First Class, Telhara, District Akola,
stand quashed and set aside.

Rule accordingly. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]