



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.655 OF 2022

1. Sau. Sunitasingh Jayprakashsinha Thakur,
Aged about 52, Occup. Housewife, R/o
Welcome Society, Zingabai Takli, Nagpur.
2. Jayprakashsinha Thakur, aged about 56,
Occup. Service, R/o Welcome Society,
Zingabai Takli, Nagpur.
3. Renu Ngendrasinha Thakur, Aged about
42, Occup. Housewife, R/o. Welcome
Society, Zingabai Takli, Nagpur.
4. Nagendrasinha Thakur, Aged about 45,
Occup. Business, R/o Welcome Society,
Zingabai Takli, Nagpur.

Applicants

-Versus-

1. State of Maharashtra, through Police
Station Officer, Ramnagar Police Station,
Tq. and District, Chandrapur.
2. Pooja Sushilsinha Thakur, aged about
major, Occup. Housewife, R/o. C/o. Old
State Bank Colony, Mul Road, Ramnagar,
Chandrapur.

Respondents

Mr. A.B. Band, counsel for the applicants.
Mr. M.K. Pathan, A.P.P for non-applicant State.
Ms. Ratna Singh, counsel for non applicant No.2.

**CORAM VINAY JOSHI &
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 25th January 2024.

ORAL JUDGMENT (Per : Vinay Joshi, J.)

Heard.

2. **Admit.** The application is heard finally with the consent of the learned counsel for the parties.

3. By this Criminal application under Section 482 of the Code of Criminal Procedure, the applicants are seeking to quash the criminal prosecution arising out of Crime No.6 of 2022 registered with Police Station Ram Nagar, District Chandrapur, for the offence punishable under Section 498-A r/w 34 of the Indian Penal Code.

4. Quashing is sought on account of absence of specific material to put the applicants on trial. It is the applicant's case that the allegations are vague and general, which even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case for trial. The applicant no.1 is the mother-in-law, no.2 is the father-in-law, no.3 is sister of mother-in-law and no.4 is the husband of the sister of mother-in-law of the informant. We make it clear that husband is not before us. In the result, we have considered, the *prima facie* material to

the extent relatives of husband only.

5. The couple got married on 06.12.2020, on which the informant lady resumed to cohabit at Nagpur in the house of her husband and in-laws. At the relevant time, the informant was serving with Zilla Parishad, Chandrapur as a Junior Engineer. Since, beginning she started to stay at Chandrapur and used to return at her husband's house at weekends. However, from the month of February-2021 i.e. after two months from marriage, the relation has worsened which resulted the informant completely forsaking the company of husband and her in-laws. On such a background, we have considered the allegations levelled by lady in her First Information Report.

6. The informant stated that within initial two months, thought the relations were smooth, however, it was followed by husband insisting to raise monetary demand of five lacks for doing a business. The informant gave some of Rs.50,000/- on 08.01.2021, however, the demand continued by her husband. She stated that applicants used to instigate her husband in turn, she was harassed by her husband for monetary demand. The informant

stated the things to her parents on which a meeting was held, however, the applicants and husband have not yield the request.

7. We have also gone through a written report dated 29.12.2021 filed by the informant with the police, which was initiation of a dispute. The informant's learned counsel took us through paragraph no.7 to 9 of the written report. It reveals that there are allegations against present applicants that they used to join the husband in the harassment. It is alleged that applicant Nos. 3 and 4 though resides separately, however, they were frequently visiting at her husbands house and also joining him in raising monetary demand. Some meetings have been held, however it does not work.

8. The learned counsel for the applicants has primly canvassed that hardly for initially one week from marriage, the informant stayed in family and thus, there was no occasion to harass her mentally as well as physically. It is submitted that after two months from marriage, she returned to her maternal house and thus, their joint residence was only at the weekend during first two months and then, there was total separation. It is submitted that

since, the informant did not return, husband has issued a notice for restoration on 1.07.2021, as well as filed a police report against wife on 27.09.2021. On the other hand, the wife has also issued a notice for restoration on 01.11.2021 i.e. after one year and then filed police report on 05.11.2022. Endeavour was made to state that since, the husband has issued the legal notice, in retaliation wife also issued a notice as well as filed police report to pressurise the husband and his family members.

9. The applicants have placed strong reliance on the decision of the Supreme Court in case of **Abhishek Vs. State of Madhya Pradesh** reported in **2023 LiveLaw (SC) 731:2023 INSC 779**, wherein a review was taken of earlier decisions in the filed and finally it has been expressed that on the basis of general and omnibus allegations, lacking specific details regarding how and when relatives subjected to the harassment, the prosecution would not lie. Earlier decisions in case of **Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others** reported in [(2022)6 SCC 599] and in the case of **Preeti Gupta and another Vs. State of Jharkhand and another** reported in [(2010)7 SCC 667] has been considered by Supreme Court while expressing that the tendency of

implicating relatives of husband is at rise and thus, on general and omnibus allegations the prosecution would not stand.

10. On the other hand, the informant's, learned counsel initially relied on the decision of this Court in the case of **Muzhir Ahmed Itbar Khan and Ors. Vs. The State of Maharashtra and anr.** reported in **2016 ALL MR (Cri.) 980**, wherein, the court has explained the meaning of the term '*cruelty*' in the sense of Section 498-A of the Indian Penal Code and further expressed that the worth of the allegations would be tested in the course of regular trial. The question, whether, the applicants have harassed and treated the wife in cruel manner, is a matter of trial and it cannot be said at initial stage, that there is no case. While, making such observations this Court also took a note that the allegations therein made in the First Information Report, *prima facie*, appears to be specific and supported by witnesses. On such a factual observation, this court expressed that it is not a stage to scrutinise the material. There can be no dispute that if there are specific allegations about the occurrence then it is wholly impermissible for this Court to enter into the factual arena to adjudicate the correctness of the allegations. However, on case to case basis, we have to examine the

tenability of the prosecution in the light of the decision of the Hon'ble Supreme Court in the case of State of **Haryana and others Vs. Bhajan Lal and others** reported in [(1992) Supp (1) SCC 335].

11. The informant's learned counsel further relied on the decision of this Court in **Criminal Application No. 233 of 2022 (Rajesh Himmat Pundkar and ors. State of Maharashtra)** dated **08.06.2022** to contend that merely because, some of the relatives (applicant Nos.3 and 4) are staying elsewhere that *ipso facto* does not mean that they have no role in the harassment. Our attention has been invited to paragraph No.13 of the decision, wherein, it is expressed that, there is no presumption in law that a relative living at a distance is always innocent. We have no dispute about the said proposition, however, we are also inclined to state that there cannot be a water tight rule in that regard. After all it is a factual aspect depending upon the facts of the case, to determine whether, relatives living separately have actually partake or inter-meddled in the relationship and have took positive steps or did some acts amounting to the cruelty within the meaning of Section 498-A of the Code. Moreover, in above decision, First Information Report was sought to be quashed, wherein, this court observed that still

investigation is going on and thus, the police may collect more material to strengthen the prosecution. Case in hand differs since already investigation is complete and charge-sheet has been filed. In other words, the entire material is before us for examination. Besides, the applicant's initial written complaint and the police report nothing has been brought to our notice to strengthen the case made out by informant.

12. We have closely examined the said material, wherein besides a general statement that applicant's who are relatives of husband have joined the husband in raising demand, nothing beyond that. The available material is lacking specific details regarding how and when these relatives have particularly harassed the lady. Notably sister of mother-in-law and her husband who are admittedly staying at different place have been arraigned in a prosecution. It is the informant's submission that though they are staying separately, they have attended all settlement meetings and took active part. We do not see the element of harassment if some of the relatives tried to inter-meddle the relationship. Unless, there are specific acts with detail account showing the roles of relatives staying separately their implication would be wholly unjustifiable.

In above, referred case of **Priti Gupta** Supreme Court took a note about tendency to implicate all the immediate relatives of the husband in matrimonial disputes.

13. Section 482 of the Code is extra ordinary jurisdiction under Article 226 of the Constitution amenable essentially to weed out the proceedings which are lacking the specific material to put the accused on the trial. Facing a criminal prosecution is always an ordeal which shall not be permitted unless there are reasonable and triable allegations making out a *prima facie* case.

14. The learned counsel appearing for informant at the end submitted that these applicants though made respondent in the proceedings. Under the provisions of D.V.Act, they did not appear. So also they have avoided to appear in trial court in existing crime. Certainly, that cannot be a ground to reject the urge for quashing, if on facts we are satisfied that continuation of prosecution is unwholesome exercise. It is submitted that if the criminal prosecution is quashed, then the wife would be remedy-less too. True on quashing, the accused would be set free, however, that cannot be a reason to nip the untenable prosecution at the

threshold. The wife has resorted the remedy under D.V.Act as well as she has remedies under other acts, which she may resort.

15. On close examination, we conclude that the available material is lacking specific details. The prosecution as against the relatives is based on vague and general allegations. The case in hand, if tested on the enville of the parameters laid down by the Supreme Court in case of **Bhajanlal** (Supra) it would fall in the category Nos.1 and 3 of the guidelines issued therein.

16. On above canvass continuation of prosecution against the relatives would be an abuse of the process of court. In the circumstances, we, allow the application and quash and set aside the criminal prosecution namely, RCC No.745 of 2022 arising out of First Information Report No.6 of 2022 registered with Police Station Ram Nagar, District Chandrapur, for the offence punishable under Section 498-A r/w 34 of the Indian Penal Code to the extent of present applicants only.

17. We make it clear that above findings have no impact on the pending D.V. proceedings, since the para- meters for a criminal prosecution lies on different footings. the concerned D.V.

proceedings shall be dealt in accordance with the provisions of law without getting influenced by this order.

(VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)