



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

CRIMINAL APPLICATION NO.741 OF 2022

1. Shri Sanjay D. Jain, aged about 60 years, Occupation :Retired Professor, R/o Flat No.1, First floor, Preetin Apartment, Near Water Tank, Laxmi Nagar, Nagpur
2. Sau. Saroj w/o Sanjay D. Jain, Aged about 53 years, Occu. Lecturer, R/o Flat No.1, First floor, Preeti Apartment, Near Water Tank, Laxmi Nagar, Nagpur.
3. Ku. Poornima d/o Sanjay D. Jain, Aged about 26 years, Occu. Student, R/o Flat No.1, First Floor, Preeti Apartment, Near Water Tank, Laxmi Nagar, Nagpur.
4. Shri Piyush s/o Sanjay Jain, aged about 30 years, occu. Private Servic, R/o Flat No.1, First Floor, Preeti Apartment, Near Water Tank, Laxmi Nagar, Nagpur.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer, Bajaj Nagar, Police Station, Nagpur.
2. Pooja Dilip Jain @ Pooja Piyush Jain, R/o Shanti Bhavan, Shahid Chowk, Behind Police Chowki, Itwari, Nagpur.
3. State of Maharashtra through Police

Station, Officer, Tahsil Police Station,
Nagpur.

4. Commissioner of Police, Nagpur City,
Nagpur.

... NON-APPLICANTS.

Shri Kartik Shukul, Advocate for the applicants.
Ms. Trupti Udeshi, Addl.PP for the State.
Shri H.R. Gadhia, Advocate for non-applicant no.2

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 19.03.2024.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. By this application, the applicants who are the husband, parents-in-law and sister-in-law of the informant lady are seeking to quash the Charge-sheet arising out of First Information Report bearing Crime No.20 of 2022 registered on 06.02.2022 with the Bajaj Nagar Police Station, Nagpur City for the offence punishable under Section 498-A, 377 read with Section 34 of the Indian Penal Code.

4. The couple got married on 14.07.2021 whilst they separated on 12.10.2021. The informant stated about the harassment meted out by the applicants during her joint stay, which caused her to file a police report. The informant stated the details about the offerings of valuables given in marriage to the groom and his family members. It is her case that, on the first night of marriage, the husband insisted her for oral sex. On the following day, her parents-in-law had inquired about the private things which did happened on the earlier night. The parents-in-law of the informant used to humiliate her by saying that she was not able to satisfy her husband. Mother-in-law as well as Sister-in-law were insisting her to comply the demand of various articles like Car, TV, Washing Machine, etc.. On 07.08.2021, mother-in-law telephoned to the parents of the informant raising a demand with ultimatum that on failure to comply, the informant would be divorced.

5. The informant stated in detail as to how her husband sexually harassing her. It would suffice to say that he was insisting for unnatural sex, used to urinate and spit on her body and asked to lick and other things which we do not wish to reproduce. It is her case that, after some days again her parents-in-law raised demand and sent her back. Within 2 to 3 days her husband and father-in-law came to her maternal house and insisted to comply the demand. By getting rid of

harassment she has lodged the report.

6. Learned Counsel for the applicants would submit that the allegations of harassment are vague and of general nature. Though the informant claims to have filed a police report with the Tahsil Police on 20.01.2022, it was suppressed. No medical report in support of allegation has been filed. The parties are in rival terms as they have filed several cross complaints against each other. It is submitted that while giving statement before the Bharosa Cell, the allegations were made only against the husband.

7. Learned Counsel for the applicant relied on the decisions of this Court in *Criminal Application Nos.1415/2013 (Mr. Ajay Arthor Craig and ors. vs. State of Maharashtra)*, *563/2023 (Vandana Purushottam Ingole and anr. vs. State of Maharashtra)*, *403/2023 (Abdul Salim Abdul Razzque and ors. vs. State of Maharashtra and ors)* and *655 of 2022 (Sau. Sunitasingh Jayprakashsinha Thakur and ors. vs. State of Maharashtra and anr.)*, to contend that on the basis of vague and general allegations, the relatives of husband shall not be implicated. Besides that reliance is placed on the decision of the Supreme Court in cases of *Shafiya Khan alias Shakuntala Prajapati vs. State of Uttar Pradesh and anr. (2022) 4 SCC 549*, *Geeta Mehrotra and*

anr. vs. State of Uttar Pradesh and anr. (2012) 10 SCC 741, Abhishek vs. State of Madhya Pradesh 2023 SCC OnLine SC 1083, Kahkashan Kausar alias Sonam and ors. vs. State of Bihar and ors. (2022) 6 SCC 599 to contend that tendency of implicating all family members is at rise. On the basis of general and omnibus allegations against the relatives, the prosecution would not lie.

8. We have gone through all cited decisions. The decisions relied by the applicants of this Court are purely adjudication on the basis of facts of the respective cases. We have kept in mind the proposition laid by the Supreme Court in above decisions while scrutinizing the factual matrix. On the other hand, the learned Counsel for the informant also relied on the decisions of this Court in cases of *Sunita Kumari w/o Ram Sevak and ors. vs. State of Maharashtra (Criminal Application No.1660/2022)*, *Shafi Liyakat Kazi and ors. vs. State of Maharashtra and anr. (Writ Petition No.5067 of 2019)* and *Muzhir Ahmed Itbar Khan and ors. vs. State of Maharashtra and anr. (2015 SCC OnLine Bom 6160)*, which are equally based on facts of those cases.

9. After all we have to scrutinize the facts of this case to form an opinion that whether *prima facie* case has been made out to stand

the prosecution. We have examined the FIR as well as the prior complaint dated 20.01.2022 lodged with the Tahsil police. It reveals that initially the informant has filed a report with Tahsil Police, where her maternal house situates. However, as the cognizance was not taken she has lodged the report with the Bajaj Nagar Police Station, where the accused resides. Though it is stated that prior report was fabricated one but we are not inclined to draw such inference merely on the basis of the reply given to the husband under the provisions of the Right to Information Act.

10. The informant has specifically stated that right from the first night she was subjected to sexual harassment. Though effort was made by applicants to state that there was mere demand of unnatural sex, however entire report is to be read coupled with the other material. In earlier report dated 20.01.2022, the informant specifically stated that she was compelled to do oral sex as well as other unnatural sexual activities. The report conveys that on the 2nd day of marriage itself, her parents-in-law made uncalled inquiry about her sexual life. There were allegations that mother-in-law and sister-in-law used to harass her for meeting the unlawful demand of several things like fourwheeler, T.V., Washing Machine, Air Conditioner etc. She has specifically stated that on 07.08.2021, mother-in-law telephoned her

parents to offer good quality of clothes failing which she would be divorced. Earlier report bears a reference that on 24.07.2021 the applicants have particularly raised the demand. The said report also indicates that at the time of 'Raksha Bandhan' festival she has been insisted to meet the demand of valuables.

11. Our attention has been invited to the extract of case diary which bears a reference about unnatural sex. We have also gone through the statement of the informant recorded under Section 164 of the Code of Criminal Procedure. Rather said statement gives fair account about the sexual harassment as well as the harassment meted out by other family members to meet unlawful demand. Particular instances dated 15.07.2021, 28.08.2021 and some other occasions have been specified. By reading of entire material, it cannot be said that ingredients of Section 498-A of the IPC are totally absent. Though it is argued that the offence under Section 377 would not attract however *prima facie* there are such allegations. It cannot be said that the report is vague, general and based on omnibus statement. Monetary demand raised on particular occasion coupled with the articles which were demanded have been stated. The informant has alleged in detail about the sexual harassment done by her husband which *prima facie* makes out the offence of cruelty. In the circumstances, it is a matter of trial to

test the veracity of material adduced on record. At this juncture, we cannot decide the worth of material, amounting to mini trial which is not permissible. On the background of above specific material, it is unjustifiable to stifle the prosecution at initial stage by sidelining the serious allegations.

12. In the light of the above discussion, the applicants have failed to make out a case to exercise our extra-ordinary jurisdiction. In the circumstances, the application stands rejected.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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