



Judgment

apl1193.22

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

CRIMINAL APPLICATION [APL] NO.1193/2022.

1.Sadashiv Shivram Gowardipe,
Aged about 63 years,
Occupation – Retired.

2.Kusum w/o Sadashiv Gowardipe,
Aged about 51 years,
Occupation – Household,

Both resident of Lathi, Tahsil Wani,
District Yavatmal.

3.Prashant Sadashiv Gowardipe,
Aged about 35 years,
Occupation – Service, resident of
Chhoriya Layout, Wani, Taluq
Wani, District Yavatmal.

4.Suvarna Umesh Bonde,
Aged about 40 years,
Occupation – Household.

5.Umesh Maroti Bonde,
Aged about 45 years,
Occupation – Service,

Nos.4 and 5 resident of Shirpur,
Tahsil Wani, District Yavatmal.

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APPLICANTS.

VERSUS

Rgd.

1.The State of Maharashtra,
through Police Station Officer,
Police Station Shirpur,
District Yavatmal.

2.Damyanti Sunil Gowardipe,
Aged about 30 years,
Occupation – Household, resident
of c/o. Ganesh Bhongale, Belora,
Post Naigaon, Tahsil Wani,
District Yavatmal.

... NON-APPLICANTS.

Mr. S.B. Gandhe, Advocate for Applicants.
Ms S. Kolhe, A.P.P. for Non-applicant no.1- State.
Mr. G.D. Asole, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Admit.

By consent of the learned Counsel appearing for
respective parties, the matter is taken up for final disposal.

Rgd.

2. By this application, applicants are seeking to quash the first information report bearing Crime No.254/2022 registered with Shirpur Police Station, District Yavatmal for the offence punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code. Applicants are parents-in-law, brother-in-law, sister-in-law and husband of sister-in-law of the informant lady. Husband of the informant is not before us.

3. It is the submission of applicants that the allegations made in the police report, even if they are taken at their face value and accepted in its entirety, they do not prima facie constitute the offence of matrimonial cruelty. The learned Counsel appearing for applicants would submit that soon after the marriage, hardly for 10 days the informant stayed at her matrimonial house, and they she lived with her husband at Nagpur for job. Precisely it is contended that there was no occasion for the relatives of husband to interact with the informant and thus, the allegations of cruelty are false.

4. It is submitted that on 10.01.2021, the informant lady left her matrimonial house, for which the husband has filed a petition for

divorce on 20.01.2021. According to applicants, in retaliation the first information report is lodged with false allegations. Lastly, it is submitted that the allegations are vague and general in nature and the same are made with a view to harass the husband and his family.

5. The couple got married on 17.05.2013. After few days from the marriage both started to reside at Nagpur. The informant alleged that no sooner they went to Nagpur, her husband started to harass her at the instance of monetary demand. She has stated that since applicants have instigated her husband, in turn he used to harass her. The informant lady has stated that on various occasions her husband used to raise monetary demand as well as physically assaulted her by consuming liquor. She has stated some instances about unruly behavior of her husband and his love affair with another women. Finally she has stated that since there was incessant monetary demand by the husband, she came back to her parents house on 10.01.2021. The informant has stated about last incident that on 25.08.2021, when her parents tried to patch up the differences, her parents-in-law raised monetary demand of Rs.20 lakhs and drove all of them. With such allegations the informant has

lodged the report with the police on 13.08.2021. The matter was initially referred to Women's Cell and as they could not succeed in reunion, finally report has been lodged on 23.06.2022.

6. The learned Counsel appearing for the informant would submit that there was persistent monetary demand by the husband. He has produced certain bank statements to establish that from time to time money has been transferred pursuant to the monetary demand. He would submit that the husband was not interested to live with the informant, hence within 10 days from separation, he has filed a petition for divorce. He has particularly emphasized that on 25.08.2021 parents of informant tried to patch up the differences, however, parents-in-law have raised specific monetary demand of Rs.20 lakhs and disallowed the informant to stay with them.

7. The learned Counsel for applicants mainly emphasized that merely on the basis of vague and general allegations, entire family members cannot be implicated in the matrimonial dispute. In this regard, he has taken us through the observations of Supreme

Court in case of **Kahkashan Kausar and others .vrs. State of Bihar and others – Manu/SC/0163/2022**, which reads as below :

“18. *The above-mentioned decisions clearly demonstrates that this Court has at numerous instances expressed concern over the misuse of Section 498A Indian Penal Code and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analyzing the long term ramifications of a trial on the complainant as well as the Accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.*

19. *Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all Accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to*

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ascertain the role played by each Accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of High Court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

On that basis it is submitted that in case at hand also there are no specific and distinct allegations raised against the family members. Besides general allegations, there is nothing to attribute their role.

8. In the light of said observations we have re-examined the police report, as well as the statements recorded by the police during the course of investigation. By virtue of interim order the police have continued the investigation, but, charge sheet has not been filed. The learned A.P.P. has attracted our attention to the statement of parents and uncle of the informant to impress that on 25.08.2021, there was a specific monetary demand from the end of parents-in-law of the informant.

9. Perusal of the entire police report, as well as the statements of nearer relatives, it reveals that time and again the informant lady has merely stated that at the instance of relatives, her husband used to raise monetary demand and harass her. She has quoted several instances blaming her husband about cruel treatment in the form of monetary demand and physical assault. Except for last instance dated 25.08.2021, we could not see any specific allegation against the present applicants. Moreover, it is not in dispute that within couple of days from the marriage, both of them shifted to Nagpur and therefore, it is difficult to accept the contention that all applicants were harassing the lady.

10. So far as applicant nos. 1 and 2, who are parents-in-law of the informant, she has quoted specific instance dated 25.08.2021 about harassment at the instance of monetary demand. The learned Counsel for applicants would submit that no such instance had occurred, but, according to him, in order to fill up the gap the informant has stated imaginary occurrence dated 25.08.2021. He would submit that already divorce petition was pending, and thus, it

is impossible for applicants to call the informant for re-union.

11. True, divorce petition was pending, however, it being a matrimonial affair always the parties are tend for re-union. We have gone through the statement of parents and uncle of the informant lady. They have stated that on 25.08.2021, they have been called for settlement and when they went, there were was a specific monetary demand at the hands of parents-in-law of the informant. The specific incident dated 25.08.2021 is stated not only by the informant, but, her parents and uncle, therefore, at this preliminary stage, we cannot say that it is imaginary incident, since it is a matter of trial to be decided on merits. However, as regards to other applicants, we could not see any material against them, besides vague and general allegations. As observed above in the report case of Kahkashan Kausar [supra], on the basis of vague and general allegations, entire family members cannot be dragged in criminal prosecution. In view of that, we are of the considered view that a case for quashing of the first information report is made out by applicant nos. 3 to 5 only, who are brother-in-law, sister-in-law and

husband of sister-in-law, hence, following order is passed.

ORDER

- (i) Criminal Application is partly allowed and disposed of.
- (ii) The first information report bearing Crime No.254/2022 registered with Shirpur Police Station, District Yavatmal for the offence punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code is hereby quashed and set aside to the extent of applicant nos. [3] Prashant Sadashiv Gowardipe, [4] Suvarna Umesh Bonde and [5] Umesh Maroti Bonde only.
- (iii) The prosecution is permitted to file charge sheet against rest of the accused.

JUDGE

JUDGE