



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

CRIMINAL APPLICATION (APL) NO.1094/2023

1. Mahananda Wd/o Radhakisan Wadekar,
age 60 Yrs., Occ. Labour,
R/o Mangujalgao, Tq. Dhansawangi,
Jalna.
2. Bhausahab Uddhavrao Wadekar,
age 35 Yrs., Occ. Labour,
R/o Mangujalgao, Tq. Dhansawangi,
Jalna.
3. Uddhavrao Marotrao Wadekar,
age 77 Yrs., Occ. Labour,
R/o Mangujalgao, Tq. Dhansawangi,
Jalna.
4. Ashwini Mahadev Dhere,
age 36 Yrs., Occ. Labour,
R/o Annapurna Nagar, Paithan,
Tq. Paithan, Distt. Aurangabad. ... Applicants
- Versus -
1. State of Maharashtra,
through PSO Lonar, Nagpur,
Tq & Distt. Buldhana.
2. Diksha W/o Shekhar Wadekar,
aged about 26 Yrs., Occ. Household,
R/o Shara, Tq. Lonar, Distt. Buldhana. ... Non-applicants

Mr. Vinay V. Sharma, Advocate for the applicants.
Mr. N.H. Joshi, A.P.P. for non-applicant No.1/State.
Ms. Ishika Jaiswal, Advocate h/f Mr. S.A. Chaudhari, Advocate for
non-applicant No.2.

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

DATED: 9.9.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By this application the applicants are seeking to quash Chargesheet (R.C.C. No.91/2023) arising out of Crime No.0123/2023 registered by non-applicant No.1 for the offence punishable under Sections 498-A, 323, 504 and 506 of Indian Penal Code.

3. Applicants are nearer relatives of husband of the informant who are seeking to discontinue the criminal prosecution alleging that the prosecution is actuated with *mala fides* and thus continuation amounts to abuse of the process of Court.

4. The learned Advocate for the applicants would submit that essentially all applicants were residing separately from the couple. After disagreement the husband has filed divorce petition and then after two years to take revenge this criminal prosecution has been initiated maliciously to bring the husband to the knees.

5. *Per contra*, learned A.P.P. as well as learned Advocate appearing for the informant resisted the application. In short, they would submit that the F.I.R. bears a specific allegation that all applicants though relatives, intermittently, used to visit Pune where couple was residing and were insisting for unlawful monetary demand and for that reason there was harassment. According to informant there is ample material to put the applicants on trial and thus quashing at the threshold would not be in the interest of informant.

6. Though the F.I.R. has been registered against the husband and relatives of husband, however, husband Shekhar is

not before us. This application is moved by mother-in-law, brother-in-law, cousin father-in-law and sister-in-law of the informant lady. The couple got married on 24.12.2020. Since beginning husband was serving at Pune hence the couple moved at Pune for residence. It is informant's case that though they were residing separately at Pune, the applicants, who are relatives, used to visit Pune and during their temporary stay they used to raise monetary demand of Rs.35,00,000/- for purchasing a flat/property. During the course of investigation the statements of all relatives have been recorded which are on the same line.

7. The applicant's learned Advocate has produced a copy of divorce petition which has been filed by husband on the ground of cruelty on 17.2.2022. Our attention has been invited to the pleadings where the husband stated that within 3 to 4 months from the marriage i.e. from 28.3.2021 itself wife has abandoned her matrimonial life and went away. Particularly it has been pleaded that the wife while leaving the house raised a

monetary demand and threatened to implicate the family in multiple cases. Then it is brought to the notice that after considerable period the wife has applied under Section 12 of the Protection of Women from Domestic Violence Act seeking multiple reliefs. In such background F.I.R. has been filed on 27.4.2023 i.e. after two years from the separation of the couple.

8. We have assessed the material with a view to see whether the *prima facie* case is made out against the relatives of husband. Apparently the couple was staying separately at Pune which makes material difference. We are not saying that there cannot be matrimonial harassment at the hands of distant relatives if they reside separately but on facts it has to be assessed whether there is possibility of these relatives to interfere into the life of the couple. Notably the applicants (nearer relatives) are resident of District Jalna whilst the couple was staying at Pune which is near about 252 to 300 kilometres away. It is not a case that they are residing in proximity so that they have easy access to the couple.

We have gone through the F.I.R. wherein the wife stated that the applicants came to Pune and at that time they humiliated and raised the monetary demand. Neither F.I.R. nor the material collected during the course of investigation would specify the dates, events or the period when alleged misdeed occurred. Rather it reveals that the informant levelled vague and general allegations against all the applicants.

9. The learned Advocate for the applicant relied on the judgment of Supreme Court in case of Achin Gupta V/s. State of Haryana and another reported in **2024 SCC OnLine SC 759** to contend that under similar circumstances by taking into consideration all earlier law laid down the prosecution was quashed. Our attention has been invited to paras 18 and 19 of the decision wherein it has been observed that where the allegations are vague, general and sweeping, without substantiating the incidents against the relatives F.I.R. needs to be quashed. Moreover, F.I.R. was lodged after two years from the filing of the

divorce petition by the husband. Having regard to such a facts, it is ruled that the case would fall in category No.7 as laid down in the case of State of Haryana V/s. Bhajan Lal reported in 1992 Supp (1) SCC 335. The relevant observations made by Supreme Court in case of Achin Gupta (supra) read as below:-

“30. In the aforesaid context, we should look into the category 7 as indicated by this Court in the case of Bhajan Lal (supra). The category 7 as laid reads thus:-

“(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

31. We are of the view that the category 7 referred to above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No.2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the

Cr.P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.”

11. Applying the ratio laid down in said case we have revisited the facts and found that the allegations against the relatives are vague and are of general nature. In such a peculiar facts requiring the distant relatives to face the criminal prosecution would be an abuse of process of Court.

12. Supreme Court in case of Kahkashan Kausar Alias Sonam and others V/s. State of Bihar and others reported in (2022) 6 SCC 599 has expressly observed that the relatives of husband shall not be dragged in the criminal prosecution on vague and general allegations. Having regard to the nature of allegations particularly on the canvass of pending divorce petition and belated registration of F.I.R. we find that the case is covered under category No.7 as indicated by the Supreme Court in case of State of Haryana V/s. Bhajan Lal. In view of above, continuation of prosecution against relatives would amount to abuse of process of Court.

13. We make it clear that above observations are made only looking to the case of relatives of the informant which has no impact on the case of husband.

14. In view of above, application is allowed.

We hereby quash and set aside Chargesheet (R.C.C. No.91/2023) arising out of Crime No.0123/2023 registered by non-applicant No.1 for the offence punishable under Sections 498-A, 323, 504 and 506 of Indian Penal Code as regards to the applicants only.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)