



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 238 OF 2024

VAISHNAVI W/O NIKHIL MALAVATKAR

VERSUS

NIKHIL DILIPRAO MALAVATKAR AND OTHERS

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Advocate for the Petitioner : Mr. Yashwant P. Jadhav

Advocate for Respondents : Mr. Satyajit S. Bora

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CORAM : SACHIN S. DESHMUKH, J.

Date : 20th November, 2025

ORDER :-

1. The petitioner questions the judgment and order dated 12.04.2023 rendered by the learned Sessions Judge, Dharashiv in Criminal Revision Application No. 05 of 2023, quashing and setting aside the order dated 19.03.2021 issuing process in Regular Criminal Case No. 408 of 2022, rendered by the learned Judicial Magistrate First Class, Osmanabad.

2. The assertions are made in the complaint that the marriage between petitioner and respondent No. 1 was solemnized on 07.07.2018 as per the customary rites and traditions. The further assertion is that after some time, the respondents subjected petitioner to domestic violence. The respondent No. 1 / husband allegedly raised dispute on account of trivial issues. The

respondents also allegedly demanded amount of Rs. 50 lakhs from parents of the petitioner. Thereafter, the complainant was driven out of the matrimonial house on 07.11.2019. Resultantly, the petitioner presented the private complaint on 08.01.2021 for offences punishable under Sections 498(A), 323, 504 and 506 before the learned Magistrate.

3. Considering the complaint and verification statement of the petitioner, the learned Magistrate passed the order issuing process under Section 204 of Code of Criminal Procedure for the aforesaid offences against original respondents No. 1, 2, 3, 4 and 6 (present respondents), whereas the complaint was dismissed under Section 203 of Code of Criminal Procedure against original respondents No. 5, 7 and 8.

4. Raising an exception to the same, present respondents preferred Criminal Revision Application No. 05 of 2023 before the learned Sessions Court. The learned Sessions Judge allowed the Revision Application recording that there is discrepancy between the complaint and verification statement and same, even if both were taken at face value and accepted in its entirety, no any offence as alleged in the complaint was made out.

5. Hence, the petitioner approached this Court by way of

present petition under Article 226 and 227 of the Constitution of India.

6. The learned counsel for petitioner submits that in the wake of specific allegations, the Revisional Court is not satisfied to interfere with the order issuing process. The Revisional Court committed error while rendering the order under challenge and failed to consider the reasons recorded by the learned Magistrate while issuing process. Hence, prayed to allow the writ petition.

7. Per contra, the learned counsel for respondents submits that the petitioner left the matrimonial house on 07.11.2019 where as the complaint is lodged on 08.01.2021, no explanation is offered for the delay in lodging the complaint. It is further submitted that without complying with the statutory mandate of approaching the Officer of the rank of Superintendent of Police, the complaint is filed. The variance in complaint and verification statement, establishes the intent of the petitioner, ought to have been noted by the learned Magistrate while passing the order of issue process. These aspects were noted by the Revisional Court in proper perspective while allowing the Revision Application.

8. In order to support the submissions, the learned counsel for respondents has placed reliance on the following

judgments.

- (i) **Kahkashan Kausar and Ors. Vs. State of Bihar and Ors. (AIR 2022 SC 820)**
- (ii) **Achin Gupta Vs. State of Haryana and Anr. [(2025)3 SCC 756].**
- (iii) **Satish Sudhakar Patil and Ors. Vs. The State of Maharashtra and Ors. [(2017) SCC OnLine Bom 1170]**

9. I have heard learned counsel for litigating side and perused the entire record.

10. Admittedly, the petitioner left the matrimonial house on 07.11.2019 whereas the complaint is presented on 08.01.2021. No explanation is put forth for the delay in filing the complaint.

11. At this juncture, it is necessary to reproduce the verdict of Hon'ble Apex Court in the case of **Mrs. Priyanka Srivastava and Anr Vs. State of U.P. and Ors. [(2015)6 SCC 287]**, which reads as under :-

"21.We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so

that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

12. In the light of the aforesaid verdict, the provisions of Code of Criminal Procedure ought to have been followed. The Petitioner, however, without approaching to the Higher Officer / Authority, has taken recourse under Section 154(3) of CrPC, has directly presented the complaint, de hors the mandate of Section 154(3) of CrPC. These aspects are taken into account by the Revisional Court while allowing the Revision and dismissing the complaint.

13. The submission put forth on behalf of the learned counsel for respondents lends support from the judgments on which reliance is placed, wherein the Hon'ble Apex Court has underscored the need to consider only specific allegations in case

of matrimonial disputes before initiating criminal proceedings, the same is ignored by the learned Magistrate while passing the order of issue process.

14. It is well settled position of law that the Courts must exercise caution while proceeding against the relatives in matrimonial disputes. The relatives should not be roped in on the basis of omnibus allegations unless specific instances of their involvement are made out. In the present case, perusal of record indicates and establishes that no specific and distinct allegations have been made and attributed against the respondents. The allegations are vague and omnibus in nature.

15. In that view of the matter, no error could be noted in the order rendered by the learned Sessions Judge. Permitting criminal proceedings to continue against the respondents, will result abuse of process of law and lead to a travesty of justice. Hence, no case is made out to cause interference in the order under challenge.

16. The writ petition *sans* merits and accordingly, the same is **dismissed**.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi