



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 300 OF 2021

1. Rajaram Irappa Saudagar
Age 70 Years, Occu – Pensioner; R/o Flat
No. Q-397/398, Parmar Nagar, Behind
KPCT Complex, Fatima Nagar, Pune.
2. Rahul Rajaram Saudagar
Age 38 Years, Occu-Service, R/o Flat No.
Q-397/398, Parmar Nagar, Behind KPCT
Complex, Fatima Nagar, Pune.
3. Swati Rahul Saudagar
Age 36 Years, Occu-Pensioner, R/o Flat No.
Q-397/398, Parmar Nagar, Behind KPCT
Complex, Fatima Nagar, Pune.
4. Mehul Rajaram Saudagar
Age – 36 Years, Occu-Service; Earlier R/o
Flat No.2, Ramanand Krupa, Pune-Solapur
Road, Kawadipat, Pune.

Now temporarily R/o Flat No. Q-397/398,
Parmar Nagar, Behind KPCT Complex,
Fatima Nagar, Pune.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through Police Inspector, Kotwali Police
Station, Ahmednagar, District Ahmednagar.
2. Ashwini Mehul Saudagar
Age 30 Years, Occu – Household; R/o Plot
No.84, 'D', Rani Laxmibai Chauk,
Bhushannagar, Kedgaon, Tahsil
Ahmednagar, District Ahmednagar.

... RESPONDENTS

Mr. Sudarshan J. Salunke, Advocate for Petitioners.
Mr. Rahul B. Temak, Advocate for Respondent No.2.
Smt. P. R. Bharaswadkar, APP for Respondent No.1/State.

**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : JANUARY 17, 2025.

JUDGMENT - [PER ROHIT W. JOSHI, J.]

. The present Petition is filed under Article 226 of the Constitution of India in order to seek quashment of First Information Report No. 5888/2020 registered with Kotwali Police Station, Ahmednagar on 4/9/2020 for offences punishable under Section 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code. The Respondent No.1 has filed chargesheet No. 32/2021 dated 27/1/2021, which is also challenged. The Respondent No.2 is Informant. She is related to the Petitioners as under :-

- (i) Petitioner No.1 – Father-in-law;
- (ii) Petitioner No.2 – Brother-in-law;
- (iii) Petitioner No.3 – Wife of Brother-in-law; and
- (iv) Petitioner No.4 – Husband.

The mother-in-law of the Respondent No.2 has expired on 3/9/2016.

2. The marriage of the Petitioner No.4 and Respondent No.2 was solemnized on 14/2/2013. The couple is blessed with a daughter, who was born on 2/11/2014. The allegations in the First Information Report is that till

a period of around six months from the date of marriage, the Respondent No.2 was treated properly by her in-laws and the atmosphere in the family was quite normal and cordial. She, however, states that thereafter the mother-in-law started raising quarrels with her on petty issues, such as, washing of utensils, cooking food etc.. She alleges that the mother-in-law and Petitioner No. 3/Wife of brother-in-law used to instigate her husband/Petitioner No.4, who in turn, used to misbehave with her, abuse her and also beat her. She has levelled allegations of beating against the Petitioner No.4 and mother-in-law on 6/7/2016. She states that thereafter complaint was lodged with the concerned Police Station on 8/7/2016, however, the matter was amicably resolved with intervention of relatives and she started residing with her in-laws.

3. The Respondent No.2 refers to an incident dated 25/8/2016, where the Petitioner Nos.1 to 4 and deceased mother-in-law are alleged to have raised a demand of Rs.5,00,000/- by asking her to get the amount from her parents for construction of house. She alleges that she had expressed her inability to get the amount from her parents, and therefore, she was abused and beaten, all her ornaments were taken away and she was expelled from the house along with the daughter. She has stated that First Information Report in relation to the said incident was lodged on 3/9/2016.

4. It is further stated in the FIR that her father and maternal uncle had visited the in-laws on 29/1/2017, however, the in-laws stopped them at the entrance of the house, saying that unless they bring an amount of Rs.5,00,000/-, the Respondent No.2 will not be allowed to return to her matrimonial house. On the basis of such allegations above First Information Report came to be lodged on 4/9/2020. The Respondent No.1 has conducted investigation in the matter and has filed chargesheet on 27/1/2021 as aforesaid.

5. We have to mention that prior to lodging of present First Information Report, the Respondent No.2 had filed a proceeding under the provisions of Protection of Women from Domestic Violence Act, 2005 being Misc. Criminal Application No. 114/2017. The present Petitioners are arrayed as Respondents in the said Domestic Violence proceeding. The Petitioner Nos.1 to 3 have filed a Petition being Criminal Writ Petition No. 654/2019, challenging the maintainability of the proceedings against them. The said Petition came to be allowed vide Judgment and Order dated 21/1/2020. This Court has held that the Petitioner Nos.1 to 3 were residing separately from the Petitioner No.4/husband of the Respondent No.2. It is observed in the order that no overtact was attributed to the Petitioner Nos.1 to 3 by the Respondent No.2. It is also observed that the husband was not residing with the Petitioner

Nos.1 to 3 and that the Petitioner No.1 had also taken steps to sever his relations with the Petitioner No.4/son.

6. Mr. Sudarshan Salunke, the learned Counsel for Petitioners submitted that the allegations in the First Information Report, if taken on the face value, do not make out any case for prosecution against the Petitioners under Section 498-A of Indian Penal Code. He argued that there is a matrimonial discord between the Petitioner No.4/husband and Respondent No.2/wife, as a consequence of which, the wife has taken resort to lodging First Information Report against the Petitioner No.4/husband and his family members only as an arm twisting tactic. He contends that the domestic violence proceeding was filed after the alleged incident relating to demand of dowry dated 25/8/2016 and the domestic violence proceeding has been quashed against the Petitioner Nos.1 to 3 on the ground that no positive role could be attributed to the Petitioner Nos.1 to 3 with respect to allegations of domestic violence. The Petitioner Nos.1 to 3 were not staying together with the Petitioner No.4/husband and the Petitioner No.1 had taken steps to sever his relations with the Petitioner No.4. He contends that the FIR should be quashed for the aforesaid reasons.

7. *Per contra*, Smt. P. R. Bharaswadkar, learned APP appearing for

Respondent No.1/State and Mr. Rahul B. Temak, learned Counsel for Respondent No.2 argued that allegations regarding demand of dowry, and illtreatment on failure to satisfy the demand, have been levelled. They submit that apart from this, the other acts of cruelty for other reasons are also quoted in the FIR. They submit that since allegations have been levelled, which make out ingredients of offence under Section 498-A, First Information Report and chargesheet cannot be quashed in exercise of powers under Article 226 of the Constitution of India and/or Section 482 of the Code of Criminal Procedure.

8. We may mention that initially when the matter was heard and we are expressed our reservations regarding the case of the Petitioner No.4, as canvassed by the learned Counsel. The learned Counsel for Petitioners took instructions and made a motion seeking permission to withdraw the Petition with respect to the Petitioner No.4 and to advance submissions for the Petitioner Nos.1 to 3 only. We had accepted the request, and accordingly, the Petitioner No.4 was permitted to withdraw the Petition.

9. We have heard the matter on merits only with respect to the Petitioner Nos.1 to 3.

10. Having perused the FIR and statements of other witnesses recorded during the course of investigation, we find that the principal

grievance of the Respondent No.2 is against her husband/Petitioner No.4. She has levelled allegations of illtreatment against the Petitioner No.4. Such allegations are also made in the First Information Report against the deceased mother-in-law. However, as regards the Petitioner Nos.1 to 3, we find that except for alleged incident, which is stated to have occurred on 25/8/2016, there are no specific allegations against them.

11. As regards the alleged incident dated 25/8/2016, we may mention that by the said date, relations between the parties were already strained. The Respondent No.2 had lodged a complaint on 8/7/2016 alleging that the Petitioner No.4 and his deceased mother had beaten up her. She states that the matter has been resolved only with intervention of her relatives on the parental side. The alleged incident dated 25/8/2016 has occurred within a short span thereafter. However, the First Information Report lodged thereafter was registered only for the offences punishable under Section 323 and 504 of Indian Penal Code. This First Information Report is stated to be lodged on 3/9/2016.

12. It will be pertinent to mention that thereafter in the year 2017, the Petitioner has lodged a domestic violence case against all the Petitioners. The said Petition was filed on 30/1/2017. The said proceeding came to be

quashed against the Petitioner Nos.1 to 3 vide Judgment dated 21/1/2020 passed this Court in Criminal Writ Petition No. 654/2019. While quashing the domestic violence proceedings, this Court has clearly held that the Petitioner No.1 had made attempts to sever relations with the Petitioner No.4. It is observed that the Petitioner Nos.1 to 3 were not residing with the Petitioner No.4. The order also records that the Respondent No.2 had not attributed any overtact against the Petitioner Nos.1 to 3 in order to sustain domestic violence case against them. It will also be pertinent to mention that the Petitioner No.4 and Respondent No.2 has exchanged notices levelling allegations and counter-allegations against each other. The Petitioner No.4 has also filed a Petition No. 1463/2016 for restitution of conjugal rights against the Respondent No.2 on 2/12/2016.

13. The aforesaid facts will clearly demonstrate that there is a marital discord between the Petitioner No.4 and Respondent No.2. This marital discord has resulted in allegations and counter-allegations as also several allegations between the parties. In this backdrop, when we consider the allegations levelled in the First Information Report, we find that the principal grievance of the Respondent No.2 is against the Petitioner No.4, which she has levelled in all throughout the First Information Report. Certain allegations are levelled against the mother-in-law, who has now expired. However, except for

the alleged incident dated 25/8/2016, there are no allegations against the Petitioner Nos.1 to 3. It is already held in earlier domestic violence proceedings by this Court that the Petitioner Nos.1 to 3 are not residing with the Petitioner No.4 and that the Petitioner No.1 wanted to sever relations with the Petitioner No.4.

14. We are of the considered opinion that the present case is one of overimplication. The Respondent No.2/wife has involved the family members of her estranged husband in criminal offence without any justifiable cause or reason for the same. As noticed above, there are no allegations against the Petitioner Nos.1 to 3 in the First Information Report, except the allegations relating to the alleged incident dated 25/8/2016. The said allegations are also shown as omnibus in nature. The Respondent No.2 has not attributed any individual role to the Petitioner Nos.1 to 3. She has simply named them along with the Petitioner No.4 and the mother-in-law, against whom she had a grievance with respect to petty household matters. The First Information Report is also lodged after a period of around four years from the date of alleged incident. There is no explanation, whatsoever, for inordinate delay of four years in lodging the First Information Report.

15. It is being noticed that estranged wives have a tendency of

implicating names of family members and relatives of the husband in the case under Section 498-A of Indian Penal Code. Several Judgments of the Hon'ble Supreme Court and different High Courts, including this Court, has taken a note of rising tendency of overimplication.

16. Having regard to this general tendency, the Hon'ble Supreme Court has held in the matter of ***Mamidi Anil Kumar Reddy V/s State of Andhra Pradesh and Another reported in 2024 SCC OnLine SC 127*** and several other Judgments that generally Complaints/First Information Reports are got drafted now a days by the persons having knowledge relating to legal matters, and therefore, due care and caution is exercised to incorporate allegations, that will on the face of it, make out a cognizable offence against the in-laws. The Hon'ble Supreme Court has, therefore, directed that while considering cases under Section 498-A for quashing of First Information Report and such reliefs, the Courts must not look at the contents of the First Information Report alone in isolation. The Courts must read the First Information Report in conjunction with other attending circumstances of the case. Likewise, due care and caution should be exercised in order to protect innocent people, against whom, no worthwhile allegations are levelled. It is directed that particularly in the cases, where proceedings are initiated out of vengeance, it is necessary to read the contents of First Information Report with due care and caution.

17. There is a backdrop against which the present First Information Report is lodged. There is inordinate delay in lodging the First Information Report. Although quashing First Information Report for offence under Section 498-A of Indian Penal Code on the ground of limitation itself is not permissible, the delay caused in lodging First Information Report is a relevant factor to be considered. Particularly, in the light of other attending circumstances and most importantly quashing of domestic violence proceedings against the Petitioner Nos.1 to 3. The contents of First Information Report and other material also do not remotely suggest any common intention between the Petitioner Nos.1 to 3 and Petitioner No.4 in relation to causing cruelty to the Respondent No.2 within the meaning of Section 498-A of Indian Penal Code.

18. Having regard to the totality of circumstances, we are of the considered opinion that continuing criminal prosecution against the Petitioner Nos.1 to 3 will amount to abuse of the legal process. We, therefore, deem it appropriate to quash the First Information Report and chargesheet against the Petitioner Nos.1 to 3. Hence, the following order.

ORDER

- A) The Petition is disposed of, as withdrawn, with respect to the Petitioner No.4 – Mehul Rajaram Saudagar.

B) The First Information Report No. 5888/2020 registered with Kotwali Police Station, Ahmednagar on 4/9/2020 for the offences punishable under Section 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code and chargesheet No. 32/2021 dated 27/1/2021 submitted pursuant to the said First Information Report to the Court of learned Chief Judicial Magistrate, Ahmednagar are quashed against the Petitioner Nos.1 to 3, viz – Petitioner No.1 – Rajaram Irappa Saudagar; Petitioner No.2 – Rahul Rajaram Saudagar; and Petitioner No.3 – Swati Rahul Saudagar respectively.

19. Criminal Writ Petition stands disposed of accordingly.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)