



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

14 CRIMINAL APPLICATION NO. 1191 OF 2023

1. Rekha w/o Uttamrao Gomsale
2. Shailesh s/o Uttamrao Gomsale
3. Swati w/o Shailesh Gomsale
4. Usha d/o Uttamrao Gomsale
(Usha w/o Samadhan Raut)
5. Manisha d/o Uttamrao Gomsale
(Manisha w/o Ravikiran Admane)
6. Santosh Uttamrao Gomsale ...Applicants

versus

1. The State of Maharashtra
2. Anjali w/o Santosh Gomsale
(Anjali d/o Ratan Saundarmal) ...Respondents

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Advocate for Applicant : Mr. Vaibhav N. Shinde with Ms. Radhika S. Navandar

APP for Respondent No.1: Mr. S. A. Gaikwad

Advocate for Respondent No.2 : Mr. P. N. Ghadge (appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATED : 17th FEBRUARY, 2025

PER COURT :-

1. At the request of learned advocate for the applicants, leave to correct the R.C.C. number. The correction be carried out forthwith.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, initially for quashing of the

F.I.R. vide C.R. No. 3 of 2023, registered with Wadwani police station, district Beed and by way of amendment for quashing of the proceeding in R.C.C. No. 29 of 2023, pending before the learned Judicial Magistrate, First Class, Wadwani, district Beed for the offences punishable under sections 498-A, 323, 504, 506 r.w. 34 of I.P.C.

3. It is not in dispute that respondent No. 2 and the applicant No.6 (who came to be added as party by order dated 01.09.2023) got married on 21.11.2013. They were blessed with two sons, aged 9 and 7 years, respectively. The applicant No.6 is serving in police department at Ahmednagar. The applicant No.1 is mother-in-law, applicant No.2 is brother-in-law, applicant Nos. 4 and 5 are sisters-in-law of respondent No.2 and applicant No.3 is wife of applicant No.2.

4. Heard Mr. Shinde with Ms. Navandar, learned advocates for the applicants, learned A.P.P. for respondent No.1-State and Mr. Ghadge, learned advocate (appointed) to represent the cause of respondent No.2. In order to cut short, it can be submitted that all advocates have made submissions to support their respective contentions.

5. Perusal of the F.I.R. would show that all the applicants were

stated to be residing under one roof. Father-in-law of respondent No.2 was also serving in police department. However, it appears that he expired on 29.01.2023. The informant states that she was treated properly for about one year but thereafter, she was harassed on the count that she was unable to cook the food properly, her parents have not given proper training. All of them used to give pinching words and used to ask her to bring an amount of Rs.5,00,000/- from her parents for installation of petrol pump. She used to say that her father's financial condition is not such that she can bring the amount from him, but at that time, upon the instigation by the others, the husband used to abuse and assault her. They used to keep her starved. She had informed about the said harassment to her parents but they had advised her to bear. She also alleges that the husband used to drink liquor by concealing it from others and was also involved in illicit relationship. When this fact was told by the informant to other applicants, they used to support the husband. Even sisters-in-law used to abuse her and also assault her. Even the relatives of husband, who are also relatives of respondent No.2, were asked to intervene and mediate, however, they have taken the side of the applicants. The allegations are levelled that those two persons i.e. distant relatives had also given threats to kill to the informant. She states that she had sustained the harassment for about five years, however, she was driven out of the house alongwith the children.

According to her, she was driven out of the house three years prior to filing of F.I.R.

6. Thus, it is to be noted from the contents of the F.I.R. that she wanted to level allegations against all. The statements of witnesses under section 161 of the Cr.P.C. are on the same lines. However, the fact which is suppressed by the informant is that husband had filed a petition for restitution of conjugal rights before the Family Court, Ahmednagar i.e. A-50 of 2019. The said petition has been decreed and the informant was directed to resume cohabitation within a period of two months from the date of decision i.e. 4.8.2022. In the said matter, it is stated in the judgment that though the informant was served but she preferred not to appear. Now, learned advocate for respondent No.2 submits that the informant has preferred appeal challenging the said decree and it is pending before this Court. The appeal might be pending but still the fact remains that as on today, there is decree in favour of applicant No.6, which is in respect of restitution of conjugal rights. Of course, prior to the said petition, there appears to be exchange of notices.

7. We are unable to get when the appeal has been filed and whether there is any explanation that when she came to know about the decree that has been passed, whether she had attempted to

resume cohabitation with applicant No.6, when she has levelled allegations against husband, regarding his involvement in illicit relations, the informant has not given name of any lady. But, in the F.I.R., it is stated that there was evidence with the informant to support the said statement, however, alongwith the charge sheet no such evidence is annexed or nature of such evidence, which was stated to be available, has not been stated by way of supplementary statement. Therefore, when the wild allegations are made without evidence, by the informant against husband-applicant No.6, then this cannot be taken as a piece of evidence of cruelty as defined under Section 498-A of I.P.C.

8. Perusal of the charge sheet does show that the statements of sons of the informant have not been taken under Section 161 of Cr.P.C. when they are stated to be 9 and 7 years, respectively. They would have been the best witnesses to support the contents in the F.I.R. The other witnesses though have reiterated same statements, yet it can be seen that those statements made by them on the basis of the information supplied by the informant to them.

9. The informant is stating that the applicants were demanding amount of Rs.5,00,000/- for installation of petrol pump. She does not say that at any point of time, she had made attempt to get the details

or even her father has not stated in his statement under section 161 of Cr.P.C. as to whether any application has been made, by any of the relatives of the husband, to get the petrol pump from the appropriate authority. Of course, it could not have been taken in the name of applicant No.6, he being the Government servant. Further taking into consideration the guess work in respect of expenditure for installation of petrol pump, the amount of Rs.5,00,000/- is very meager amount. Another fact is to be noted is that applicant Nos.4 and 5 are married sisters-in-law, still, at the time of lodging F.I.R., respondent No.2 has stated about their maiden names. Why their status as married sisters-in-law has been suppressed is not explained. Certainly, it can be taken as an intentional act. But when the charge sheet was filed, as regards applicant No.5 is concerned, it is in her name of after marriage, but as regards applicant No.4, it is still under maiden name. Therefore, definitely, the question has to be raised in respect of investigation. Merely because those accused persons have received notice under section 41-A in the names which have been stated in the F.I.R. and the charge sheet will not be a sufficient ground in support of the prosecution story. Certainly, the suppression is with ulterior motive. When applicant Nos. 4 and 5, sisters-in-law, were married long back, then normal course would be that they would be in their respective matrimonial homes. A picture that has been painted in the F.I.R. that both of them were residing

with the informant and other applicants is therefore, untrue. The other allegations as against other accused are omnibus and as if all of them were acting in chorus, which cannot be a real fact.

10. At the cost of repetition, we would say that when there is suppression of decree that has been passed against the informant for restitution of conjugal rights on 04.08.2022, still she gives imaginary cause of action dated 18.12.2022. It is then stated when she was in her parental home on that day, mother-in-law, father-in-law, another accused Sudhakar Shelke and his wife went, abused, threatened and told that she should do whatever she wants. When already decree is in favour of either husband or his relatives, why would they go to her and say something. In fact, as F.I.R. gives a story that she had gone to the parents' home much prior to 18.12.2022 and in fact when she lodged the F.I.R., period of three years had already lapsed. Learned advocate for the applicants, therefore, raised point of limitation and states that order of taking cognizance passed by the learned C.J.J.D. and J.M.F.C. Wadwani, on 18.4.2023, is illegal. In respect of all these points, we would like to rely on the decision dated 29.01.2025, rendered in criminal application No. 887 of 2023 (***Musbin Babulal Thengade and others vs. The State of Maharashtra and another***) by this Court to which one of us (Smt. Vibha Kankanwadi, J.) was a party. As regards the point of limitation, this court has observed on

the basis of the decision rendered by the Hon'ble Supreme Court in the case of ***Arun Vyas vs. Anita Vyas, reported in (1999) Criminal Law Journal, 3479.*** In para 14 of the said decision, this Court has observed as under:-

"14. In the light of above, we are of the opinion that limitation for offence punishable under Section 498-A of the IPC shall commence from the last act of cruelty. Offence under Section 498-A of the IPC is a continuing offence implies that each act of cruelty would offer new starting point of limitation. Limitation for prosecution under Section 498-A does not continue for indefinite period. Such interpretation will render Section 468 of the Cr. P.C. nugatory or otiose for the purpose of Section 498-A of the Indian Penal Code which does not appear to be the intention of legislature. Had there been intention to exclude Section 498-A of the IPC from the sweep of Section 468 of the Cr.P.C express provision could have been made for the said purpose."

11. Of course, we are clarifying the position now and cognizance of the offence in this case has been taken long back, may be taking into consideration the cause of action shown on 18.12.2022 and therefore, we do not want to stretch this point more. However, for the aforesaid reasons, when the F.I.R. was lodged with some ulterior motive, it deserves to be quashed and set aside as against all applicants. This is a fit case where we are exercising powers under section 482 of Cr.P.C. Hence, we proceed to pass the following order:-

O R D E R

- I. The application stands allowed.
- II. The proceedings in R.C.C. No.29 of 2023 pending before the learned Judicial Magistrate, First Class, Wadwani, district Beed, arising out of F.I.R. vide C.R. No.3 of 2023, dated 04.01.2023, registered with Wadwani police station, district Beed, for the offences punishable under sections 498-A, 323, 504, 506 r.w.34 of I.P.C. as against all the applicants, stands quashed and set aside.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

rlj/