



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1959 OF 2022

1. Ahmad Abdulsamad Shaikh
Age : 34 years, Occp : Labourer,
R/o Room No.15, Sai Baba Nagar,
Modi-Patel Road, Station Road,
Bhayinder (West), Thane
2. Abdulsamad Abdulnawab Shaikh
Age : 61 years, Occp : Nil,
R/o Room No.15, Sai Baba Nagar,
Modi-Patel Road, Station Road,
Bhayinder (West), Thane
3. Nassem Abdulsamad Shaikh
Age : 52 years, Occp : Household,
R/o Room No.15, Sai Baba Nagar,
Modi-Patel Road, Station Road,
Bhayinder (West), Thane
4. Yasmeen Javed Shaikh
Age : 35 years, Occp : Household,
R/o Post. Pimpla Dhaiguda,
Tq. Ambajogai, Dist. Beed.
5. Nasreen Abdulsamad Shaikh
Age : 23 years, Occp : Student,
R/o Room No.15, Sai Baba Nagar,
Modi-Patel Road, Station Road,
Bhayinder (West), Thane
6. Rehmat Abdulsamad Shaikh
Age : 30 years, Occp : Labourer,
R/o Room No.15, Sai Baba Nagar,
Modi-Patel Road, Station Road,
Bhayinder (West), Thane
7. Azmat Samad Shaikh
Age : 25 years, Occp : Private Job,
R/o Room No.15, Sai Baba Nagar,

Modi-Patel Road, Station Road,
Bhayinder (West), Thane

8. Javed Abdul Shaikh
Age : 29 years, Occp : Private job,
R/o Near Masjid Pimpla,
Dhaiguda, Dist. Beed.
9. Mukhtar Abdul Gaphur Shaikh
Age : 60 years, Occp : Nil,
R/o A/1102, Prathamesh Heritage
CHS Ltd., Kanakia Road,
Beverly Park, Navaghar Village,
Mira Road East, Mira Bhayander,
Thane.
10. Rukhsana Mukhtar Shaikh
Age : 50 years, Occp : Household,
R/o B/504, Janki Avenue,
Azad Nagar, Mira Bhayendar
Fatak Road, Gaurav Dharm Kata,
Bhayander (East), Thane,
Bhayander.
11. Dawood Mukhtar Shaikh
Age : 23 years, Occp : Student,
R/o B/504, Janki Avenue,
Azad Nagar, Mira Bhayendar
Fatak Road, Gaurav Dharm Kata,
Bhayander (East), Thane,
Bhayander.

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
2. Sharmin Ahmed Shaikh
Age : 25 years,
R/o Haji Hamid Colony,
Darga Road, Kotwali,
Parbhani.

..RESPONDENTS

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Advocate for the applicants : Mr. Shyam C. Arora
APP for Respondent- State : Mr. V.K. Kotecha
Advocate for Respondent No.2 : Mr. Al Amoodi A. h/f Mr. G.R. Syed

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

DATED : 22th JANUARY, 2025.

JUDGMENT (PER ROHIT W. JOSHI, J.):

. The present matter arises out of First Information Report dated 31/03/2022 registered with Kotwali Police Station, Dist.Parbhani, vide F.I.R. No.0095/2022, for the offences punishable under Sections 498-A, 323, 504, 506 and Section 34 of the Indian Penal Code (IPC) at the behest of respondent No.2 along with Regular Criminal Case No.781/2022 pending on the file of learned 1-Chief Judicial Magistrate, Parbhani.

2. Respondent No.2 is the informant. Her relations with the applicants are as under :-

1. Applicant no.1 – husband
2. Applicant No.2 – father -in-law
3. Applicant No.3 – mother-in-law
4. Applicant No.4 – married sister-in-law
5. Applicant No.5- sister-in-law
6. Applicant No.6 – brother-in-law
7. Applicant No.7 – brother-in-law

8. Applicant No.8 – husband of married sister-in-law
9. Applicant No.9- maternal uncle-in-law
10. Applicant No.10 – maternal aunt
11. Applicant No.11 – maternal brother-in-law

3. The marriage of respondent No.2 was solemnized with applicant no.1 on 24.04.2017. The couple is blessed with a daughter, who was born somewhere in the year 2019. As per contents of the F.I.R., respondent No.2 was treated well by her husband and in-laws for about one month. She alleges that after a period of one month of marriage, husband and in-laws of respondent no.2 started illtreating her mentally and physically on one reason or the other. The allegations against applicant no.1- husband are that he started suspecting her character and hurled abuses at her. He also used to beat her and was not offering food. The husband and father-in-law were asking her to bring money from her parents for starting business by her husband and mother-in-law was instigating applicant no.1 to leave respondent No.2 at her parents' house on the ground that it was not possible to handle her. Respondent no.2 alleged that applicant nos.4 to 11 were harassing her on the ground that she is not doing any household work and also they were asking her to prepare food at late night etc. Respondent No.2 has alleged that husband had given threats to her to bring the amount of Rs.1,00,000/- from her parents, else he will kill her

and drop her to her parents' house. Due to the said harassment meted out by respondent no.2, she approached the office of Superintendent of Police, Parbhani and made complaint application to *Bharosa Cell* to resolve the matter. Thereafter, five meetings were held before *Bharosa Cell*, however, husband attended four meetings and no settlement was arrived at. In such circumstance, she has lodged the FIR.

4. Respondent No.1 has completed investigation in the matter and has filed charge-sheet under Section 173 of the Code of Criminal Procedure, 1973, vide Final Report No.311/2022 dated 28.06.2022, pursuant to which Regular Criminal Case No.781/2022 is registered against the applicants, which is pending adjudication before the learned 1-Chief Judicial Magistrate, Parbhani.

5. During the course of hearing, we had indicated to Mr.Shyam C. Arora, learned Advocate for the applicants that we are of the opinion that applicant Nos.1 to 3 may not have a case for quashing. Mr. Arora, learned Advocate, on instructions from his clients, made oral motion seeking to withdraw the application with respect to applicant Nos.1 to 3. We accepted the oral motion and allowed him to withdraw the application for applicant Nos.1 to 3 i.e. the husband and parents-in-law.

6. As regards applicant Nos.4 to 11, learned Advocate for the

applicants has contended that all the allegations made against them are absolutely vague and lacking in all material particulars. Even if the allegations are taken on their face value, they do not remotely make out any of the ingredients of Section 498-A of the IPC. He further states that the relations between applicant no.1 – husband and respondent no.2 – wife are strained and therefore, FIR has been lodged with a malafide intent to harass applicant no.1 and his family members. He, therefore, submits that the FIR and consequent criminal prosecution is required to be quashed against applicant Nos.4 to 11.

7. As against this, Mr. V.K. Kotecha, learned APP and Mr.AL Amoodi A., learned advocate for respondent No.2 state that allegations in the FIR do make out a case under Section 498-A of the IPC. They would further submit that correctness or otherwise of the allegations cannot be seen at the present stage and that all the allegations made in the FIR should be assumed to be correct for the purpose of adjudication of the present application. They submit that the present application is liable to be rejected in view of the allegations made in the FIR.

8. Having heard learned Advocates for the parties and on perusal of the FIR and other material in the charge-sheet, we find that the allegations of illtreatment and harassment caused to respondent no.2 are against applicant nos.1 to 3. We find substance in the

contention of learned counsel for the applicants that the FIR is lodged against applicant nos.4 to 11 with an intention to implicate all the family members of the estranged husband in a criminal offence. Over implication is apparent on the face of the FIR. The F.I.R. is lodged by respondent no.2 without providing any particulars and general, omnibus allegations which are far too vague have been levelled against applicant nos.4 to 11. Therefore, it will be unjust and unfair to force applicant nos.4 to 11 to face criminal prosecution on the basis of such allegations.

9. Perusal of First Information Report will demonstrate that the allegations levelled against applicant nos.4 to 11 are vague, omnibus and general in nature, without mentioning the specific date and time or even the tentative period with respect to demand and harassment caused by them to respondent no.2.

10. Applicant no.4 who is married sister-in-law and applicant no.8, who is her husband are residing separately from applicant no.1 and respondent no.2. So also applicant 9 to 11 are maternal uncle, his wife and son respectively who are also residing separately from them. Therefore, the allegations against applicant Nos.4 to 11 clearly indicate over implication on the part of respondent no.2. Applicant nos.5 to 7 are sister-in-law and brothers-in-law of respondent no.2. Although they were residing together with respondent no.2 at her matrimonial house,

she is unable to ascribe any specific role to them to attract.

11. The allegations against the applicant numbers 4 to 8, even if taken on their face value, do not make out the essential ingredients of cruelty within the meaning of section 498A of the IPC. The allegations are that the applicant nos.4 to 8 used to treat and abuse respondent no.2. The allegation against them is not with respect to demand of dowry. As regards, other allegations particulars with respect to alleged ill treatment and abuses are pertinently absent in the FIR. As regards, the applicant nos.9 to 11, they are maternal uncle, his wife, and his son, respectively of the husband of the respondent no.2. Although allegation of demand of money is made against applicant no.9, perusal of the FIR will indicate that the said allegation is absolutely vague and wanting in all material particulars. It is merely said that the applicant no.9 had threatened that if respondent no.2 did not bring money from her parents, she will be forcibly evicted from the matrimonial house. The allegations against applicant nos.10 and 11 are not relating to demand for dowry. The allegations of treatment against them also do not make out any of the ingredient of Section 498A. It also needs to be mentioned that the allegation with respect to demand of money against applicant no.9 is vague. It is lacking in material particulars, however, respondent no.2 naming them in the FIR.

12. In the light of the judgments of the Hon'ble Supreme Court in the matters of ***Preeti Gupta Vs. State of Jharkhand and another*** reported in ***2010(7) SCC 667***, ***Geeta Mehrotra Vs. State of Uttar Pradesh and another*** reported in ***2012(10) SCC 741*** and ***Kaskashan Kausar Vs. State of Bihar and others*** reported in ***2022(6) SCC 599***, it is the duty of High Courts dealing with quashing petitions with respect to offence under Section 498-A of the Indian Penal Code to be careful while dealing with allegations against relatives, who stayed at the distant place having regard to realities of strained matrimonial relationship, which create a tendency to implicate all the family members or near relations of the husband. The Hon'ble Supreme Court had guided the High Courts to read between the lines while dealing with allegations against relatives residing at distant places and with due care and circumspection to guard against over implication. These judgments of the Hon'ble Supreme Court have been followed recently in the matter of ***Payal Sharma Vs. State of Punjab and another*** reported in ***2024 S.C.C. Online (SC) 3473***.

13. We are of the considered opinion that respondent No.2 has unnecessarily implicated applicant Nos.4 to 11 in the matter merely because they are siblings of her estranged husband. The criminal prosecution under Section 498-A of the IPC can not be sustained against applicant Nos.4 to 11. We therefore pass the

following order :-

ORDER

- (i) The application is partly allowed.
- (ii) The application in respect of applicant no.1 - Ahmad Abdulsamad Shaikh, applicant no.2 - Abdulsamad Abdulnawab Shaikh and applicant no.3 - Nasseem Abdulsamad Shaikh stands dismissed as withdrawn.
- (iii) F.I.R. No. 0095/2022 dated 31/03/2022 registered against applicant no.4 -Yasmeen Javed Shaikh, applicant no.5 - Nasreen Abdulsamad Shaikh, applicant no.6 - Rehmat Abdulsamad Shaikh, applicant no.7 - Azmat Samad Shaikh, applicant no.8-Javed Abdul Shaikh, applicant no.9 - Mukhtar Abdul Gaphur Shaikh, applicant no.10 - Rukhsana Mukhtar Shaikh and applicant no.11 - Dawood Mukhtar Shaikh with Kotwali Police Station, Dist. Parbhani, for the offences punishable under Sections 498-A, 323, 504, 506 and Section 34 of the Indian Penal Code along with Regular Criminal Case No.781/2022 pending on the file of learned 1-Chief Judicial Magistrate, Parbhani, are hereby quashed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/