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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

92 CRIMINAL WRIT PETITION NO. 991 OF 2023

KAZI MUSHAHEDODDIN AJIJODDIN AND OTHERS

....Petitioners

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondents

Mr. N. K. Tungar, Advocate for the petitioners

Mr. S. B. Jadhav, APP for the respondents/State

Mrs. Fatema Kazi, Advocate fore respondent No. 2

CORAM : KISHORE C. SANT, J.

DATE : 22nd JULY, 2025

P. C.

1. Heard the learned advocate for the parties.
2. By consent of the parties this petition is taken up for final disposal at the stage of admission.
3. The present criminal writ petition is filed challenging the judgment and order passed below exh.1 in criminal revision application no. 68/2022 by the learned Additional Sessions

Judge, Beed dated 03-06-2023 thereby partly allowing the criminal revision application filed by the present petitioners. The present petitioners had challenged the order passed below exh. 28 by the learned JMFC, Beed dated 22-08-2022 rejecting the application for discharge filed by the present petitioners. The petitioners are the original accused in the proceeding under section 498-A pending before the learned JMFC, Beed.

4. The facts in short, respondent No.2 first informant filed Misc. Application No. 55/2014 in the court of Chief Judicial Magistrate leveling various allegations against the present petitioners. It is alleged that after marriage with the present petitioner No. 1 on 25-10-2009 the informant started residing with the present petitioners in the matrimonial home. In the marriage, parents of the opponent gave an amount of Rs.25,000/-, gold ornaments of 8 tolas and utensils towards dowry. Out of the marriage there is one child born. It is further alleged that after about six months accused No. 1 started assaulting and harassing the informant. The allegation against

accused Nos. 2 to 10 is that they used to instigate the husband-accused No.1. They used to alleged that the informant does not know cooking. Two instances are quoted of assault on 29-04-2013 and 12-01-2014.

5. The learned Magistrate taking cognizance of the complaint issued process. The present petitioners appeared in the matter. They filed discharge application exh. 28 under section 239. The learned JMFC by order dated 22-08-2022 rejected the said application by observing that on 29-04-2013 the accused drove the complainant from the house to meet unlawful demand of dowry. It is further held that there was harassment at the hands of these accused persons. The petitioners, therefore, filed a criminal revision application No. 68/2022 in the court of learned Additional Sessions Judge, Beed. The learned Sessions Judge partly allowed the revision and discharged accused No. 7-Firdos Abdul Razzak i.e. sister-in-law of the informant. The learned Additional Sessions Judge rejected the revision by impugned order dated 03-06-2023 to

the extent of present petitioners. The petitioners are therefore, before this court.

6. Mr. Tungar, learned advocate for the petitioners vehemently argued that in the present case there are no specific allegations against any of the petitioners. There is already talak on 29-04-2013. The wife thereafter left the house and thus there was no question of ill-treatment. The complaint is filed after eight months. Initially the informant had approached the police. However, police did not take any cognizance as no case was made out to register the crime under section 498-A. The informant, thereafter filed an application under section 156(3) and same was allowed 16-01-2014 and investigation was directed. A charge-sheet came to be filed on 11-03-2014 and thereafter the proceeding started. He submits that no ingredients of the offence are in fact, made out. It is not shown that cruelty was of such nature which would drive the women to commit suicide. Both the courts have failed to appreciate this aspect. He further submits that petitioner No.5 is residing at

Mumbai. He never resided together with the family. Petitioner Nos. 4,6 to 9 all are residing at different places. There is no specific allegation against any of the petitioners in the entire complaint. Even in the charge-sheet there is no specific material. He, thus, submits that discharge application ought to have been allowed.

7. The learned advocate for the petitioners relies upon the judgment in the case of Preeti Gupta and Anr. Vs State of Jharkhand and Anr¹. Para No. 35 of the said judgment reads as under:

“35. The criminal trial lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society.”

8. The learned advocate for the respondent No.2

1 2010 AIR (SC) 3363

vehemently opposed the petition. She submits that both the courts have considered the case by looking into the material produced on record and charge-sheet. There was no talak between the parties. In the proceeding for the restitution of conjugal rights for the first time, the husband came with the story of Talak. She submits that in fact it is specifically stated in her application before the learned Magistrate that relationship still subsists. So far as separate residence, she submits that all are residing together. In support of this contention she has invited attention of this court to the voters list wherein accused persons are shown resident of same house i.e. House No. 1-4-480 at Beed. She submits that there is no substance in the contention that the petitioners are residing separately. She invited the attention to para No. 9 of the order passed by the learned Magistrate by submitting that the learned Magistrate has rightly considered that the accused persons drove the complainant from the house to meet unlawful demand of dowry.

9. This court has heard the matter and gone through

the order. The complaint is filed under section 498-A of the IPC.

Section 498-A reads as under:

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.

[Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.]

Explanation.—For the purposes of this section, "cruelty means"—

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

10. The present case at the most can be considered under explanation (b) that whether the harassment of the woman is with a view to coercing her or any persons related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. By looking to the complaint and the application, it is clear that no case is made out under explanation (a). So far as explanation (b) is concerned, this court has considered the application filed under Section 156(3).

It is seen that the allegation of demand is omnibus and vague. It is only stated that accused Nos. 2 to 10 used to instigate accused No.1. So far as demand is concerned, it is of Rs.7 lakhs for purchase of Maruti Swift vehicle. Said allegation is however against all the persons without specifying as to which of the accused persons exactly demanded the amount. In para No. 6 and 7 of the application two instances are shown of assault. On 29-04-2013 and 12-01-2014. However, allegations are only that all the accused persons made demand. Accused Nos. 8 to 10 allegedly assaulted her. There is nothing to show that she received any injury out of the such incident.

11. From, the order it is seen that the learned Magistrate has only observed that the complainant was drove out of the house by the accused persons. However, it is not discussed as to which of the accused has exactly played role. Looking to the order passed by the learned Sessions Judge it is not clear as to what exact material is appearing against the accused persons.

12. Thus, on going through the order this court finds that there is no specific material appearing against the accused persons.

13. This court finds that the learned advocate for the petitioners has rightly placed reliance on the judgment in the case of Preeti Gupta (supra). This court on taking overall view of the facts and considering the material on record finds that case is made out to allow the petition. There is no sufficient material to frame the charges against the petitioners. The petition, therefore succeeds. The impugned order passed below exh.1 in Criminal Revision Application No. 68/2022 by the learned Sessions Judge, Beed dated 03-06-2023 is hereby quashed and set aside. The application below Exh. 28 filed by the petitioners in RCS No. 185/2014 pending before the learned JMFC, Beed is hereby allowed. The accused persons-petitioners stand discharged.

[KISHORE C. SANT, J.]