



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

CRIMINAL APPLICATION NO.2863 OF 2023

1. Shaikh Osman s/o Shaikh Nabi, Age – 52 yrs, Occ. Business, R/o H.No.4-4-33, Near Shahanoor Hamvi Masjid Moti Karanja, Dist. Aurangabad.
2. Shaikh Naheed Begum w/o Shaikh Usman, Age – 43 yrs, Occ. Household, R/o H.No.4-4-33, Near Shahanoor Hamvi Masjid Moti Karanja, Dist. Aurangabad.

... APPLICANTS

VERSUS

1. The State of Maharashtra, through Police Inspector, Police Station Kranti Chowk, Dist Aurangabad.
2. Manisha w/o Shaikh Abrar, Age 35 yrs, Occ. Household, R/o 1. Near Bharat Press, Anguri Baugh, Dist. Aurangabad 2) Bakwal Nagar, Waluj, Aurangabad.

... NON-APPLICANTS.

Shri Shaikh Altamash Abdul L. Shaikh, Advocate for the applicants.

Smt. P.R. Bharaswadkar, Assistant Public Prosecutor for the Non-applicant/State.

Non-applicant no.2 is served.

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

DATE : 23.01.2025.

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

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of the learned Counsel appearing for the parties.

3. The applicants in the present matter are accused nos. 3 and 4 in the First Information Report ('FIR') No.226 of 2019 registered with the Police Station Kranti Chowk, Aurangabad City on 16.07.2019 for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code ('IPC'). The applicant no.2 is the wife of applicant no.1. The non-applicant no.2 is the informant, who is the wife of brother of applicant no.1 namely Shaikh Abrar. This Shaikh Abrar is accused no.1 and his second wife Nilofar is accused no.2.

4. The gist of an allegation in the FIR is that the marriage of non-applicant no.2 was solemnized with accused no.1 somewhere in the year 2011. The couple is blessed with two children from the wedlock. The non-applicant no.2 claims that she was treated well in the initial period of around 3 years from the date of marriage. However,

thereafter, accused no.1 married accused no.2 from where the things started getting bad. She alleges that accused nos.1 and 2 used to ill treat her, abuse her and also beat her, exerting pressure for getting money from her parents for buying motorcycle. She claims that such incidents of cruelty had occurred repeatedly. As regards the present applicants, who are accused nos. 3 and 4, the allegations are that they had mentally and physically harassed her and often used to threaten her that they will forcibly evict her from the matrimonial home. Based on these allegations the non-applicant no.1 has registered FIR against the present applicants and husband of non-applicant no.2 and his second wife. The non-applicant no.1 has conducted investigation in the matter and has filed a charge-sheet. Pursuant to the said charge-sheet, a criminal case being Regular Criminal Case('R.C.C.') No.1632 of 2020 is registered against all the accused persons, which is pending for adjudication before the learned Judicial Magistrate First Class at Aurangabad.

5. Shri Shaikh Altamash Abdul L., learned Counsel for the applicants submits that the allegations against the applicants are absolutely vague and lacking in all material particulars. He states that the allegations are not sufficient to sustain prosecution against the applicants, and therefore, FIR should be quashed against them.

6. As against this, the contention of Smt. P.R. Bharaswadkar, learned Assistant Public Prosecutor ('APP') is that the allegations are sufficient to sustain prosecution at present and details of harassment and cruelty can be furnished during the course of trial in the witness box.

7. We have heard the rival submissions as aforesaid and perused the record of the case with able assistance of both the learned Counsel. Perusal of the FIR and other statements recorded under Section 161 of the Code of Criminal Procedure reveal that general and vague allegations are made against the applicants that they used to ill-treat the non-applicant no.2 and had threatened to forcibly evict her from the matrimonial house, if the demand of money is not fulfilled. What is relevant is that the tentative period, tentative number of such incidents and particulars with respect to manner of harassment amounting to cruelty are completely absent in the FIR. It is now, well settled by the catena of the decision of the Hon'ble Supreme Court as also this Court that, the prosecution under Section 498-A of the IPC cannot be sustained on the basis of general and vague allegations. We find that the allegations levelled in the FIR are grossly inadequate to make out essential ingredients of the offence under Section 498-A of the IPC against the present applicants. We are unable to accept the

contention of the learned APP that particulars with respect alleged cruelty can be furnished during the course of trial in the present case since the allegations in the FIR are grossly inadequate to make out a case of cognizable offence punishable under Section 498-A of the IPC. As a general proposition, we may accept the contention that particulars can be given during the course of trial while depositions are recorded. However, there cannot be any quarrel about the proposition that the FIR with its contents must disclose that the cognizable offence is committed and all the essential ingredients thereof must be mentioned. We find the allegations in FIR grossly inadequate, and therefore, no fruitful purpose would be served for forcing the applicants to undergo the turmoil of facing a criminal trial. The present applicant no.1, who is the brother of the husband of non-applicant no.2 as also the applicant no.2, who is the wife of applicant no.1 are unnecessarily arrayed as an accused. The case against them is one of over-implication, since they are family members of estranged husband of non-applicant no.2/informant. We, therefore, inclined to allow the present application by quashing the FIR and criminal proceedings against the present applicants. Hence, we pass the following order :

- (a) The Criminal Application is allowed.

- (b) The First Information Report No.226 of 2019 registered with the Police Station Kranti Chowk, Aurangabad City on 16.07.2019 for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code along with Charge-sheet bearing R.C.C. No.1632 of 2020 pending on the file of Judicial Magistrate First Class at Aurangabad are hereby quashed against the present applicants i.e. 1. Shaikh Osman s/o Shaikh Nabi and 2. Shaikh Naheed Begum w/o Shaikh Usman.
8. The Criminal Application stands disposed of accordingly.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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