



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 2948 OF 2023**

1. Maroti Subhash Telange  
Age : 46 Years, Occu : Labour; R/o At Post  
Vasarni, Itwara Nanded, District Nanded.
2. Kalawati Babu Ibitwar  
Wrongly shown as Kalawati Maroti Telange  
Age : 40 Years; Occu : Household; R/o At  
Post Barhali, Tahsil Mukhed, District  
Nanded.
3. Sundarabai Subhashrao Telange  
Age : 69 Years, Occu : Household; R/o At  
Post Vasarni, Itwara Nanded, District  
Nanded.
4. Rekha Maroti Telange  
Age : 52 Years, Occu : Household; R/o  
House No. 24, At Post Vasarni, Tahsil and  
District Nanded.
5. Maroti Pundlik Telange  
Age : 59 Years, Occu : Labour; R/o House  
No. 24, At Post Vasarni, Tahsil and District  
Nanded.
6. Sanjay Babu Ibitwar  
Age : 43 Years, Occu : Labour; R/o At Post  
Barahali, Tahsil Mukhed, District Nanded.
7. Babu Maroti Ibitwar  
Age : 77 Years; Occu – Nil; R/o At Post  
Barahali, Tahsil Mukhed, District Nanded.

... **APPLICANTS**

**VERSUS**

1. The State of Maharashtra  
Through Police Inspector, Degloor Police  
Station, Tahsil Degloor, District Nanded
2. Mira Maroti Telange  
Aged : 40 Years, Occu : Labour; R/o  
Deshpande Galli, Tahsil Degloor, District  
Nanded.

**... RESPONDENTS**

Mr. Ashutosh S. Kulkarni, Advocate for Applicants.  
Ms. Pooja K. Apache, Advocate (Appointed) for Respondent No.2.  
Mr. S. A. Gaikwad, APP for Respondent No.1/State.

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

**DATE : JANUARY 23, 2025.**

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

. The present Application is filed under Section 482 of the Code of Criminal Procedure seeking quashment of First Information Report No. 354/2022 dated 24/7/2022 registered with Police Station, Degloor, Tahsil Degloor, District Nanded for the offences punishable under Section 498-A, 494, 323, 504 and 506 read with Section 34 of Indian Penal Code and Regular Criminal Case No. 34/2023 pending before the learned Judicial Magistrate First Class, Degloor, District Nanded, which is registered pursuant to the said First Information Report.

2. The above First Information Report is lodged by the Respondent No.2. She is related to the Applicants as under :

- (i) Applicant No.1 – Husband;
- (ii) Applicant No.2 – Second wife of husband;
- (iii) Applicant No.3 – Mother-in-law;
- (iv) Applicant No.4 – Sister-in-law (married);
- (v) Applicant No.5 – Husband of Sister-in-law;
- (vi) Applicant No.6 – Brother of Second wife; and
- (vii) Applicant No.7 – Father of Second wife (since deceased).

3. At the outset, we may mention that since the Applicant No.7 – Babu Maroti Ibitwar has expired, the proceeding stands disposed of against him as abated.

4. The allegations in First Information Report demonstrate that the marriage of Applicant No.1 and Respondent No.2 was solemnized somewhere around the year 2006 i.e. 16 years before lodging of the First Information Report. The Respondent No.2 has begotten two sons aged about 16 years and 14 years at the time of lodging of First Information Report from her wedlock with the Applicant No.1. The Respondent No.2 states that for a period of around four years, i.e. upto the year 2010, she was treated properly by her in-laws. She alleges that her parents-in-law, sister-in-law and her husband used

to repeatedly ask her to bring the sum of Rs.5,00,000/- from her parents for purchasing a goods vehicle for her husband/Applicant No.1, since he was in employment as a driver. She alleges that since she had expressed inability of her parents to meet such demand, the parents-in-law as well as sister-in-law of her husband used to instigate her husband to beat her.

5. An allegation is made against the Applicant No.1 that he used to raise quarrel with her for petty reasons, like cooking food etc.. She has alleged that the husband used to threaten that he would desert her and used to cause physical and mental harassment to her. It is also alleged that the parents-in-law, sister-in-law and her husband used to instigate the Applicant No.1 to force the Respondent No.2 to leave her matrimonial house. According to the First Information Report, her relatives on parental side made several attempts for reconciliation of the matter, however, all efforts proved to be futile. On the contrary, she was made to suffer even greater hardship thereafter. It will be pertinent to mention that these meetings are alleged to have been held before a period of around six months from the date of lodging of First Information Report.

6. Apart from the above allegations, she states that in the year 2008 her husband had beaten her up and taken all her ornaments and that he

married the Applicant No.2 and offered the said ornaments to her at the time of marriage. She states that the Applicant No.2 is daughter of paternal aunt of the Applicant No.1. The marriage between Applicant No.1 and Applicant No.2 was solemnized after the demise of first husband of Applicant No.2. She has levelled allegations of harassment against the father and brother of the Applicant no.2 as well.

7. The First Information Report came to be registered with such allegations against the Applicants. The Respondent No.1 has conducted investigation in the matter after lodging the First Information Report and has filed chargesheet in the matter on 19/1/2023 bearing No. 6/2023. Based on the said chargesheet, a criminal case being Regular Criminal Case No. 34/2023 is registered against the Applicants.

8. Mr. Ashutosh S. Kulkarni, learned Counsel appearing for the Applicants argues that marriage between the Applicant No.1 and Respondent No.2 was solemnized in the year 2006. The second marriage is allegedly solemnized in the year 2008. He points out that the younger son, who is stated to be 14 years old, was born in close proximity with the second marriage of the Applicant No.1. He then contends that according to the Respondent No.2 she was treated well for a period of four years after marriage which includes

period of two years after the alleged second marriage. He then contends that the allegations with respect to Section 498-A of Indian Penal Code are vague and omnibus in nature. As per his contention, First Information Report, which is registered on the basis of such allegations, is required to be quashed in exercise of the powers under Section 482 of the Code of Criminal Procedure in order to prevent abuse of legal process. He also argues that the Respondent No.2 has deliberately given a penal colour to a matrimonial dispute and has implicated mother of the Applicant No.1 as also married sister and her husband in the matter without any justifiable cause.

9. *Per contra*, Mr. S. A. Gaikwad, learned APP appearing for Respondent/State and Ms. Pooja K. Apache, learned Counsel appearing for the Respondent No.2 contend that the allegations are not vague and general, as contended by the Applicants. They submit that the allegations are sufficient to take the case for trial and that the allegations may or may not be proved during the trial is altogether a different matter. They sum up the submissions stating that in the light of allegations in the First Information Report and material gathered during the course of investigation, the Application deserves to be rejected.

10. We have perused the First Information Report and other material

in the chargesheet. The allegations in the First Information Report are certainly not clear and precise. Allegations have been levelled in a round about manner without providing details as regards the alleged period of harassment amounting to cruelty. The Respondent No.2 has stated that the relations were cordial for a period of four years after the marriage, however, the allegations in the First Information Report tend to disclose that after a period of two years of her marriage, second marriage was illegally solemnized between the Applicant Nos.1 and 2. She has alleged that few days before second marriage, all her ornaments were taken away from her and the same were offered to the second wife. She has alleged that while taking her ornaments, she was beaten up by the husband. These allegations pertain to the year 2008 i.e. tentatively after a period of two years from the date of her marriage. These allegations contradict her earlier statement in the First Information Report, where she states that she was treated properly initially for a period of four years after the marriage. The fact that tentative period and tentative number of occasions of alleged illtreatment and harassment amounting to cruelty are not mentioned in the First Information Report, assume greater significance in view of the said contradictions.

11. It is also clear from the reading of First Information Report that the sister-in-law and her husband have been named without being able to

level any specific allegations against them. The allegations in the First Information Report against them are of general and omnibus nature. Such allegations are not sufficient to sustain prosecution under Section 498-A of Indian Penal Code. Apart from the above, First Information Report is also grossly belated as it relates to the alleged cruelty, which had commenced from the year 2008.

12. The First Information Report is lodged in the year 2022, after a period of 14 years. The Respondent No.2 has alleged that such incidents of cruelty had occurred intermittently, however, the dates or even tentative period thereof are not specified. The delay is sought to be explained by stating that she did not take any steps earlier, having regard to the future of her sons. This solitary statement is not sufficient to explain the cause of inordinate delay of around 14 years in reporting the acts of cruelty.

13. It also appears improbable and inconceivable that when a demand was made for a particular purpose i.e. purchasing a goods vehicle, the demand will be for the same amount of Rs.5,00,000/-. Judicial notice can be taken about the fact that for a period extending to 14 years, the cost of any commodity including a goods transport vehicle would not be the same. This also dents the credibility of the allegations levelled by the Respondent No.2.

14. Having regard to totality of circumstances, the general nature of allegations in the First Information Report and inordinate delay in lodging the First Information Report, we are of the view that continuation of prosecution against the Applicants will not yield any purpose. The material on record is grossly inadequate to sustain prosecution against them. The essential ingredients to make out a case under Section 498-A of Indian Penal Code are lacking in the First Information Report. Continuation of prosecution against the Applicants will, therefore, amount to abuse of the legal process. We are, therefore, of the opinion that the First Information Report against the Applicants deserves to be quashed with respect to the offence under Section 498-A of Indian Penal Code.

15. Section 494 of Indian Penal Code is included in Chapter XX of the Indian Penal Code. Section 198 of the Code of Criminal Procedure provides that cognizance of offences under Chapter XX including Section 494 of Indian Penal Code can be taken only on complaint made by the wife, or on her behalf by her parental relatives, as are specified in the said provision. The offence is non-cognizable offence. Since the First Information Report is lodged under Section 498-A of Indian Penal Code, cognizance with respect to the offence under Section 494 of Indian Penal Code can also be taken. First Information Report for offence under Section 494 was maintainable only because of

Section 498-A. Since the case under Section 498-A of Indian Penal Code is not made out and we have held that First Information Report is liable to be quashed *qua* Section 498-A, First Information Report cannot be sustained for the offence under Section 494 of Indian Penal Code, which is a non-cognizable offence, and also because Section 198 of Code of Criminal Procedure provides that cognizance can be taken only on the basis of complaint and not on the basis of First Information Report. We may also mention that the other Sections, under which First Information Report is registered i.e. Sections 323, 504 and 506 of Indian Penal Code, are non-cognizable offences.

16. We are of the opinion that there is a delay of around 14 years in raising grievance with respect to the second marriage. The delay is not explained by the Respondent No.2. The Respondent No.2 has resided together with her husband and his second wife for a period of about 14 years. She has lodged First Information Report with respect to the said offence only when there was a breakdown of matrimonial relationship with her husband.

17. The Respondent No.2 has alleged that the Applicant No.2 is second wife of her husband i.e. Applicant No.1. On the basis of allegations, offence under Section 498-A of Indian Penal Code is registered. As has been held by the Hon'ble Supreme Court in the case of *U. Suvetha V/s State by*

*Inspector of Police and Another*,<sup>1</sup> and this Court in the case of *Ranjana Gopalrao Thorat V/s State of Maharashtra*<sup>2</sup>, the second wife is not a relative of the husband, since the marriage is not a legal marriage. Since the second wife, with whom marriage is solemnized illegally, cannot be termed to be relative of the husband within the meaning of Section 498-A of Indian Penal Code. The second wife i.e. Applicant No.2 and her brother/Applicant No.6 cannot be prosecuted for the offence punishable under Section 498-A of Indian Penal Code. Although the second wife/Applicant No.2 was cousin of the husband, the allegations in First Information Report against her are in her capacity of second wife and not in her capacity of cousin of husband.

18. For the reasons aforesaid, the Application deserves to be allowed and is, accordingly, allowed. Hence, the following order.

#### ORDER

A) The Criminal Application is allowed.

B) The First Information Report No. 354/2022 dated 24/7/2022 registered with Police Station, Degloor, Tahsil Degloor, District Nanded for the offences punishable under Section 498-A, 494, 323, 504 and 506 read

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<sup>1</sup> 2009(6) Supreme Court Cases 757

<sup>2</sup> 2007(5) Mh.L.J. 425

with Section 34 of Indian Penal Code and Regular Criminal Case No. 34/2023 pending before the learned Judicial Magistrate First Class, Degloor, District Nanded, which is registered pursuant to the said First Information Report are quashed against the Applicant Nos.1 to 7, *viz* – Applicant No.1 – Maroti Subhash Telange; Applicant No.2 – Kalawati Babu Ibitwar; Applicant No.3 – Sundarabai Subhashrao Telange; Applicant No.4 – Rekha Maroti Telange; Applicant No.5 – Maroti Pundlik Telange; Applicant No.6 – Sanjay Babu Ibitwar; and Applicant No.7 – Babu Maroti Ibitwar respectively.

C) Ms. Pooja K. Apache, learned Appointed Counsel appeared on behalf of the Respondent No.2. Her professional fees is quantified at Rs.7500/-.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)