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

CRIMINAL APPLICATION NO.3670 OF 2024

1. Shrikant S/o Ramakant Awadke,
Age : 38 Years, Occ. Agriculture,
R/o. Mukramabad Tq. Mukhed,
Dist. Nanded. (Husband)

2. Satyawati W/o Ramakant Awadke,
Age : 59 Years, Occ. Household,
R/o. Mukramabad, Tq. Mukhed,
District Nanded. (Mother-in-law)

3. Shubhangi W/o Prashant Tondure,
Age : 47 Years, Occ. Household,
R/o. Behind New Bus Stand,
Bidar Tq. & Dist. Bidar (Karnataka)
(Sister-in-law)

4. Sheela W/o Sachin Patil,
Age : 40 Years, Occ. Household,
R/o. Apparao Chowk, Degloor Road,
Udgir, Tq. Udgir, Dist. Latur,
now residing in Qatar.
(Sister-in-law)

5. Manisha W/o Chandrakant Sukunge,
Age : 50 Years, Occ. Household,
R/o. Barhali (A) Tq. Mukhed,
Dist. Nanded. (Aunt-in-Law)

6. Chandrakant S/o Pandurang Sukunge,
Age : 55 Years, Occ. Agriculture, (abated since deceased)
R/o. Barhali (A) Tq. Mukhed,
Dist. Nanded. (Uncle-in-Law) ..Applicants
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through the Police Station Officer,
Aurad Shahajani Police Station,
Dist. Latur

2. Shweta Shrikant Awadke,
Age : 27 Years, Occ. Household,
R/o. Shivajinagar, Aurad Shahajani,
Tq. Nilanga, Dist. Latur .. Respondents

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Advocate for the applicants : Mr. N. P. Patil
A.P.P. for Respondent No.1 State : Adv. R. P. Gour

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

DATE : JANUARY 06, 2025

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

1. The applicants have invoked inherent jurisdiction of this Court vested under Section 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for the sake of brevity) in order to challenge FIR No. 0262 of 2024 registered against them with Aurad Shahajani Police Station, District Latur on 01.08.2024 for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code. (hereinafter referred to as 'IPC')

2. Respondent No.2 is the informant. The applicants are related to respondent No.2 as under :-

applicant No.1 Husband

Applicant No.2 Mother-in-law

applicant No.3 sister-in-law

applicant No.4 sister-in-law

applicant No.5 (sister of mother-in-law)

applicant No.6 (husband of applicant No.5).

3. The applicant No.6 has expired on 05.10.2024. Death certificate dated 21.10.2024, issued by Gram Panchayat Bapsherwadi Taluka Mukhed District Nanded is produced on record by the learned Advocate for the applicants. It is taken on record and marked as Exhibit 'A'. Since applicant No.6 has expired, the proceeding stands abated as against him.

4. Respondent No.2 has mentioned in the First Information Report that her marriage with applicant No.1 was solemnized on 15.03.2017. She states that the in-laws treated her well for a period of approximately two months and thereafter started harassing her. The allegations in the First Information Report are that all the applicants used to make complaints on the ground that she was not good looking, she was not well mannered and she could not cook food properly. Apart from this, it is also alleged that all the applicants used to ask her to bring an amount of Rs. 5,00,000/- from her father for purchasing a plot. She has stated that she was also abused, beaten and accordingly harassed and ill-treated by all the applicants and further that on 28.11.2018, she was forcibly expelled from her matrimonial home. All these allegations have been levelled against all the applicants. It is thereafter stated that a meeting of family

members and relatives on both sides was held in order to resolve the issue, however, in that meeting also the applicants refused to take back respondent No.2 in her matrimonial house stating that she was not good looking and well mannered and could not cook food. The period of alleged illtreatment is mentioned as 15.05.2017 to 28.11.2018.

5. The learned Advocate for the applicants Shri. N. P. Patil, has argued that all the allegations in the First Information Report are lacking in material particulars. He states that leave apart the date and time even tentative period of alleged harassment and ill-treatment is not mentioned. He further states that it is inconceivable that all the applicants i.e. applicant Nos. 1 to 6 had committed the said act together as alleged in the First Information Report. He also points out that although an allegation is levelled with respect to demand of Rs. 5,00,000/- for purchasing plot, the allegation in the First Information Report is that, Rs. 5,00,000/- should be provided in order to purchase of a plot for all the applicants. He specifically points out the word '*Amhala*' i.e. 'us' mentioned in the First Information Report. He further states that in the meeting for reconciliation, demand for dowry is not made even according to respondent No.2. He then submits that the offence is allegedly committed between 15.05.2017 to 28.11.2018 and the First Information Report is lodged

on 01.08.2024. He submits that there is not a single word offering explanation for the delay in lodging the First Information Report. He submits that the First Information Report is lodged after a period of approximately 5 years and 10 months. On the delay his submission is twofold, firstly that the First Information Report is barred by time and secondly unexplained delay indicates false implication. The learned counsel for the applicants has drawn our attention to Annexure 'A' which is residency permit issued by the State of Qatar to applicant No.4 to point out that she is not even residing in India. He further draws our attention to Hindu Marriage Petition No. 164 of 2019 filed by applicant No.1 to contend that despite filing of divorce petition, respondent No.2 did not lodge the First Information Report at the relevant time. He would contend that the First Information Report is lodged at the stage when the divorce petition is posted for arguments. His contention is that, the First Information Report is lodged in order to exert pressure on applicant No.1 to withdraw the divorce petition.

6. As against this, Mrs. R. P. Gour, the learned A.P.P. submits that in cases of offence under Section 498-A of the IPC, First Information Report should not be quashed on the ground of delay since a wife always has a hope that the issue would be reconciled sooner or later and therefore, does not rush with lodging of First Information Report since such step is likely to bring an end to every possibility of amicable

settlement permanently. She submits that offence under Section 498-A of the IPC offers recurring/continuous cause of action. She further states that allegation with respect to demand for dowry is clearly made in the First Information Report and as regards the word *Amhala/* us she states that it is obvious that demand was for applicant Nos. 1 and 2.

7. Respondent No.2 is served in the matter but has not bothered to appear in order to oppose the present application.

8. We have perused the First Information Report and other material on record. Perusal of the First Information Report clearly indicates that the allegations levelled by respondent No.2 are omnibus in nature. They are absolutely vague and lacking in all material particulars. The allegations are not person specific. They do not refer to any tentative period of alleged harassment or illtreatment. The fact that even according to respondent No.2 demand for dowry was not made during the conciliation meeting is also factor that needs to be taken into consideration. The delay in lodging of the First Information Report coupled with the fact that respondent No.2 has not offered any explanation for the delay speaks of itself. We find that the contention of the applicants that the First Information Report is lodged after a period of over five years and ten months at the stage when the divorce petition is posted for arguments. It is also correct

that there is no statement in the First Information Report explaining the delay.

9. We are of the clear opinion that the First Information Report has been lodged as an arm-twisting pressurizing tactics. The contents of the First Information Report taken on face value do not make out any case to continue prosecution against any of the applicants. We find that respondent No.2 is trying to give a penal colour to the matrimonial dispute between herself and her husband i.e. applicant No.1 and for that purpose she has impleaded the name of applicant No.2, so also applicant Nos. 3 and 4 who are sisters-in-law and applicants Nos. 5 & 6 who are the sister of mother-in-law and her husband. This is a clear case of abuse of criminal process. We rely upon ratio of judgments of the Hon'ble Supreme Court in the matters of

(i) ***Preeti Gupta Vs. State of Jharkhand [(2010) 7 SCC 667***]

(ii) ***Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another [(2012) 10 SCC 741***].

(iii) ***Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and others [(2022) 6 SCC 599]***.

(iv) ***Payal Sharma vs. State of Punjab [(2024) SCC OnLine*** **3473]**

(v) ***Mamidi Anil Kumar Reddy Vs. The State of Andhra***

Pradesh [(2024) SCC OnLine 127]

10. All these judgments of the Hon'ble Supreme Court clearly lay down that general and omnibus allegations are not enough to sustain criminal prosecution under Section 498-A of the Indian Penal Code. The Hon'ble Supreme Court has also cautioned that in cases of prosecution under Section 498-A of the IPC, the Courts must read between the lines to find out the true intent. It is held that over implication has become a norm in the matrimonial disputes and cases under Sections 498-A of the IPC.

11. In view of what we have recorded above, we are clearly of the opinion that the present case is also one of the kind in which respondent No.2 wife has initiated criminal prosecution against her husband, mother-in-law, sisters-in-law and also sister of mother-in-law and her husband by making omnibus allegations. She has not been able to provide any particulars of the alleged ill-treatment. She is also not able to assign any specific role to any applicant individually. Applicant Nos. 3 to 6 are also not residing with applicant Nos. 1 and 2. Apart from this, the timing of lodging of the First Information Report and delay also speak about the intention on the part of respondent No.2.

12. The aspect of delay needs to be viewed in the light of section

514 of the BNSS. Section 514 of BNSS provides limitation of three years for taking cognizance of offence punishable with sentence for a term not exceeding three years. Offence under Section 498-A of the IPC is sentence punishable up to three years. The limitation is therefore, governed by Section 514 (2)(c) of BNSS The complaint is filed beyond the period of three years and is barred by limitation. Section 514 of BNSS bars taking cognizance of such offence beyond prescribed period of limitation. However, cognizance of the offence can be taken beyond the period of limitation in view of Section 519 of the BNSS.

13. The cognizance of offence can be taken beyond the period of limitation in two contingencies

(i) That the delay has been properly explained

or

(ii) That is necessary to do so in the interest of justice.

As regards the first aspect of the explanation, there is not a single word either in the First information Report or in the subsequent statement recorded during the course of the investigation explaining the delay. Respondent No.2 has failed to explain delay caused in initiation of the criminal prosecution by lodging the First Information Report. As regards the second aspect i.e. to take cognizance of an offence in the interest of justice, although it is barred by limitation, we have already held above that contents of the First Information Report and other material including statements of witnesses recorded during the course of investigation do not make out essential ingredients of Section 498-A of the Indian Penal Code. We may also observe that the contents of the First Information Report and statements clearly demonstrate attempt to implicate all the family members of the estranged husband. The timing of First Information Report is also very peculiar i.e. it is filed at the time when the divorce petition was filed by the husband and was posted for final arguments. Having regard to the above, we are of the opinion that it will not be in the interest of justice to take cognizance of the matter which is filed beyond prescribed period of limitation. In fact, while dealing with the merits of the matter, we have observed that continuation of prosecution against the applicants will amount to abuse of legal process since essential ingredients of the offences are pertinently absent.

14. One of the contentions raised by the learned A.P.P. is that offence under Section 498-A of the IPC is a continuing offence and, therefore, period of limitation shall begin to run at every moment while the offence is continuing. She has placed reliance on Section 518 to buttress this contention. In this context, when we referr to the First Information Report, it is clearly stated in the First Information Report

that the alleged ill-treatment, harassment by the applicants was from 15.05.2017 to 28.11.2018. Respondent No.2 claims that she was forcibly ousted at the matrimonial house on 28.11.2018 and from then onwards she is residing with her parents. She has thereafter referred to reconciliation meeting between both families held in the year 2018 in the First Information Report. The date or month of alleged meeting is not mentioned. The last date of harassment as per First Information Report is 28.11.2018. The reconciliation meeting is alleged to be held in the year 2018 itself. It is alleged that in the reconciliation meeting as well, the in-laws of respondent No.2 has levelled allegations against her and also abused her. Therefore, even if the date of meeting which was held in the year 2018 is considered to be last date of harassment, the harassment did not continue as per version of respondent No.2 beyond 31.12.2018. The period of three years limitation prescribed under Section 514 expired on 31.12.2021. The First Information Report as stated above is lodged on 01.08.2024 i.e. after a period of 2 years and 7 months.

15. We propose to deal with the contention by relying upon judgment of the Hon'ble Supreme Court in the matter of ***Arun Vyas and another Vs. Anita Vyas reported in (1999)4 SCC 690***. The Hon'ble Supreme Court has held in the said decision that an offence under Section 498-A is continuing offence and on every occasion on

which the wife is subjected to cruelty, she will have a new starting point of limitation. It is thus clear that continuing cause of action would not mean that the cause of action shall continue perennially. The cause of action shall continue only till the last incident of cruelty. The last incident of cruelty in the present case is not beyond 31.12.2018.

16. Normally we would have considered remanding the matter back to the learned Magistrate to consider the point of limitation, however, since we have held that essential ingredients of Section 498-A are also not made out and have proceeded to decide the matter on merits as well, we have not remanded the matter to the learned Magistrate but have decided the point of limitation ourselves. In view of the above discussion, we deem it appropriate to allow the application and pass the following order :-

ORDER

(I) The application is allowed.

(II) First Information Report No.0262 of 2024 dated 01.08.2024 registered with Aurad Shahajani Police Station, District Latur for offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code are hereby quashed against all, i.e. applicant No.1 Shrikant S/o Ramakant Awadke, applicant No.2 Satyawati W/o Ramakant Awadke, applicant No.3 Shubhangi W/o Prashant Tondure, applicant No.4 Sheela W/o Sachin Patil, applicant No.5 Manisha W/o Chandrakant Sukunge.

(III) First Information Report No.0262 of 2024 stands abated against deceased applicant No.6 Chandrakant S/o Pandurang Sukunge.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni