



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

CRIMINAL APPLICATION NO.4031 OF 2022

- 1) Akshay S/o Vinayak Pawar
(Husband),
Age-29 years, Occu:Nil,
R/o-Flat No.13, E/2 Apartment,
Vision City, Kanchanwadi,
Aurangabad,
- 2) Vinayak S/o Nivruti Pawar,
(Father-in-law),
Age-61 years, Occu:Service,
R/o-Flat No.13, E/2 Apartment,
Vision City, Kanchanwadi,
Aurangabad,
- 3) Mangal W/o Vinayak Pawar,
(Mother-in-law),
Age-49 years, Occu:Household,
R/o-Flat No.13, E/2 Apartment,
Vision City, Kanchanwadi,
Aurangabad,
- 4) Pritam S/o Vinayak Pawar,
(Brother-in-law),
Age-25 years, Occu:Student,
R/o-703, 2C Building No.122,
Bhakti Height, Tilak Nagar,
Chember West, Mumbai,
- 5) Murlidhar S/o Maroti Asabe,
(Father of Mother-in-law),
Age-77 years, Occu:Nil,
R/o-At Post-Warapgaon,
Tq-Ambajogai, Dist-Beed,

- 6) Gangubai W/o Murlidhar Asabe,
(Mother of Mother-in-law),
Age-72 years, Occu:Nil,
R/o-At Post-Warapgaon,
Tq-Ambajogai, Dist-Beed,

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through P.I., Kallam,
Dist-Osmanabad,
- 2) Puja W/o Akshay Pawar,
Age-26 years, Occu:Household,
R/o-At Post-Tandulwadi,
Tq-Kallam, Dist-Osmanabad.

...RESPONDENTS

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Mr. V.D. Sapkal, Senior Counsel i/b. Mr. M.R. Wagh Advocate
for Applicants.
Mr. A.R. Kale, A.P.P. for Respondent No.1 – State.
Mr. V.D Salunke Advocate i/b. Mr. S.A. Nagarsoge Advocate
for Respondent No.2.

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

DATE OF RESERVING JUDGMENT : 10th JANUARY 2025

DATE OF PRONOUNCING JUDGMENT : 24th JANUARY 2025

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard finally with the consent of the learned Advocates
appearing for the respective parties.

2. Present Application has been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No.423 of 2022 dated 14th November 2022 registered with Kallam Police Station, District-Osmanabad and by way of amendment for quashing the proceedings in R.C.C. No.21 of 2023 pending before the learned Judicial Magistrate First Class, Kallam, District-Osmanabad, for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. The facts which are not in dispute, are that respondent No.2 got married to applicant No.1 on 6th January 2021. Applicant Nos.2 and 3 are the parents of applicant No.1. Applicant No.4 is brother of applicant No.1. Applicant Nos.5 and 6 are the parents of applicant No.3 (mother-in-law).

4. Heard learned Senior Counsel Mr. V.D. Sapkal instructed by Mr. M.K. Wagh Advocate for the applicants, learned APP Mr. A.R. Kale for respondent No.1 and learned Advocate Mr. V.D. Salunke instructed by Mr. S.A. Nagarsoge Advocate for respondent No.2.

Perused the affidavit-in-reply filed by respondent No.2 along with the annexures.

5. Respondent No.2 – informant in her FIR has stated that after her marriage with applicant No.1, she had gone to reside with the husband and in-laws. At the time of marriage, her parents had given amount of Rs.7,00,000/- as dowry, 15 Tolas of gold jewellery, amount of Rs.11,000/- for clothes as well as household utensils. She was treated properly for about 3 months. However, after 2 to 3 months, when she was at home on 22nd April 2021, applicant Nos. 2 to 6 started demanding amount of Rs.6,00,000/-, to be brought by her from her parents, for household expenses. Applicant No.1 had then assaulted her by kicks and fists and all of them had abused her. She told them that her parents are not having so much of amount and therefore, she will not bring the amount. At that time she was again assaulted and abused. She was kept starving. Around 9.00 a.m. on 12th February 2022, applicant No.1 told her that she should bring four wheeler from her parents and at that time applicant No.4 told that she should be driven out of the house and when she brings the Car then she would be taken for cohabitation and then he abused the informant. Therefore, she

informed the said fact to her parents on phone. Informant was then advised by the parents that she should bear with the harassment and if she gets a child then everything will be alright. All the applicants started saying that her parents have not given anything in the marriage and she should bring four wheeler and then she was left at her parental home at Tandulwadi by applicant No.1 on 17th April 2022. While going, applicant No.1 had abused her and given threats to cut hand and legs of the informant and her father.

6. The investigation has been completed and charge-sheet is filed.

7. Learned Senior Counsel has taken us through the said FIR and the statements of the witnesses. He submits that the FIR is nothing but rested on concocted story when in fact informant had left the house on her own wish. Applicant No.1 had given notice through Advocate on 6th May 2022 asking her to resume cohabitation within fifteen days otherwise applicant No.1 would be at liberty to take appropriate legal steps. Thereafter on 24th June 2022 applicant No.1 has filed Petition for Divorce bearing H.M.P. No.138 of 2022 before the learned Civil Judge, Senior

Division, Ambajogai, District-Beed. The informant has filed proceedings under the provisions of the Protection of Women from Domestic Violence Act before the Judicial Magistrate First Class, Kallam, to which the applicants have given written reply on 3rd August 2023. As a counter blast to the steps taken by applicant No.1, the FIR has been lodged. If we consider the statements of the father of the informant and other witnesses, it is to be noted that they are trying to give more facts which are not even pleaded by respondent No.2 in her FIR. It is then stated by the witnesses that brother of the informant had booked a Car on 2nd April 2022 after it was learnt that there is a demand for Car from informant to her parents. There was a meeting which was attended by the respectable persons but then it is stated that a proposal was put by the father of the informant that he had booked the Car for which he would pay the down payment but the further installments to be paid by applicant No.1, to which the applicants did not agree. All these are the concocted facts. Even the affidavit-in-reply given by respondent No.2 would show that she is now further exaggerating the story which she had not stated in the FIR. Though the FIR is not an encyclopedia, but at least the basic facts are required to be pleaded. With such exaggeration and no specific role attributed

to applicant No.4, who was the student and now resides at Mumbai, it would be unjust to ask the applicants to face the trial. Even the grand-parents, who are residing at Ambajogai, have been roped in. The documents produced i.e. receipt of the jewellery would certainly show that even the applicants' side had purchased gold ornaments for giving it to respondent No.2. Applicant No.1 has given reasons in the Petition filed for divorce, as to why the differences arose between him and applicant No.2.

8. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the Application. Learned Advocate for respondent No.2 submits that role has been attributed to each and every accused in the FIR. Respondent No.2 was treated properly only for three months after the marriage. When marriage was actually performed in a grand way, still the applicants started demanding amount. Demand of Rs.6,00,000/- was made on 22nd April 2021 for household expenses. When it was refused by respondent No.2, she was assaulted and abused. Then there was demand for four wheeler on 12th February 2022. Then on 17th April 2022, applicant No.1 had forcefully left informant at her parental home. When the demand for Car was made, the said fact was informed by

respondent No.2 to her father. Therefore, father in his statement under Section 161 of the Code of Criminal Procedure says that he had asked his son Rohit to book a Car. Accordingly, it was booked on 2nd April 2022. But then father of the informant says that since the Car could not be delivered within time, respondent No.2 was left by applicant No.1 at his house. Thereafter also he had made attempts to persuade the applicants. Though notice was given by applicant No.1, on 22nd May 2022, father of the informant went to Deola and found that the house was under lock and the applicants had gone to Aurangabad. When he came to Aurangabad on 24th May 2022, along with the informant, it was found that the house was closed. He had taken the photographs. Thereafter the father of the informant had taken the relatives and friends and arranged a meeting, however, applicant No.2 flatly refused to pay the installments of the Car. Then the father of the informant showed inability to give the Car and then the notice of the divorce proceedings was received by the informant. All these acts amount to cruelty. Just prior to marriage the father of the informant had transferred an amount of Rs.2,00,000/- each on 9th December 2020 and 10th December 2020, from the account of the mother of the informant and further an amount of Rs.2,00,000/- was transferred to the

account of applicant No.1 on 10th December 2020, from the account of the father of the informant. In spite of giving so much of amount, it appears that the applicants were greedy and they have subjected respondent No.2 to cruelty. There is also a document regarding booking of the Car by Rohit. Now, charge-sheet is filed, therefore, let the trial be held. This cannot be taken as a fit case where the inherent powers are required to be exercised.

9. At the outset, we would like to say that taking into consideration the FIR, the marital life, till respondent No.2 allegedly left at her parental home, is one year and three months. Out of which, informant says that she was treated properly for about three months and then quotes two incidents of 22nd April 2021 and 12th February 2022. She has stated that the amount of Rs.6,00,000/- was demanded by all the applicants on 22nd April 2021 for household expenses. Then she attributes the physical act of assault only to applicant No.1 and as regards others, it is stated that they abused her. Thereafter, the informant says that intermittently she was kept starved. That means, it was not a continuous act of either demand, assault and abuse. Then informant is specifically saying that at 9.00

a.m. on 12th February 2022, applicant No.1 made demand for four wheeler and then applicant No.4, brother-in-law told that she should be driven out of the house. She has not involved applicant Nos. 2, 3, 5 and 6 in the subsequent incident dated 12th February 2022. She states that she had informed the said fact to her parents and then the parents advised her to bear with the cruelty. But, still it is said that all the applicants were saying that nothing was given at the time of marriage and she should bring four wheeler. Now, when informant says this, she is not alleging any act of cruelty because only demand not coupled with any act, may not amount to cruelty as contemplated under Section 498-A of the Indian Penal Code.

10. Then directly, the informant in the FIR, says that she was left at the parental home on 17th April 2022, by applicant No.1 and while going, he had abused and gave threats to her. Important point to be noted is that if applicant No.1 had gone to her parental home for leaving her on 17th April 2022 and this fact has been then stated by father Ramesh, he has not stated that the Car was already booked on 2nd April 2022. We are aware that we cannot meticulously go into the contradictions in the statement, however, this Court would be justified in reading

between the lines in order to assess, whether anybody is falsely implicated or arrayed as an accused with *mala fide* intention. The FIR is totally silent on the point of booking of a Car by Rohit, brother of the informant, on 2nd April 2022 itself and the further acts of going father along with the informant to Deola on 22nd May 2022, to Aurangabad on 24th May 2022 and the alleged meeting wherein there was refusal by applicant No.2 to pay the installments of the Car. The said improvement appears to be with ulterior motive taking advantage of the fact that Rohit had booked a Car for himself on 2nd April 2022. If the accused persons were demanding the Car and it was booked much prior to 17th April 2022, then there would not have been an occasion for applicant No.1 to leave the informant to her parental home. Statements of Uttamrao Tekale, Gajanan Chonde, Sunil Kale, would show that they had attended the meeting, however, none of them has given the date of the meeting. Even the father of the informant has also not given the date of the said meeting when in respect of other events specific dates are given. Statement of mother of the informant would show that when demand for four wheeler was made and the father of the informant had shown willingness to give, it was resisted by the informant, however, still the parents showed their willingness to

give the four wheeler. Now, everybody appears to be interested in improving the facts. Statement of Rohit has been recorded on 20th November 2022, but it is totally silent on the point, as to what happened to the Car which he had booked on 2nd April 2022. He has not stated that when applicant No.2 had refused to give installments, he had cancelled the booking.

11. The affidavit-in-reply of respondent No.2 consists of more facts than pleaded in the FIR. Now, she has tried to give answer to everything that has been raised. It is now pleaded that in the said divorce petition when respondent No.2 has filed an application under Section 24 of the Hindu Marriage Act for interim maintenance, applicant No.1, who was serving as a Bank Manager, has given resignation, thereby he wants to show that he is unable to give maintenance that may be fixed.

12. Learned Advocate appearing for respondent No.2 has also produced on record one Mutation Entry showing that the father, applicant No.2 has sold his agricultural land to applicant No.5. We are afraid that these acts, which are subsequent, cannot be taken as acts of cruelty as contemplated under Section 498-A of the Indian Penal Code. Those contentions may be raised in

appropriate legal proceedings, but here the cruelty has been specifically defined in the Explanation to Section 498-A of the Indian Penal Code and therefore, it should be either within Explanation (a) or Explanation (b) to Section 498-A of the Indian Penal Code.

13. Taking into consideration the contents of the FIR and the statements of the witnesses and the contents of the charge-sheet, the case squarely falls within the parameters laid down in *State of Haryana and others vs. Ch. Bhajanlal and others, AIR 1992 SC 604*, for exercise of powers under Section 482 of the Code of Criminal Procedure. It appears that the proceedings have been initiated in order to rope everybody and it would be unjust to ask the applicants to face the trial. Application, therefore, deserves to be allowed. Hence, the following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No.21 of 2023 pending before the learned Judicial Magistrate First Class, Kallam, District-Osmanabad for the offence punishable under Sections 498-A, 323, 504, 506

read with Section 34 of the Indian Penal Code, arising out of the the First Information Report vide Crime No.423 of 2022 dated 14th November 2022 registered with Kallam Police Station, District-Osmanabad, stands quashed and set aside as against applicant Nos.1 to 6 i.e. - 1) Akshay S/o Vinayak Pawar 2) Vinayak S/o Nivruti Pawar, 3) Mangal W/o Vinayak Pawar, 4) Pritam S/o Vinayak Pawar, 5) Murlidhar S/o Maroti Asabe and 6) Gangubai W/o Murlidhar Asabe.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JAN25