



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

CRIMINAL APPLICATION NO. 3982 OF 2023

1. Kiran S/o. Shekhar Todkar,
Age. 30 years, Occ. Business,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad.
2. Shekhar S/o. Vishwanath Todkar,
Age. 75 years, Occ. Nil,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad.
3. Suman W/o. Shekhar Todkar,
Age. 73 years, Occ. Housewife,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad.
4. Yogesh S/o. Shekhar Todkar,
Age. 37 years, Occ. Service,
R/o. S/o. Shekhar Todkar, Flat no. 8, Shripurna Complex,
Balut Ali, A/P-Chakan, Tq. Khed, Chakan, Dist.Pune.
5. Bipin S/o. Shekhar Todkar,
Age. 40 years, Occ. Nil,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad.
6. Bharti D/o. Shekhar Todkar,
Age. 37 years, Occ. Service,
R/o. S/o. Shekhar Todkar, Flat no. 8, Shripurna Complex,
Balut Ali, A/P-Chakan, Tq. Khed, Chakan, Dist.Pune.
7. Suvarna W/o. Bipin Todkar,
Age. 40 years, Occ. Nil,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad.
8. Vimal W/o. Vishwanath Todkar,
Age. 75 years, Occ. Nil,
R/o. Borsar, Tq. Vaijapur, Dist. Aurangabad. ...Applicants

Versus

1. The State of Maharashtra
Through Khultabad Police Station,
Tq. Aurangabad, Dist. Aurangabad.

2. Amruta W/o. Kiran Todkar,
Age. 27 years, Occ. Nil,
R/o. Golegaon, Tq. Khultabad, Dist. Aurangabad. ...Respondents

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Advocate for Applicant : Mr. Vinod S. Salve

APP for Respondent No. 1 : Mr. S.N. Deshmukh

Advocate for Respondent No. 2 : Mr. S.S. Kulkarni

...

**CORAM : SMT. VIBHA KANKANWADI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 17th APRIL 2025

PER COURT [*Per : Manjusha Deshpande, J.*] :-

1. The applicants have approached this Court with a prayer to quash and set aside the Regular Criminal Case No. 135/2023 pending before the Court of 2nd JMFC, Khultabad, Aurangabad, pursuant to filing of charge sheet no. 141/2023 dated 24.08.2023 for offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code, against the applicants.

2. Applicant no. 1 is the husband of informant / respondent no. 2 – Amruta W/o. Kiran Todkar. Applicant nos. 2 to 8 are the father-in-law, mother-in-law, brother-in-laws, sister-in-laws and grandmother-in-law, respectively of respondent no. 2. Respondent no. 2 had lodged FIR No. 262/2023 on 20.06.2023 against the applicants, alleging offences under Sections 498-A, 323, 504 read with 34 of IPC. It is alleged by respondent no. 2 that after her marriage on 23.02.2015, she was treated well by the applicants for about 10 months. However,

thereafter applicant no. 1 demanded Rs.1,50,000/- from her parents for starting business. Since his demand was not fulfilled, he started harassing and abusing respondent no. 2. It is further alleged that the other applicants used to instigate applicant no. 1 to harass and assault respondent no. 2 for fulfillment of their demand of money from the parents of respondent no. 2. Since their demand was not fulfilled, they used to torture her. She was given ultimatum that if she did not bring money, she will be ousted from the house. On 29.05.2016, she was driven out of house. She was threatened that unless she brings Rs. 1,50,000/- from her maternal house, she would not be taken back in the house. Upon which, she made a complaint in Women Redressal Cell, Aurangabad. Due to the efforts taken by the Women Redressal Cell, there was compromise arrived at between herself and her husband. As a result, she resumed co-habitation with her husband in February 2017. After resumption of co-habitation, she gave birth to a girl child who is four years old at the time of filing of FIR.

3. It is alleged that after year 2020, she was again ill-treated by her husband and in-laws. She was abused and assaulted on trivial grounds and, thereafter, in December 2020, she was ultimately driven out of the house. Since then, she is residing at her maternal house. After coming back to her maternal house, she has filed FIR against the present applicants.

4. It is the contention of the applicants that though respondent no. 2 has made allegations about ill-treatment and addiction of liquor of applicant no. 1 and demand of Rs. 5 Lakhs from her parents, none of that is true. In fact, applicant no. 1 is a handicapped person who used to sell mobile accessories on road. Respondent no. 2 used to dislike the business of her husband. It is further contended that applicant nos. 1 to 3, 5 and 7 have never demanded any money or harassed or beaten respondent no. 2, in spite of that she has made false allegations against them.

5. Learned advocate appearing for applicants has also relied on the judgment and order passed by the 7th Judicial Magistrate First Class, Aurangabad, in the Domestic Violence proceedings instituted by informant/respondent no. 2 herein. In the said proceeding the JMFC has observed that the non-applicants had not subjected her to domestic violence. It is also held by the JMFC, that the perusal of record reveals that informant herein had moved application for restitution of conjugal rights from which inference can be drawn that the person who is subjected to harassment would never be willing to cohabit with the spouse who subjects a person to harassment. Further reliance is placed by the JMFC on the complaint lodged at Police station against the informant herein who used to beat the non applicant no. 1/ husband. Even FIR was registered by the mother-in-law of the applicant against her for assaulting her mother-in-law due to which the mother-in-law

has filed the FIR against the informant on 06.12.2020.

6. Applicant no. 3 was required to be admitted in Sanjivni Hospital, Pune, since the right leg of applicant no. 3 was injured. In the medical history of the Sanjivni Hospital which is annexed to the application, it is clearly stated that the patient is admitted due to the assault by the daughter-in-law of the patient. FIR No. 1335/2020 was also registered against respondent no. 2 herein.

7. We have heard Mr. S.N. Deshmukh, learned APP for the State and learned Advocate Mr. Sumant Kulkarni for respondent no. 2. Learned APP and learned Advocate for respondent no. 2 opposed the prayer made by the applicants. According to them, now the investigation is complete and there is enough material gathered by the prosecution in support of the allegations made in the FIR. The prayer made by the applicants does not deserve any consideration and the application should be dismissed.

8. After filing of the present Criminal Application, charge sheet has been filed by the prosecution which is pending before learned JMFC, Khultabad, Aurangabad. On perusal of the contents of the FIR as well as the charge sheet, it is evident that though there was initial discord between applicant no. 1 and respondent no. 2, however after their compromise in the year 2017, she has resided along with the applicants up to December 2020. She has also begotten a child who is

presently residing with her. In the FIR, she has not given any specific instances in support of her allegation for the offences under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code. Merely, vague and omnibus allegations about assault, ill-treatment and abuse are made by the informant. Though she has named all the family members i.e. all the applicant nos. 1 to 8, however, no specific role is attributed to each of these applicants. It also needs to be appreciated that after resumption of cohabitation in February 2017, up to December 2020, there is no allegation about ill-treatment or abuses by the applicants. From the documents placed on record by the applicants, it is apparent that her application seeking maintenance under Section 12 of the Domestic Violence Act, has been rejected and in fact, there are complaints made against her by her mother-in-law. Applicant no. 3 /mother-in-law was required to be admitted in the hospital due to the assault by respondent no. 2 herein.

9. The statements of the witnesses recorded during the investigation by the prosecution which forms part of the charge sheet also does not contain any specific allegations against each of the applicants named in the FIR. It is merely stated that the relatives have instigated husband and due to which she was driven out of the house.

10. Though in the FIR, it is alleged that she was ill-treated by the applicants while residing with her in laws after her marriage, from

23.02.2015 to 13.06.2016, however, after her resumption of cohabitation in 2017 up to 2020 there does not seem to be any complaint against the applicants. She was allegedly driven out of the house in December 2020 and FIR is filed on 20.06.2023, there was delay in filing the FIR. Upon perusal of the documents on record, it is evident that when her application under the Domestic Violence Act was rejected by the JMFC, Aurangabad, by order dated 25.01.2023, respondent no. 1 seems to have filed the FIR on 20.06.2023. Thus, the obvious conclusion that can be drawn is that the FIR seem to be motivated with a desire of vengeance after losing the Domestic Violence proceedings.

11. Even otherwise, none of the accusations under Sections 498-A, 323, 504 and 34 of IPC are made out either from the contents of FIR or from the documents forming part of the chargesheet. Section 498-A of the IPC reads thus :

“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 wilful 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.”

12. The informant has not made out any case of cruelty with specific instances against any of the applicants. Similarly, though an offence under Section 323 of IPC has alleged to have committed, there is no instance quoted by the informant about voluntarily causing hurt to her nor it is supported by any medical certificate. Even allegation of Section 504 of IPC, it is intentional insult with intention to provoke breach of peace, has not been made out even from the contents of the FIR.

13. We are guided by the decision of the Hon'ble Apex Court in case of *State of Haryana and others Versus Ch. Bhajan Lal and others*, **AIR 1992 SC 604**, wherein categories have been culled out by the Hon'ble Apex Court wherein the powers under Section 482 of the Code of Criminal Procedure, can be exercised for preventing the abuse of process of law. According to us, the case of the present applicants is covered by clause no. (g) which reads thus :

“7 (g) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. In a recent decision of the Hon’ble Apex Court reported in **(2022) 6 SCC 599** in case of *Kahkashan Kausar @ Sonam Versus State of Bihar and Others*, the Hon’ble Apex Court has taken into consideration the misuse of Section 498-A of IPC, by the wife for roping in all the relatives of the husband on the basis of omnibus allegations made against them. The Hon’ble Apex Court after taking into consideration the earlier judgments in this regard has observed thus:

“17. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of Section 498-A of IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

15. According to us, the above observations are squarely applicable to the facts of the present case. Respondent no. 2 has unnecessarily implicated the applicants herein in the offences which are not at all made out either from the contents of FIR or from the evidence collected during the investigation. Upon considering the relevant documents, we do not find any specific role attributed to the applicants, therefore, it would be unjust if the applicants are required to go through the trial on the basis of general and omnibus allegations. Therefore, in our opinion this is a fit case for exercising our powers under Section 482 of the Code of Criminal Procedure. Hence, we pass the following order :

ORDER

- i. Charge sheet bearing no. 141/2023 dated 24.08.2023 numbered as RCC No. 135/2023 pending before the JMFC, Khultabad, District Aurangabad, for offence under Sections 498-A, 323, 504 read with 34 of the Indian Penal Code, 1860, against the applicants, is quashed and set aside.
- ii. Criminal Application is disposed of.

(MANJUSHA DESHPANDE, J.)

(SMT. VIBHA KANKANWADI, J.)