



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

CRIMINAL APPLICATION NO.168 OF 2024

1. Sheikh Hanif Sheikh Rafique, aged about 30 years, Occu. Labour.
2. Smt. Butul Bee Sheikh Rafique, Aged about 50 years, Occ. Household.
3. Sheikh Anis s/o Sheikh Rafique, aged about 29 years, Occ. Private,
4. Afroja Bee Sheikh Jamir, aged about 35 yers, Occ. Household.
5. Saniya Parvin Sheikh Jamir, aged about 21 years, occ. Household.

All r/o Jalnagar Ward, Chavhan Factory,
Near Hanuman Mandir, Chandrpaur, Tq.
And Distt. Chandrapur.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer, Police Station Balapur, Tq. Balapur, District Akola.
2. Sau. Seema Firdous Sheikh Hanif, aged about 25 years, Occ. Household, r/o Gharkul No. 979, Near I.T. I. College, Balapur, Tq. Balapur, Distt. Akola.

... NON-APPLICANT(S).

Ms. Kadambini E. Meshram, Advocate for the applicants.
Shri G.S. Umale, Addl.PP for the State.
Shri Anzar Baig Mirza, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.
DATE : 09.04.2025.

ORAL JUDGMENT : (Per : Pravin S. Patil, J.)

Heard.

2. By this application the applicants are seeking quashing of First Information Report bearing Crime no.0552/2023 dated 03.08.2023 registered with the Balapur Police Station, District Akola for the offence punishable under Sections 498A, 504, 506 read with Section 34 of the Indian Penal Code.

3. In short, it is the case of the prosecution, that non-applicant No.2 on 03.08.2023 lodged the police complaint that after her marriage with applicant no.1 on 26.07.2017, she was subjected to cruelty at the hands of her applicant no.1/husband. It is further alleged that applicant nos.2 to 5, who are her in-laws used to instigate applicant No.1/husband and because of that applicant no.1/husband used to ill-treat her. She has further alleged that her mother-in-law used to harass

her on the ground of dowry. As such, on the basis of these allegations, FIR came to be registered against the present applicants.

4. The applicants stated that even if the allegations levelled against them are taken on its face value, no offence is made out against them. It is stated by them that entire FIR do not show any specific incident, date, time, etc,. All the allegations levelled against them are vague and omnibus. It is further submitted by the applicants that informant used to quarrel with applicant No.1 and his family members. She was in habit to left the house without informing the applicants. She was always reluctant to return back.

5. It is brought to the notice that present applicants on 22.05.2021 lodged report to the Ram Nagar Police Station, District Chandrapur against the non-applicant no.2 to demonstrate about the behavior of non-applicant No.2. It is further pointed out that said complaint was referred to the Women Counseling Center, Chandrapur but the non-applicant no.2 did not responded to the same. But, after some days on her own returned back to the matrimonial house. In short, it is the submission of the applicants, that informant herself was not interested to co-habit with the applicant no.1, and therefore, there was matrimonial discord before 1 year of lodging of police complaint

by her.

6. The applicant during the pendency of present application, by Pursis dated 17.02.2025 placed on record the copy of judgment delivered by the 6th Joint Civil Judge, Junior Division, Chandrapur and thereby pointed out that the learned Court decreed the suit filed by him for restitution of conjugal rights. It is further pointed out from the said judgment that learned Trial Court has specifically recorded the findings that “the informant failed to place any material on record to prove the hardship or lawful reason to left the company of applicant no.1/husband under Section 281 of the Momdan law”.

7. Learned Additional Public Prosecutor stated that after registration of offence the Investigating Agency has investigated the matter. Statement of various witnesses are recorded which corroborates the case of the prosecution. Hence, it is not a fit case to quash and set aside the criminal proceedings against the present applicants.

8. We have perused the record and considered the submissions advanced by the learned Counsel appearing for respective parties. The allegations levelled against the applicants therefore are to be examined on the touchstone of Section 498A of the IPC.

9. Upon perusal of material as well as documentary evidence

available on record, it appears that attempt made by applicant no.1 to reunite with the informant/wife was justified attempt. Hence, he pointed out that applicant no.1 and his family members have taken every care to see that non-applicant No.2 should co-habit with them. but non-applicant no.2 herself is not interested to co-habit with the applicant no.1.

10. Section 498A of the IPC is attracted in two contingencies; the first being where the husband or the relative of the husband of a woman, subjects such woman to cruelty. The cruelty has been explained to mean any willful 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. The second being when the husband or the relative subjects such woman to harassment. 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.

11. In the present case, even if the accusation against the applicants are considered on the touchstone of the ingredients of the offence punishable under Section 498-A of Indian Penal Code, they do

not disclose cruelty or harassment as defined under Section 498-A of Indian Penal Code. Furthermore, it is not the case of informant/complainant that because of incident as alleged, she attempted to commit suicide or even thought of it. On the contrary allegations made by informant are only of instigation but without giving the details of such instigation. From perusal of contents of First Information Report against family members of husband/applicant no.1, it is clear that ingredients of Section 498-A of Indian Penal Code are not satisfied. Rather it is clear that they have been implicated by informant with an ulterior motive for wreaking vengeance.

12. In the aforesaid context, we are of the view that category 7 referred in the case of ***State of Haryana vs. Bhajanlal AIR 1992 SC 604***, is applicable which reads thus :

“Where a criminal proceedings is manifestly attended with malafide 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.”

We are of the considered view that, in the present case, the informant set in motion the criminal proceeding against applicants out of personal grudge. Hence, in view of vague and omnibus allegations against the applicants, we are of the opinion that no offence is made

out under Section 498-A of Indian Penal Code against the present applicants and continuation of criminal proceeding against them would amount to abuse of process of law, therefore, the same is liable to be quashed and aside. Hence, we proceed to pass the following order :

- (a) The Criminal Application is allowed.
- (b) The First Information Report bearing Crime no.0552/2023 dated 03.08.2023 registered with the Balapur Police Station, District Akola for the offence punishable under Sections 498A, 504, 506 read with Section 34 of the Indian Penal Code, is hereby quash and set aside.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR , J.)

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