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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.135 OF 2020

1. Owais Zahidali Saiyed,
Aged about 33 Years,
Occupation : Business.
2. Zahida Zahidali Saiyed,
Aged about 63 Years,
Occupation : Household,
Both Applicants 1 and 2
R/o 27, Meem Manzil,
Prashant Nagar, Near CID
Headquarters, Kotol Road,
Nagpur – 44, Police Station,
Mankapur, District Nagpur.
3. Zakera Maksood Sheikh Mawas,
Aged about : 61 Years,
Occupation : Housewife,
R/o W/o Maqsood Shaikh,
105 Aman Meadows,
Kamgar Nagar,
Opposite CID Headquarters,
Katol Road, Nagpur – 13.
4. Madiha Zahid Ali Saiyed,
Aged about : 23 Years,
Occupation : Student,
R/o Myles Stylandish Hall,
610 Beacon Street,
Boston – 02215,
Massachussets U.S.A.

.... APPLICANTS

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Mankapur,
District : Nagpur.
2. Mrs. Shumaila Owais Saiyed
(Ms. Shumaila Esa Khan),
Aged about 30 Years,
Occupation : Household,

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R/o C/o Esa Khan Abdul Kadar Khan,
R/o Building No.5, Flat No.4,
Arvind Nagar, Kalina – Kurla Road,
Kalina Santacruz (E),
Mumbai – 400029.

3. Vazeer Hussain Shaikh,
Aged about major,
Occupation : Inspector,
Police Station, Mankapur,
Nagpur.

.... NON-APPLICANTS

Mr. S. V. Sirpurkar, Advocate for the applicants.
Ms. Shamsi Haider, APP for Non-applicant No.1/State.
Mrs. Maira Ateeb, Advocate for non-applicant No.2 through
video conferencing.

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 22.09.2025
PRONOUNCED ON : 08.10.2025**

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**
2. Heard finally with the consent of the learned Counsel of the parties.
3. The present application is preferred by the applicants for quashing and setting aside the First Information Report in connection with Crime No.95/2019 dated 09/04/2019 and consequent proceeding RCC No.3867/2023 having charge sheet No.111/2023 dated 18.10.2023 registered under Sections 498A,

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323, 504, 506, 406, 420 read with Section 34 of the Indian Penal Code.

4. The applicants i.e. applicant No.1 is the husband and applicant Nos.2 to 4 are the nearest relatives of the husband are arraigned as an accused in connection with the above said crime. On the basis of report lodged by the non-applicant No.2, on an allegation that her marriage with the applicant No.1 was performed and other applicants are his nearest relatives. After marriage, she was not treated well by the applicants as the marriage was not performed as per their status. It is further alleged by her that the applicant No.1, on the instigation of the other applicants, demanded Rs.50 Lakh from her parents for increasing the business. On the basis of the said report, police have registered the crime against the present applicants.

5. The present application is filed mainly on the ground that no *prima facie* case is made out against the present applicants, merely because the Talaq was pronounced by the applicant No.1 and to give a counterblast to the said Talaq, the present First Information Report (for short 'FIR') was lodged by the informant. The another ground raised was the Investigating agency i.e. non-applicant No.1 without following the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.**

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reported in **2022 LiveLaw (SC) 577**, arrested the applicant No.1 without issuing notice to him under Section 41 of the Code of Criminal Procedure (hereinafter referred as the 'Cr.P.C.')

6. Heard learned Counsel for the applicants, who submitted that as far as the applicant Nos.2 to 4 are concerned, general and omnibus allegations are levelled against them. No specific instances are narrated by the informant as far as the ill-treatment at the hands of the applicant Nos.2 to 4 are concerned. He further submitted that applicant No.4, prior to the marriage of the applicant No.1 and informant, studying in USA and therefore, the question of ill-treatment at her hands does not arise. Merely because she is the sister of the applicant No.1 and it being a recurring tendency to implicate all family members, she is also implicated in the alleged offence. In view of that, the FIR deserves to be quashed. He further submitted that even considering the allegation against the applicant No.1, admittedly, no specific instances are narrated when the said demand was made. In fact, after marriage, the non-applicant No.2 was not intending to stay along with the applicants and after due efforts, she has not resumed the cohabitation, therefore, the applicant No.1 has pronounced Talaq on 21.02.2019 and thereafter, the FIR came to be lodged on

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09.04.2019, only to give the counterblast to the process of Talaq, in view of that, the application deserves to be allowed.

7. Per contra learned APP strongly opposed the said application and submitted that there are specific allegations as far as the applicant No.1 is concerned, the arrest of the applicant No.1 as he approached to the Police Station *suo motu* by providing him grounds of arrest. So the question of non-compliance of Section 41 of Cr.P.C. does not arise. It is submitted that at the most, non-compliance would entitle the applicant No.1 for bail and not for quashing of the proceeding, therefore, he prays for rejection of application.

8. Learned Counsel for the non-applicant No.2 also endorsed the same contention and submitted that the arrest of the accused/applicant is after following the due process, therefore, the application deserves to be rejected.

9. Learned Counsel for the applicants placed reliance on **Criminal Writ Petition No.3898/2023 [Alex s/o Isaac Vs. The State of Maharashtra's through RCF Police Station, Chembur, Mumbai and others decided on 01.10.2024]**.

10. After hearing both sides and on perusal of the investigation papers, it reveals that the relationship between the

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applicant No.1 and the non-applicant No.2 is not disputed. As far as the allegation as to the harassment for demand of dowry is concerned, admittedly, the material allegations are levelled against the applicant No.1. As far as the applicant Nos.2 to 4 are concerned, general an omnibus allegations are levelled against them. There is no dispute as to the fact that Talaq was pronounced by the applicant No.1 on 21.02.2019 and the FIR was lodged subsequent to that 09.04.2019. The allegations levelled against the applicant No.1 as to the ill-treatment when she was cohabiting at her matrimonial house. The recitals of the FIR and various statements of the witnesses alleges against the applicant No.1. Applicant No.4 since long i.e. prior to the marriage of the applicant No.1 and non-applicant No.2, studying in USA. Thus, as far as the applicability of the provision of Section 498A of IPC against the applicant Nos.2 to 4 is concerned, appears to be on the basis of the general allegations. At this stage, reference can be given to Section 498A of IPC which reads as under:

"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.

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Explanation -- For the purpose 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 meet such demand."

11. At this stage, reference can be given to the observations made by the Supreme Court in the matter of **Preeti Gupta vs State of Jharkhand** reported in **(2010) 7 SCC 667** wherein the Apex Court observed in para Nos.30, 32 and 34 as under:

"30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number

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of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations."

12. In the case of **Kahkashan Kausar @ Sonam vs The State of Bihar** reported in **(2022) 6 SCC 599**, the Supreme Court after taking stock of various decisions, rendered by the Supreme in the subject matter, observed in para 17 as under:

"The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A 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."

13. Keeping in mind the aforesaid observations, we find that this is a fit case to exercise our jurisdiction under Section 482 of Cr.P.C. as far as the applicant No.2 to 4 are concerned.

14. The another ground raised by the applicant No.1 is that there is non-compliance of Section 41 of Cr.P.C. as per the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil** referred supra.

15. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. The Hon'ble Apex Court in the case of **Satender Kumar Antil** referred supra observed that "If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either

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to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.”

16. It is further held that this provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

17. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

18. Thus, the Hon’ble Apex Court has considered the scope and object of Section 41 of Cr.P.C. In the light of the guidelines issued by the Hon’ble Apex Court it is necessary to see whether said compliance was complied by the non-applicant No.3 – Investigating

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Officer. The station diary entry of Mankapur Police Station dated 10.09.2019 filed along with the charge sheet shows that on that day, it was the applicant No.1 who *suo motu* appeared before the Investigating Officer and thereafter by issuing him the grounds of arrest, he was arrested. The general diary entry also shows that after complying the guidelines issued by the Apex Court he was arrested and the grounds of arrest also communicated to him as well as his relative was also intimated. Thus, in view of the observation of the Hon'ble Apex Court in **Satender Kumar Antil** referred supra, there is a compliance by the Investigating Officer before arrest of the applicant No.1 that he has recorded his reasons in writing while making his arrest. Therefore, the contention of the learned Counsel for the applicants that on that ground also the application deserves to be allowed as the arrest itself is invalid is not sustainable.

19. Coming to the merit of the case, as far as the applicant No.1 is concerned, admittedly, there is specific allegations and specific instances are narrated by the informant and therefore, at this stage, *prima facie* case is made out against the applicant No.1.

20. As observed earlier, admittedly, the applicant Nos.2 to 4 are roped into the criminal proceeding only because they are relatives of the applicant No.1.

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21. It is observed by the Hon'ble Apex Court in the case of **Dara Lakshmi Narayana and others vs. State of Telangana and another** reported in **MANU/SC/1309/2024** wherein it is observed that:

"It has become a recurring tendency to implicate every member of the husband's family, irrespective of their role or actual involvement, merely because a dispute has arisen between the spouses. It was further held that where the allegations are bereft of specific particulars, and particularly where the relatives sought to be prosecuted are residing separately or have had no connection with the matrimonial home, allowing the prosecution to proceed would amount to an abuse of the process of law. The Court noted that criminal law is not to be deployed as an instrument of harassment, and that judicial scrutiny must be exercised to guard against such misuse."

22. In the light of the above observations and as observed earlier that only general and omnibus allegations are levelled against the applicant Nos.2 to 4 and therefore, the application deserves to be allowed partly to the extent of applicant Nos.2 to 4. We are therefore inclined to exercise our jurisdiction under Section 482 of Cr.P.C. and pass the following order:

ORDER

(i) The criminal application is **partly allowed**.

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(ii) Charge sheet No.111/2023 dated 18.10.2023 bearing RCC No.3867/2023 pending before the Joint Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur, in connection with Crime No.95/2019 dated 09.04.2019 registered with Police Station Mankapur, District Nagpur for the offences punishable under Sections 498A, 323, 504, 506, 406, 420 read with Section 34 of the Indian Penal Code, are hereby quashed and set aside to the extent of applicant Nos.2 to 4.

(iii) The application in respect of applicant No.1 Owais Zahidali Saiyed, is rejected.

The application stands disposed of.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)