



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

Criminal Application (APL) No. 370 of 2021

1. Mohammad Rizwan Qureshi Firoz Anwar,
aged about 33 years, Occ. Nil
2. Haji Mohammad Imran Qureshi Firoz
Qureshi;
Aged about 30 years, Occ. Service
R/o C/o Ush International Ltd., 201-206,
2nd Floor Shinnd Industrial Area, Site-IV,
Ghaziabad (U.P.)
3. Shehanaz W/o Mh. Imran Qureshi,
Aged about 28 years, Occ. Police Service
1 & 3 R/o Badri Nagar, Ahir Galli, Dig
Gate Mathura, Tq. & Dist. Mathura (U.P.)

... Applicants

// VERSUS //

1. State of Maharashtra, through Police Station
Officer, Ramdaspeth Police Station, Akola,
Tq. & Dist. Akola
2. Shaistha Parvin W/o Md. Rizwa Qureshi,
Aged about 26 years, Occ. Nil
R/o Haji Islomhoddin, Jiwaji Ismailji
Apartment, Telipura Chowk, Akola, Tq and
District Akola

... Non-applicants

Shri H.M.Mohta, Advocate for the applicants.

Shri Sagar Ashirgade, APP for the non-applicant/State.

Shri Kunal Pande, Advocate for the non-applicant no.2.

**CORAM : ANIL S. KILOR &
PRAVIN S. PATIL, JJ.**

Reserved on : 25th March, 2025.

Pronounced on : 25th June, 2025.

ORAL JUDGMENT : (PER : PRAVIN S. PATIL, J.)

Rule. Rule is made returnable forthwith. By consent of the learned counsel for the parties, the matter is taken for final disposal.

2. By this application, applicants are seeking to quash and set aside First Information Report No. 365 of 2020 dated 26th September, 2020 registered with Police Station Ramnagar Akola and charge-sheet no. 50 of 2024 dated 15th May, 2024 for the offence punishable under Sections 498-A, 420, 406, 201 read with Section 34 of Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, 1961.

3. In short, the case of prosecution is that the marriage of informant was solemnized on 1st July 2019 with applicant no. 1 at Kohinoor Marriage Hall, Akola. The family members of the informant paid huge amount as well as ornaments and articles to the applicants in the marriage.

4. After the marriage, on 3rd July 2019, the informant reached to the house of applicants at Mathura. At that time applicant no.1, who is the husband, applicant nos. 2 and 3, who are brother-in-law and sister-in-law of the informant, abused her on the ground that her parents did not

satisfy their demands and paid less amount than what expected by them. As such, threatened the informant to bring more amount from her parents. It is alleged that applicant no.1 is not physically capable to maintain physical relations, he is impotent.

It is alleged that the mother of applicant namely Naseem Nisha was suffering from cancer and family of applicants was in need of money for her medical treatment therefore present applicants by hatching conspiracy, arranged the marriage only to exploit financially the family of informant.

She further alleged that on 8th July 2019, when she approached to the applicant no.3 and informed her about physical inability of applicant no.1, that time she was told that as family was in need of money for treatment of mother, a drama of marriage was performed. It is alleged that at the same time, informant was threatened of dire consequences if she discloses the said fact to others. It is further alleged that informant was threatened to hand over deposit receipts of Rs 4,00,000/- which was deposited by the brothers of informant in the bank account of informant

and demanded additional Rs. 5,00,000/- from the family members of the informant for the treatment of mother of applicant no.1.

Informant stated that the reception ceremony of her marriage was arranged by the applicants family on 9th July 2019. In the said reception, all the family members of informant attended the reception ceremony but at that time she did not told anything to them. Then, on 10th July 2019 returned back to her parents house from Mathura to Akola. After reaching to her parental house, she made phone call to applicant no.1 and asked about health and requested him to do necessary health check up and take treatment, however, applicant no. 1 denied to do so.

She narrated all these incident to her family members on 1st August 2019. Then, on 3rd August 2019 along with family members they had been to the house of applicant no.1 at Mathura to settle the dispute but applicants family did not respond. Therefore, on 26th September 2020, she lodged police report to the Police Station Ramdaspath, Akola. On the basis of allegations made by the informant, initially, the offence was registered under section 498-A of Indian Penal Code and Sections 3

and 4 of Dowry Prohibition Act against the applicants and one Firoz Anwar Mohd. Yunus.

5. In the above referred backdrop, the learned counsel for the non-applicant no.2 has relied upon the judgments of Hon'ble Supreme Court in the case of Rajiv Thapar and others. Vs. Madan Lal Kapoor reported in 2013(3) SCC 330, Inder Mohan Goswami and another Vs. State of Uttaranchal and others reported in 2007(12) SCC 1 and Bobbili Ramakrishna Raja Yadad and others Vs. State of Andhra Pradesh and another reported in 2016(3) SCC 309, to contend that this Court should not exercise jurisdiction under Section 482 of the Code of Criminal Procedure as the charge-sheet is filed in the matter and further this Court cannot evaluate the truthfulness of the allegations levelled by the prosecution against the accused by conducting mini-trial.

6. In the present matter, initially this Court issued notice vide order dated 5th March, 2020 and directed the State not to file charge-sheet without permission of this Court. Accordingly, permission was sought to file charge-sheet in the matter, which was granted vide order dated 12th April, 2024.

7. In the charge-sheet the offence under sections 420, 406, 201 and section 34 of Indian Penal Code were added against the applicants by the prosecution.

8. The submissions of the applicants is that applicant no. 1 is an Engineer by profession and has completed his engineering in Electrical and Electronic from Gautam Buddha Technical University, applicant no.2 is in service at Usha International, Ghaziabad and applicant no.3 is working in police department at Mathura (Uttar Pradesh).

9. It is submitted that informant resided with them only for 7 days i.e. from 3rd July, 2019 to 9th July, 2019. During this period all the relatives of applicants were present in the house and everyone was enjoying the marriage ceremony. Therefore, all the allegations against them are afterthought and made with malafide intention to drag all family members in the web of criminal offence to settle her personal scores.

10. It is further pertinent to note that non-applicant no 2 along with her affidavit filed in the matter dated 23rd February 2022 clearly stated that she received the notice for restitution from applicant no.1 on 8th June 2021. She further stated that applicant no.1 has filed the petition

for dissolution of marriage bearing matrimonial petition No. 1349 of 2021 which is presently pending before the Family Court, Mathura. As the matter was filed at Mathura, she approached to the Hon'ble Supreme Court of India to transfer the petition to the Family Court, Akola and the same was allowed by the Honorable Apex Court on 17th January 2024. From the perusal of the affidavit and documents placed on record by non-applicant no.2/informant, it can be inferred that the criminal proceedings are set in motion by the informant to get the rid of other proceeding and to settle personal scores in the matter.

11. In the above referred backdrop on perusal of the record, it is evident that in respect of allegations that to meet the expenses of medical treatment of mother of applicant no.1, applicants hatched a conspiracy of marriage. The documents pertaining to medical treatment of late Nasim Nisha shows that late Nasim Nisha was given treatment at the institute of Liver Dialysis Science at New Delhi, during the period 5th March 2018 to 21st March 2018 and thereafter from 27th August 2018 to 28th January 2019. The said certificate shows that there was diagnosis of Cancer but same was recovered immediately after taking treatment. As such, it is

clear that treatment of Late Nasim Nisha was done one year before the marriage. It is further pointed out from record that late Nasim Nisha being employee of police department, all expenditure was borne by the police department. Hence, the allegations of the informant are incorrect.

12. In respect of allegation that applicant no. 1 is impotent and as this was not disclosed, the informant has been cheated, the applicant no. 1 has relied upon the medical certificate dated 17th July, 2019 issued by Maharshi Dayanand Saraswati, District Hospital, Mathura which negates such allegation.

13. As per the complaint alleged ill-treatment was meted out to her between 3rd July 2019 to 9th July 2019. But the First Information Report came to be lodged on 26th September 2020 that is after near about a period of after 13 months. There is no explanation for such inordinate delay.

14. In the present case, it is admitted fact that the marriage between applicant and informant was taken place on 1st July 2019 at Akola. Then on 3rd July 2019 she went to the Mathura. On 9th July 2019, there was a reception of their marriage at Mathura. On 10th July 2019

informant came back with her family members at her parental house. Therefore, the duration of residence of informant at the house of applicants was only for a period of 6 to 7 days. Thus, considering this short duration of informant in the house of applicants, the allegations made by informant do not inspire confidence.

15. The prosecution has further registered the offence under Section 406 of Indian Penal Code. As per the pre-requisite of Section 406, it is necessary to demonstrate that a person who is entrusted with property legally, but dishonestly misappropriates or converts to his own use that property, then only Section 406 of Indian Penal Code can be said to be attracted. However, in the present case, from averment of informant it is not established on record that informant entrusted movable property, ornaments and amount with understanding to get it return back and same has been dishonestly misappropriated or converts by applicants to their own use. Hence, according to us, the present case is the classic example, at what level Investigating Officer can stretch the matter in matrimonial disputes.

16. In the present case, since the First Information Report in question emanates from matrimonial discord, therefore the allegations levelled against the applicants are required to be examined on the touchstone of Section 498-A of Indian Penal Code.

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 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. 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.

17. In the present case, first contingencies is not attracted because it is not the case of informant that she was harassed to the extend that she drive to commit suicide or to cause grave injury or danger to her life.

In respect of second contingencies that informant was harassed for unlawful demand, there is no specific details about time, date, place or manner in which the alleged harassment meted out to her. The only averment in the First Information Report as well as charge-sheet is that in the marriage certain amount and articles were given to the applicants family and as they were not satisfied. She has been harassed.

18. At this stage, it would be relevant to refer the relevant judgments of Hon'ble Supreme Court as the issue involved in the matter in question emanates from matrimonial discord.

- (i) Preeti Gupta and another Vs. State of Jharkhand reported in 2010(7) SCC 667;
- (ii) Geeta Mehrota and another Vs. State of Uttar Pradesh and another reported in 2012(10) SCC 741;
- (iii) Arnesh Kumar Vs. State of Bihar reported in 2014(8) SCC 273;
- (iv) Rajesh Sharma Vs. State of Uttar Pradesh reported in 2018(10) SCC 472;

- (v) *Kahkashan Kausar alias Sonam and another Vs. State of Bihar*
reported in 2022(6) SCC 599.

Hon'ble Apex Court has time and again observed that "incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A Indian Penal Code as instruments to settle personal scores against the husband and his relatives".

"This court has at numerous instances expressed concern over the misuse of section 498A Indian Penal Code 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”.

19. In the present matter, the investigating machinery seems to be set in motion by relying upon well drafted averment in police complaint therefore, it will be relevant to refer case of Iqbal alias Bala and others Vs. State of Uttar Pradesh reported in 2023 (8) SCC 734, wherein Hon’ble Supreme Court observed as under:

In this case, we would like to observe something important whenever accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he/she would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Hence, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

The Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

20. In the case of *Priti Gupta Vs. State of Jharkhand* (supra) it is held that to find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of

common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

21. In aforesaid context, we are of the view that category (7) as indicated by Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajanlal reported in 1992 Supp.(1) SCC 35 is applicable which reads thus:

“(7) where a criminal proceeding 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”.

22. As such we are convinced that implication of applicants in the present offence is with an oblique motive.

23. In view of above, the case laws referred by non-applicant no.2 are not helpful to her in the present matter. The law declared by Hon'ble Supreme Court particularly in matrimonial dispute is otherwise. This Court cannot shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegation in the First Information Report

and charge-sheet disclose the commission of a cognizable offence. According to us, Court owes a duty to look into many other attending circumstances emergency from the record of the case over and above the averments. Hence, considering the facts and circumstances of present case, we proceed to pass the following order.

ORDER

- i. Criminal Application No. 370 of 2021 is allowed;
- ii. First Information Report No. 365 of 2020 dated 26th September, 2020 registered with Police Station Ramnagar Akola and charge-sheet no. 50 of 2024 dated 15th May, 2024 for the offence punishable under Sections 498-A, 420, 406, 201 read with Section 34 of Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, 1961 is hereby quashed and set aside in terms of prayer clause (i-a).

Rule is made absolute in aforesaid terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[ANIL S. KILOR, J.]