



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

CRIMINAL WRIT PETITION NO. 215/2025

State of Maharashtra,
through Police Station Officer,
Police Station Buldhana City,
Dist. Buldhana.

...PETITIONER

VERSUS

1. Rukhsana Bee Ismail Shah,
Age 23 yrs., Occ. Household,
2. Rubina Bee Ismail Shah,
Age 19 yrs., Occ. Household,

Both R/o. Samrat Ashok Nagar,
Buldhana, Tq. and Dist. Buldhana.

...RESPONDENTS

Mr. S. S. Hulke, Addl. Public Prosecutor for petitioner/State.
Mr Anilkumar J. Jhakkar, Advocate for respondent Nos. 1 & 2.

CORAM : M. M. NERLIKAR, J.

DATE : 16.09.2025

ORAL JUDGMENT :

Heard.

2. Issue Rule, returnable forthwith. Mrs. Anilkumar J. Jhakkar, learned counsel waives service for respondents. With

consent of learned counsel for the parties, the petition is taken up for final hearing.

3. The present criminal writ petition is being filed under Article 226 of the Constitution of India praying to quash and set aside the order passed by the learned Trial Court dated 26.09.2024 at Exh. 44 with a further direction to the learned Trial Court to frame the charge against the respondents and they be tried as per the law for the alleged commission of offences punishable under Sections 302 and 498-A read with Section 34 of the Indian Penal Code ("IPC") in connection with Crime No. 410/2020 registered with Police Station Buldhana City.

4. Brief facts:-

The informant Mustaq Shah Isa Shah lodged the report alleging that in the marriage of his daughter deceased Rukhsarbi who was married to Musa Shah Ismail Shah, Rs.5051/- was paid as dowry, however, mother-in-law of the deceased Rukhsarbi i.e. accused No.2 was not happy on account of insufficient amount being given as dowry. After marriage,

Rukhsarbi went to co-habit with her husband. It is alleged that accused No.1 Parvinbi (Sister-in-law of the deceased) as well as accused No.2 Jaitunbi Ismail Shah (mother-in-law of deceased) started harassing the deceased for not giving more dowry. This fact was disclosed to the parents of deceased Rukhsarbi. The accused persons used to abuse, assault, tease and compel the deceased to do all types of household work and thereby subjected her to ill-treatment. It is further alleged that for the marriage of accused No.4 Rubinabi (present respondent No.2), accused No.2 Jaitunbi demanded Rs. 15,000/- as dowry from the informant. However, due to financial constraints the informant was not able to satisfy the demand of accused No.2 and accordingly, accused No.2 started giving ill-treatment to the deceased Rukhsarbi.

It is further alleged that on 14.04.2020 at about 08.30 p.m. the informant called Rukhsarbi on phone and talked on conference call with her and Reshma. But, at that time, Rukhsarbi did not talk properly and hence, he inquired about her health, but Rukhsarbi did not reply anything and changed

the subject. On 15.04.2020, the informant and his wife went to meet his son Aslam Shah who was lodged in Jail in respect of complaint filed by Aslam Shah's in-laws and while returning on motorcycle at about 10.30 a.m., the father-in-law of deceased Rukhsarbi told that Rukhsarbi fell in the bathroom and was brought to the Government Hospital Buldhana. The informant and his wife went to the Government Hospital, Buldhana and found their daughter dead. They found that there were injuries on her body and accordingly on 18.04.2020, the informant lodged the report with the Police Station for the alleged offences. There are no allegations against the husband and the father-in-law of the deceased in the report.

5. After lodging of the FIR, investigation was carried out and charge-sheet came to be filed. It appears that there are no allegations about involvement of respondents in commission of offence of murder of the deceased. The only allegation is of cruelty caused to the deceased. Therefore, the respondents herein filed an application under Section 227 of the Code of Criminal Procedure for discharge. By an order dated

26.09.2024, the learned Sessions Judge, Buldhana was pleased to discharge the present respondents i.e. accused Nos. 3 and 4 for the offences punishable under Sections 302 and 498-A read with Section 34 of the IPC.

6. Therefore, being aggrieved and dissatisfied by the order dated 26.09.2024, the State of Maharashtra through Police Station Officer, Police Station, Buldhana City, District Buldhana approached this Court by assailing the said order. The learned APP submits that *per se*, the order is illegal as there is ample of material against the respondents. He further submits that there are at least two statements which implicates the present respondents to face trial under Section 498-A of the IPC. Reliance is placed on the statements of Sunita Ravi Jain and Mangal @ Manda Kashinath Borde who are neighbours of the deceased Rukhsarbi. It was fairly conceded that though there is no material to proceed against the respondents for the offence punishable under Section 302 of the IPC, however there is sufficient material to proceed against the respondents for the offence punishable under Sections 498-A read with

Section 34 of the IPC. Therefore, accordingly prayed to quash the order dated 26.09.2024 passed by learned Sessions Judge, Buldhana.

7. On the other hand, the learned counsel for respondents submits that charge-sheet discloses that no offence under Section 302 of the IPC was committed by the respondents and the Investigating Officer has exonerated the present respondents from the said charge. So far as against the accused No.1 namely Pravinbi Ismail Shah is concerned, the offences under Sections 302 and 498-A read with Section 34 of the IPC are made out. He further submits that there is no evidence so far as implicating the present respondents for the offence punishable under Section 302 of the IPC. The allegation of murder is levelled against only one person i.e. accused No.1 Parvinbi. He further submits that even the entire material, if taken into consideration, no offence under Section 498-A of the IPC is made out. The respondents have been unnecessarily implicated in the said crime and accordingly prayed that the present petition be dismissed.

8. Upon hearing both the counsel and after going through the material placed before me along with the charge-sheet, it appears that prima facie the allegations of murder are against the accused No.1 Pravinbi. This fact can be gathered from paragraph 8 of the order dated 26.09.2024 which reads as under:-

“8 Considering all the material in the charge-sheet, it could be well concluded that there is no any allegations against the applicants/accused for commission of murder of the deceased and/or participation in any act leading to cause death of the deceased Ruksarbi. Moreover, learned Addl. PP has also fairly conceded that the applicants/accused have not been alleged to have committed murder under Section 302 of I.P.C.”

9. Therefore, considering the above facts, it seems that against the present respondents, there is no allegation of murder. Not only that, this fact has been fairly admitted by the learned APP. However the learned APP has strongly submitted that though Section 302 of the IPC would not attract, however Section 498-A of the IPC is made out on the basis of statements of Sunita and Mangal. I have gone through the Statements of

Sunita Ravi Jain as well as Mangal Kashinath Borde, wherein both have stated that the present respondents used to quarrel with deceased Rukhsarbi and also assault her. These witnesses and other neighbours have rescued Rukhsarbi from the clutches of the accused persons including the present respondents. The statement of Mangal further goes to show that due to the assault by the accused persons, deceased Rukhsarbi used to cry and scream and upon hearing the same, witness Mangal has told the accused persons not to assault the deceased Rukhsarbi.

10. I have perused both the statements. i.e. of Sunita and Mangal. It seems that both have made allegations against the respondents in respect of assault. On consideration of these statements, it seems that they have narrated and referred to one incident, wherein Rukhsarbi was involved in a quarrel with the present respondents. It further appears that witness Mangal helped to rescue the deceased from the clutches of the respondents and others accused persons. However, the second part of the statement appears to be hearsay.

11. The explanation to Section 498-A of the IPC provides that cruelty means 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 a woman. Further, it explains that harassment of woman where such harassment is with a view to coerce 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 is included in the definition of “cruelty”. Therefore, the explanation clarifies that cruelty must be of such a nature that it should drive the woman to commit suicide or grave injury or danger to life, limb or health either mental or physical and further, the harassment should be with a view to meet any unlawful demand.

12. After perusal of the contents of the statements of the neighbours, it would demonstrate that the act of the respondents would not fall under the definition of Section 498-A for the reason that the statement of Sunita is vague as it does not specify when the incident had occurred. It merely

states that on several occasions, the accused persons used to beat deceased Rukhsarbi and two months before these witnesses rescued Rukhsarbi from the clutches of the accused persons. It is further stated in their statements that the present respondents used to demand amount from deceased Rukhsarbi. However, the second part of the statement is hearsay. Therefore, to attract Section 498-A of the IPC, it is necessary that degree of harassment is of such a nature that it is likely to drive the woman to commit suicide or to cause grave injury etc. Merely saying that the woman was ill-treated or harassed or assaulted is not sufficient to attract Section 498-A of the IPC. Therefore, after perusal of the impugned order, I do not find any error. The learned Sessions Judge, Buldhana has considered the material placed on record and passed a well reasoned order and therefore, it does not require any interference at the hands of this Court while exercising the powers under Article 227 of the Constitution of India. Hence, the following order:-

(I) Criminal Writ Petition is dismissed.

13. Rule is discharged accordingly.

(M. M. NERLIKAR , J.)

Gohane