



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

CRIMINAL APPLICATION (APL) NO.972 OF 2021

- 1) Zafar Iqbal s/o Mohd. Ismail,
Aged about 58 years, Occu. – Retired,
- 2) Smt. Shakera w/o Zafar Iqbal,
Aged about 52 years, Occu.-Household,

Both R/o House No.747-A-1, Plot No.
87-A, Nelson Square, Nagpur.

.... **APPLICANTS**

VERSUS

- 1) The State of Maharashtra,
through Police Station Officer, Sadar,
Nagpur.
- 2) Ambareen w/o Mujahid Iqbal,
Aged about 42 years, Occu.-Household,
R/o Saugaat Building No.89/90,
Samaj, Bhushan Society, Behind Roshani,
Masjid Gorewada Ring Road, Nagpur.
Also at
R/o House No.747-A/87 A Nelson Square,
Near Hotel Kareem, Beside Raghva
Apartments, Mental Hospital Square,
Nagpur – 13.

.... **NON-APPLICANTS**

Mr. F.T. Mirza, Senior Counsel, assisted by Mr. Anand Deshpande, Counsel
for the applicants,
Mr. H.R. Dhumale, Addl. P.P. for non-applicant No.1,
Mr. Sanket Bhalerao, Counsel for non-applicant No.2.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE : 07-03-2025

JUDGMENT : (Per : ABHAY J. MANTRI, J.)

Heard. **Admit.** Heard finally with the consent of the learned Counsel for the parties.

2. The applicants question the legality and validity of the First Information Report (for short, “*FIR*”) dated 03-10-2020 bearing Crime No.449/2020 registered with Sadar Police Station, Nagpur for the offence punishable under Sections 498-A, 354, 504 and 506 read with Section 34 of the Indian Penal Code (for short, “*IPC*”) and consequent filing of Regular Criminal Case No.2722/2021 pending on the file of 15th Judicial Magistrate First Class, Nagpur.

3. **FACTUAL MATRIX :**

(a) Applicant No.1 is the elder brother-in-law of the complainant/non-applicant No.2, and applicant No.2 is the wife of applicant No.1. The marriage of non-applicant No.2 and accused No.1-Mujahid Iqbal was solemnized on 10-11-1999 as per rites and rituals in their community. Accused No.1-Mujahid Iqbal went to Saudi Arabia for employment. In the year 2004, he had been to the Dubai for employment. At that time, non-applicant No.2 resided with him in Dubai with his children. In 2017, non-applicant No.2 came to Nagpur.

(b) Thereafter, on 03-10-2020, non-applicant No.2-informant lodged a report against the applicants and accused No.1-Mujahid Iqbal, alleging that they have subjected her to cruelty on account of the demand of dowry. It is also alleged that applicant No.1-Jafar Iqbal, assaulted her and her children and drove them out of the house. He was having ill eye on her elder daughter and with an ill intention tried to touch her. Based on the said FIR, the offence came to be registered. Hence, the applicants moved this Court to invoke its inherent powers.

4. It seems from the record that by order dated 28-02-2023, the proceedings before the Trial Court were stayed by this Court.

5. Mr. F.T. Mirza, learned Senior Counsel, vehemently contended that the allegations are baseless and vague and intend to tarnish the image of the applicants in society and mentally harass them and specifically applicant No.1 who is a retired Engineer from the Public Works Department. A bare perusal of the entire charge sheet would reveal that no offence is made out against the applicants. He further submitted that the allegations in the complaint pertain to the incidents in 2017 and before that, when non-applicant No.2 was residing with her husband in Dubai. She never lived in Nagpur till 2017. She has not explained the delay caused in lodging the FIR, and the FIR does not disclose the cognisable offence against the applicants. No specific allegations have

been made against the applicants to connect them to the alleged crime. Therefore, the ingredients of the offence as alleged are not made out against the applicants. Hence, he urged to allow the application.

6. To buttress his submissions, learned Senior Counsel has relied upon the judgment in the case of *Kahkashan Kausar Alias Sonal and Others v. State of Bihar and Others (2022) 6 SCC 599*, particularly paragraphs Nos.10, 13, 14, and 17.

7. *Per contra*, Mr. H.R. Dhumale, learned Additional Public Prosecutor for non-applicant No.1 and Mr. Sanket Bhalerao, learned Counsel for non-applicant No.2/complainant strenuously resisted the application on the ground that the contents of the complaint *prima facie* denote that a cognisable offence was made out and after completion of investigation, charge-sheet was filed against the applicants and accused No.1-Mujahid Iqbal. Therefore, the applicants failed to make out a case to invoke the inherent powers of this Court under Section 482 of the Cri. P. C. Non-applicant No.2 has also filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the “DV Act”) against accused No.1-Mujahid Iqbal, and the same is pending. The charge sheet has been filed. Therefore, the applicants cannot seek to invoke the jurisdiction of this Court; so, to determine the controversy, it would be proper to conduct the trial. The allegations in the FIR are specific and denote the committal of the offence by the applicants.

8. To substantiate their submissions, they have relied on the decisions of the Hon'ble Apex Court in *Saraswatibai v. Lalitabai*, (2019) 16 SCC 272 and *State of M.P. v. Surendra Kori*, (2012) 10 SCC 155 and submitted that in view of the dictum laid down in the decisions above, the applicants are not entitled to the relief as claimed. Thus, the application is not tenable and is liable to be rejected. Hence, they urged the rejection of the application.

9. Non-applicant No.2 also filed written submissions in support of her case.

10. We have appreciated the rival contentions of the parties and perused the FIR, charge sheet and record. We have also gone through the written submissions filed by non-applicant No.2 and the decisions relied upon by the learned Counsel for both the parties.

11. At the outset, it appears that applicant No.1 is the elder brother-in-law of non-applicant No.2 and applicant No.2 is the wife of applicant No.1. It further reveals from the record that non-applicant No.2 married with accused No.1-Mujahid Iqbal in 1999 and after the marriage, from 2000 to 2004 Mujahid was in Saudi Arab and from 2004 till 2017 non-applicant No.2 was residing at Dubai with her husband. In 2017, she returned to Nagpur. On 05-08-2017, she filed an application under Section 12 of the DV Act against her husband and the applicants for the

grant of relief under Sections 18, 19 and 20 of the said Act. However, in the application, no allegations are made against the applicants as alleged in the FIR. In the FIR, she alleged the incident before 28-06-2017 against the applicants. Had it been the fact that she had any grievance against the applicants, then certainly she would have stated it in the application under the DV. Act. However, nothing is alleged against them which leads to drawing an adverse inference in that regard. Besides, she also filed the application against accused No.1-Mujahid Iqbal for the grant of interim maintenance to her and their children, in which also there is no disclosure of any nature vis-a-vis the present applicants.

12. A bare perusal of the FIR and statements of her daughter Afra and other witnesses, namely Sumayya Arafat and Farhana Aaga Siddique indicates, that no specific allegations are made against the applicants that they were harassing non-applicant No.2 on account of the demand of dowry. But the only allegations that appear against them are that they were instigating accused No.1-Mujahid Iqbal by providing incorrect information against non-applicant No.2 and her children. Though non-applicant No.2 in the complaint has made allegation against applicant No.1 that he was having an ill eye on her elder daughter and with an ill intention touched his daughter, however, the elder daughter Afra in her statement U/s 161 has not stated anything as alleged in the FIR against applicant No.1. Moreover, a discrepancy appears in the complaint as well

as the statements of witnesses regarding allegations in the FIR and their statements. It further reveals that, as alleged in the complaint, all the incidents occurred before 2017. However, the FIR was lodged on 03-10-2020, and no explanation has been given for lodging the FIR belatedly.

13. Furthermore, it is not the case of non-applicant No.2 that she resided with the applicants at any time. Also, in the complaint, she has not specifically mentioned the date and time when the incidents occurred, but the allegations are vague and omnibus. It is also alleged that on the instigation of the applicants, accused No.1-Mujahid Iqbal used to beat her, but how the applicants used to instigate him has not been stated in the complaint nor found during the investigation anything against them and as such the allegations against the applicants appear to be vague and omnibus. The allegations above themselves are not sufficient to constitute the offence as alleged.

14. The Hon'ble Apex Court in the case of *Kahkashan Kausar @ Sonam* (supra) has discussed in detail the parameters regarding the offence under Section 498-A of the IPC and about the implication of the relatives of the husband in the crime pertaining to matrimonial dispute with intent to harass the husband and his relatives and observed that “*considering the fact that the offence under Section 498-A is cognisable and non bailable,*

the disgruntled wife uses the same as a weapon rather than a shield to harass the husband and his relatives by lodging a criminal complaint.”

15. It is further observed that “*the ultimate object of justice is to find out the truth, punish the guilty, and protect the innocent. Finding out the truth is a herculean task in the majority of these complaints. The tendency to implicate the husband and all his inmate’s immediate relations is also not uncommon. At that time, even if it is the conclusion of a 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 consider pragmatic realities while dealing with matrimonial cases. The allegations of harassment of the 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 scrutinised with great care and circumspection.*”

16. It also held that “*the Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths and must keep in mind that relatives of the husband should not be roped on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. Besides, the tendency of cropping up the family members in matrimonial disputes is a routine.*”

17. The Hon'ble Supreme Court in the *State of Haryana and Others Vs. Ch. Bhajan Lal and Others, 1992 Supplementary (1) SCC 335* have laid down guidelines to be adhered to while exercising the inherent powers under Section 482 of the Code. With regard to the facts, we find that the case of the applicants would fall in the category of guideline Nos. i, iii and v, which reads thus:

i) *where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused;*

ii).....

iii) *where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence nor make out a case against the accused;*

iv).....

v) *where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

18. The Hon'ble Apex Court recently, in the case of *Dara Lakshmi Narayana & others v. State of Telangana & Another, 2024 SCC Online SC 3682*, after considering the parameters laid down in the decision in "*Bhajanlal's Case*" and other various decisions of the Hon'ble Apex Court, has observed that:

"A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement, should be nipped in the bud. It is a well-recognized fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes

arise out of matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessarily harassing innocent family members.”

19. Apart from the above, in ***Geeta Mehrotra and Another v. State of U.P and Another***, reported in ***2012(10) SCC 741***, the Hon’ble Apex Court has categorically observed that:

“if the contents of the first information report did not disclose specific allegations against the brother and sister of the complainant’s husband to make them liable, for bickering between non-applicant No. 2 and her husband, except the casual reference of their names, it would not be just to direct them to go through the protracting procedure, so also by merely making the general allegation that they were involved for physical and mental torture of the complainant without any allegation of their active involvement or mentioning the single incident against them as also the fact as to how they could be motivated the demand of dowry when they are only related to husband as brother or sister, and therefore, quashed the proceedings against them.”

20. Though the learned Counsel for non-applicant No.2 in written submissions has referred two decisions of the Hon’ble Apex Court, however, in the cases of ***Saraswatibai*** and ***Surendra Kori*** (supra), the Hon’ble Apex Court observed that after conclusion of the investigation and filing of the charge-sheet, the applicants have a remedy to approach the Trial Court for applying for discharge. The applicants cannot seek to invoke the jurisdiction of this Court under Section 482 of the Cri.PC. However, considering the facts of the case and the material on record, it

seems that even if the allegations in the complaint are accepted to be true they are not sufficient to satisfy the ingredients necessary to constitute the offences alleged and, therefore, the observations made in the said decisions are hardly of any assistance to non-applicant No.2 in support of her contentions.

21. Based on the aforesaid mandate of the Hon'ble Apex Court in the catena of decisions, we have considered the facts in the case at hand. In this case, no specific allegations appear against the applicants, nor are there specific allegations against them that they demanded the dowry at any time from non-applicant No.2 or that they harassed her on account of the demand of dowry. The accusations against them are vague and omnibus; also, there is a discrepancy that appears in the FIR and the statement of witness Afara, who is the elder daughter of non-applicant No.2 and, therefore, no case is made out against the applicants regarding the allegation of outraging the modesty of said Afara too as she has not stated anything against the applicants in her statement before the police. *Moreover*, it is not the case of the informant that she, along with her children, was residing with the applicants at any time. On the contrary, the record denotes that till 2017, they were living in Dubai, and thereafter, they came to Nagpur. However, the allegations in the FIR, *prima facie*, indicate that the incidents occurred before July 2017. The only accusation against the applicants is that they were instigating to accused No.1-

Mujahid Iqbal by providing the incorrect information. However, no material has been brought on record supporting said allegations. Thus, the allegations against the applicants appear vague and omnibus without any specific incident of their involvement in the crime.

22. Thus, in our opinion, the applicants have made out a case to invoke the inherent jurisdiction of this Court to quash the FIR and criminal proceedings pending against them to meet the ends of justice. In such circumstances, they cannot be dragged into criminal prosecution, and continuance of it would be an abuse of the process of law in absence of specific allegations made against them.

23. In view of the above discussion and the law laid down by the Hon'ble Apex Court, we find that continuation of the criminal proceedings against the applicants pursuant to the registration of the FIR would result in an abuse of the process of the law and would not serve the ends of justice. Therefore, in exercise of inherent powers under Section 482 of the IPC, we pass the following order.

- (i) The application is allowed.
- (ii) We hereby quash and set aside the FIR dated 03-10-2020 bearing Crime No.449/2020 registered with Sadar Police Station, Nagpur for the offences punishable under Sections 498-A, 354, 504 and 506 read with Section 34 of the Indian

Penal Code and consequent filing of Regular Criminal Case No.2722/2021 pending on the file of 15th Judicial Magistrate First Class, Nagpur against the applicants.

Added words in clause No.
(ii) as per order dated
27-3-2025 passed in APPP
No.531/2025

(iii) Inform the learned Trial Court accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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