



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

Criminal Application (APL) No. 1033 of 2022

1. Nilesh S/o Bhagwatraoji Boharapi,
Aged about 36 years, Occ. Service
R/o Flat No. 703, Marathe, Heights
Near Ghar Angan Society, Ganesh Mandir
Road, Titwala (East), Kalyan, Mumbai 421605
2. Sau. Archana W/o Anandrao Zade,
Aged about 32 years, Occ. Service
R/o B-6, Nilesh Plaza, Kalepadal, Hadapsar,
Pune-411028

... Applicants

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer, Police Station
Paratwada, Tah. Achalpur, Dist. Amravati
2. Sau. Chetana W/o Rupeshrao Boharapi,
Age 28 years, Occ. Housewife,
R/o Gowardhan Vihar, Kandali, Paratwada,
Tah. Paratwada, District Amravati

... Non-applicants

Shri Vikrant S. Giramkar, Advocate for the applicants.
Shri N.H.Joshi, APP for the non-applicant/State.

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

DATED : 15th APRIL, 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 filed under Section 482 of the Code of Criminal Procedure, applicants seeks to quash and set aside the First Information Report vide Crime No. 349 of 2022 registered with Police Station Paratwada, Tah. Achalpur, District Amravati for the offences punishable under Sections 323, 498-A, 504 read with Section 34 of the Indian Penal Code.

3. In short, the case of prosecution is that non-applicant no.2 on 14th May, 2020 lodged the police complaint against the present applicants alleging that she was subjected to physical and mental harassment at the hands of applicants. The marriage of non-applicant no.2 was solemnized with accused no.1 Rupesh on 27th May, 2019 who is working in a police department. She has alleged against the present applicants who are her brother-in-law and sister-in-law that they used to instigate her husband and her father-in-law as well as mother-in-law to demand dowry from the non-applicant no.2. As a consequence of the same, she was abused and beaten by the husband, father-in-law and mother-in-law. As such on the basis of allegation of instigation, the offence under Sections 498-A, 323,

504 and Section 34 of Indian Penal Code came to be registered against the present applicants.

4. Present applicants approached before this Court by stating that the allegations made against them are vague and omnibus. It is the submission of the applicants that even if the allegations made against them are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence in order to make out the case against them. Therefore, the criminal proceedings registered against them is liable to be quashed and set aside.

5. Learned Additional Public Prosecutor strongly objected the application by stating that after the registration of the offence, investigation is almost completed by recording the statement of witnesses which *prima facie* constitute the offence punishable under Sections 323, 498-A, 504 read with Section 34 of Indian Penal Code against the present applicants. Hence, learned Additional Public Prosecutor prayed to dismiss the present applicants.

6. In the present case, non-applicant no.2 was duly served through Court as well as by private mode of service by the applicants. However, she did not appear in the matter though served.

7. We have considered the rival submissions of both the parties and perused the record.

8. The present proceeding arose out of matrimonial discord and on the basis of allegations levelled by non-applicant no.2 the criminal law is set in motion against the present applicants. In view of this fact, firstly we have to consider the legal position laid down by the Hon'ble Supreme Court of India particularly in the case where offences registered under Section 498-A, 323 and 506 of the Indian Penal Code.

- (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.

The 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”.

9. In the teeth of above said observations of Hon’ble Supreme Court of India, we have perused the First Information Report and allegation levelled against the present applicants.

From the bare perusal of record, it is crystal clear that except instigation there are no other allegation levelled against the present applicants. Furthermore, in the First Information Report, there is no specific mentioned of any date, time or the allegation nature of harassment caused to her at the instance of applicants. As such, in absence of precise and concrete allegations as per settled principles of law, it is nothing but abuse of process of law of the Court.

10. That from the perusal of the First Information Report, it is seen that some general and sweeping allegation without bringing on record any specific instance of criminal conduct are made which do not

attract Section 498-A of Indian Penal Code against the applicants. As such, it is clear that the proceedings initiated against the present applicants is with malafide intention for wreaking vengeance out of personal grudge. In this context, we are of the considered opinion that the guidelines laid down by the Hon'ble Supreme Court of India in the case of State of Haryana Vs. Bhajanlal reported in 1992 Supp.(1) SCC 35, the present case falls into category of (7) which reads as under:

“(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”.

11. As such applying the principles laid down in case of State of Haryana Vs. Bhajanlal (Supra), it is clear that only to entangle the present applicants in the web of crime and caused them harassment to run pillar to post, they are impleaded in the matter. According to us, even if all the allegations against the applicants are taken at their face value and accepted in their entirety do not *prima facie* constitute the accusation against them.

12. In view of aforesaid reasons, we are of the considered opinion that present application deserves to be allowed in the facts and

circumstances of the matter. Hence, we proceed to pass the following order.

ORDER

- i. Criminal application is allowed
- ii. The First Information Report vide Crime No. 349 of 2022 registered with Police Station Paratwada, Tah. Achalpur, District Amravati for the offences punishable under Sections 323, 498-A, 504 read with Section 34 of the Indian Penal Code is hereby quashed and set aside against the applicant no.1 - **Nilesh S/o Bhagwatraoji Boharapi** and applicant no.2 – **Sau. Archana W/o Anandrao Zade**.

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

[PRAVIN S. PATIL, J.]

[ANIL S. KILOR, J.]