



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

CRIMINAL APPLICATION (APL) NO. 1075 OF 2023

APPLICANTS

1. Suresh s/o Raibhanji Tayade,
Aged about 67 years,
Occupation – Retired.
2. Sunanda w/o Suresh Tayade,
Aged about 62 years,
Occupation – Household.
3. Jayprakash s/o Suresh Tayade,
Aged about 40 years,
Occupation – Service.
4. Ujwalal w/o Jayprakash Tayade,
Aged about 30 years,
Occupation – Household.
5. Nilesh s/o Suresh Tayade,
Aged about 35 years,
Occupation-Service.
6. Sandip s/o Suresh Tayade,
Aged about about 32 years,
Occupation – Service;
Nos. 1 to 6 R/o Mahatma Fule Nagar,
Navsari, Amravati, Tah. and
District – Amravati.
7. Mamta Pradip Khandare,
Aged about 36 years,
Occupation – Household,

R/o Siddharth Nagar, Amravati,
Tah. and District – Amravati.

VERSUS

- RESPONDENTS:**
1. State of Maharashtra,
through Police Station Officer,
Police Station Morshi, Tah. Morshi,
District – Amravati.
 2. Ashwini Rahul Tayade,
Aged about 34 years,
Occupation – Household Work,
R/o, c/o Bhimrao Ingale, Om Nagar,
Simbhora Road, Morshi, Tah. Morshi,
District – Amravati.

Mr. Ankuh M. Tirukh, counsel for applicants.
Mr. C.A. Lokhande, APP for respondent/state.
Mr. Piyush Rewatkar, counsel h/f Mr. A.J. Mirsha, counsel for
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 28/01/2025

ORAL JUDGMENT :

1. Heard.
2. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.
3. The present application is filed by the applicant

challenging the order passed in Criminal Revision No. 19/2023 passed by the learned District Judge-5 and Additional Sessions Judge, Amravati, and to restore the order dated 21/01/2023 passed below Exhibit No. 69 in Regular Criminal Case No. 191/2021 by learned Judicial Magistrate First Class, Morshi.

4. The applicant Nos. 1 and 2 are the in-laws of the complainant, and applicant Nos. 3 to 6 are the brother-in-law and sister-in-law (wives of applicant Nos. 3 and 5), and applicant No. 7 is the sister-in-law. They are prosecuted by the complainant on the basis of the report lodged by her on 01/08/2021, alleging that her marriage was performed with Rahul Sureshrao Tayade, son of the applicant no. 1, at her matrimonial house; she was residing along with the in-laws as well as her brother-in-law and sister-in-law in a joint family. After marriage, she resumed the cohabitation, but on the next day itself, she was ill-treated by the present applicants and her husband on account of the demand of the amount, which she received as a gift from the relatives. Applicant No. 7 also ill-treated her by mentioning that she has not brought various articles in her marriage, for example, an "LED TV" and other household articles, and therefore, she has to bring those articles; otherwise,

she has to give consent for dissolution of marriage. She was further ill-treated on account of not delivering the male child but for delivering the female child. On the basis of the said report, police have registered the crime under Section 498-A read with 34 of IPC.

5. The applicants have filed the application under Section 239 of the Cr.P.C. for discharging the offence. The applicants have contended that there is a general allegation leveled against them; as far as the complainant is concerned, she was not residing along with the present applicants, but she was residing separately along with her husband, and therefore, the question of ill-treating her on various occasions does not arise.

6. It is further contended that applicant No. 3 is the brother-in-law, applicant No. 4 is his wife, and applicant No. 5 is also the brother-in-law, and applicant No. 6 is the wife; they are residing separately, and there is no specific allegation leveled against them as far as the ill-treatment is concerned. The general and omnibus allegations are made by the complainant in the present complaint, which was earlier filed by the complainant. Considering the same, no offence is made out against them, and

therefore, they be discharged.

7. It is further contended that applicants have also filed an application under the D.V. Proceedings bearing Domestic Violence Case No. 28/2021 with the same contentions, and the Magistrate has considered the same against the applicant No. 4 to 7 are discharged from the proceedings.

8. The learned Judicial Magistrate First Class has allowed the discharge application, but the same was challenged by the complainant by filing Criminal Revision No.19/2023, wherein the Revisional Court, i.e. District Judge-5 and Additional Sessions Judge, has reversed the order and order passed by the Judicial Magistrate First Class, Morshi, discharging the applicant Nos. 4 to 7 is hereby quashed and set aside. Hence, this application.

9. Heard learned counsel Mr. A.M. Tirukh, who submitted that even assuming the entire statements of the witnesses, including the statement of the complainant, only general allegations are leveled against the applicant Nos. 3 to 7. He submitted that even accepting the said contentions, no offence is made out against the present applicant Nos. 3 to 7, as there are no specific instances narrated by the complainant therefore, the

offence is not made out against them. Learned Judicial Magistrate has rightly considered the same, but the Sessions Judge has ignored the said fact, and only on the basis of the general allegations, the sessions judge has quashed the order passed by the magistrate.

10. He submitted that for establishing the offence under Section 498-A, there should be cogent and reliable evidence against the present applicants. Even the strongest suspicion is also not made out from the statements of the witnesses, and therefore, no prima facie case is made out against the present applicant Nos. 3 to 7, and the order passed by the Additional Sessions Judge deserves to be quashed and set aside.

11. Learned APP and learned counsel for the complainant strongly opposed the said application and submitted that learned Sessions Judge has rightly considered that there is a statement of the complainant showing that whenever she used to visit her matrimonial house, the present applicant Nos. 3 to 7 used to ill-treat her. At the stage of framing of charge, the strongest suspicion is also sufficient to frame the charge, and therefore the order passed by the Sessions Judge is legal and correct one, and no

interference is called for.

12. After hearing both sides and on perusal of the report filed by the complainant as well as the statements of various witnesses, it reveals. As far as the applicant No. 7 is concerned, there is a specific allegation against her that on the next day of her marriage, the applicant No. 7 has answered to bring the amount for purchasing the various articles; otherwise, she has to give consent to dissolve the marriage. The said statement is corroborated by the other statements of the witnesses also; therefore, as far as the applicant No. 7 is concerned, specific instances are narrated by the complainant as far as the allegation of the ill-treatment is concerned. The other applicants, i.e. applicant No. 3, is the brother-in-law, and No. 5 is also the brother-in-law; they both are residing separately. The earlier complaint filed by the complainant was addressed to the Police Station Officer, Morshi, District Amravati, wherein also, the complainant has stated that the applicant Nos. 3 and 5, along with the applicant Nos. 4 and 6, are residing separately at a different place. Therefore, the contention of the complainant that they have also ill-treated her is not supported or substantiated by any material,

even though there is a general allegations against them from the recitals of the FIR. The subsequent statements recorded by the complainant also show that the general allegations are leveled against the applicant Nos. 4 to 6. There are no specific instances narrated by the complainant as far as the allegations against the applicant Nos. 4 to 6 are concerned, and therefore, the application filed under Section 239 of Cr.P.C. is allowed by the Judicial Magistrate First Class. Section 239 is similar to Section 227 of the Cr.P.C. Section 239 of the Cr.P.C. states that the accused shall be discharged. If upon considering the police report and the documents sent with it under Section 173 and making such an examination, if any of the accused as the Magistrate thinks necessary, and after giving him prosecution and the accused an opportunity of being heard. The Magistrate considers the charge against the accused of the groundless; he shall discharge the accused and record his defence for solely. At the stage of Section 227 of Cr.P.C. or Section 239 of the Code, the court has power to sift the materials collected by the prosecution to find out whether there is a prima facie case against the accused or not. It has to be satisfied that there is a ground or presuming that the accused has committed the offence or that there is no sufficient ground for

proceeding against them. The court's inquiry must not directed to find out whether the case is held in conviction. Roving inquiry is not permissible; the court can consider whether the material collected by the prosecution, if accepted as it is without being subjected to cross-examination, gives rise to strong and grave suspicion for presuming that the accused has committed the offence and that unrebutted material will lead to conviction. If at the stage of Sections 227 or 239 the scales as to the guilt or innocence of the accused are given, then the Court must proceed to frame a charge. There is no question of giving benefit of doubt at this stage. If there is a strong suspicion which leads the court to think that there is a ground to presume that the accused has committed an offence, then the court will proceed to frame the charge, but if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion against the accused, the Court is within its right to discharge the accused. Suspicion has to be strong and grave, leading the Court to presume that the accused has committed an offence. While basis infirmities and broad probabilities can be considered, the court cannot make a roving inquiry into the pros and cons of the matter and weigh the evidence as if it is conducting a trial. Thus, what is

important is the nexus or link of the person with the crime, or there should be material on record to show that the said material is sufficient to frame the charge against the accused.

13. Considering the well-settled principle on which the discharge application can be considered, at this stage, the statement of the complainant and other witnesses shows that general allegations are leveled against the present applicant; no specific instances are narrated by the complainant or any of the witnesses. So, even if there is no material to show that there is a strong suspicion against the accused to ascertain that they have ill-treated the complainant for the demand of various articles. Considering the said fact, the application to the extent of applicant Nos. 3 to 6 deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The application is **partly allowed**.
- b] The applicant No. 3 to 6 are hereby discharge from the offence punishable under Sections 498-A vide Crime No. 541/2021 in Criminal Case No. 191/2021.
- c] The prayer for the applicant Nos.1, 2 and 7 of

discharge is hereby rejected and the order of Sessions Judge to the extent of applicant No. 1, 2 and 7 is maintained.

14. The Criminal Application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]