



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

CRIMINAL APPLICATION NO.1244 OF 2023

1. Mohd. Abu Bakar Mohd. Najmullah,
aged 52 years, Occ. Agriculturist,
2. Mohd. Najmullah Mohd. Suleman, aged
about 84 years, Occ. Pensioner,
3. Akhatarbi Mohd. Najmullah, aged about
79 years, Occ. Household.
4. Mohd. Umar Mohd. Najmullah, aged 50
years, Occ. Medical Practitioner.
5. Mohd. Usman Mohd. Najmullah, aged
about 45 years, Occ. Agriculturist,
6. Mohd. Ali Mohd, Najmullah, aged 36
years, Occ. : Private Service,
7. Fatema Mohd. Kalim, aged 40 years,
Occ. Household, R/o Nayi Nagari, Lonar,
Tq. Mehkar, Distt. Buldhana.
8. Ameena Mohd. Najmullah, aged about
32 years, Occ. Household.
9. Khudeeja Mohd. Najmullah, aged 35
years, Occ. Household,

No. 1 to 6, 8 & 9 r/o Khidkipura,
Pimpalgaon Raja, Tq. Khamgaon,
District Buldhana.

... APPLICANTS

VERSUS

1. State of Maharashtra, through Police Station Officer, Police Station Ansing, Tq. And Distt. Washim.
2. Afrinbee Abu Bakar Mohd, aged about 30 years, Occ. Household, r/o Durga Chowk, Ansing, Tq. And Distt. Washim.

... NON-APPLICANT(S).

Shri Gopal G. Mishra, Advocate for the applicants
Shri G.S. Umale, Addl.PP for the State.
Shri M.N. Ali, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR AND PRAVIN S. PATIL, JJ.

DATE : 08.04.2025.

ORAL JUDGMENT : (Per : Pravin S. Patil, J.)

Heard.

2. By this application the applicants are challenging the registration of First Information Report bearing Crime no.213/2023 dated 25.07.2023 registered with the Aansingh Police Station, District Washim for the offence punishable under Sections 498A, 323, 504 read with Section 34 of the Indian Penal Code.

3. In short, it is the case of the prosecution, that the informant on 25.07.2023 lodged the police complaint that her marriage was performed with applicant no.1/husband as per the Muslim custom and rites. Immediately after the marriage, applicant no.1 had started ill treatment to her on the ground of dowry. He also insulted her by repeatedly saying that she is not good looking wife. The informant further alleged that she came to know that applicant no.1 is a married person and she has been cheated.

4. In respect of other applicants, who are in-laws of the informant it is alleged that they also used to insult her by saying that she is not good looking woman and demanded dowry of Rs.3 lakhs from her. On 25/08/2015 when she was conceived pregnancy she was required to hospitalize but no care was taken by the applicants, therefore, she called her parents and they have taken her to maternal house. On 16.03.2016, she has given birth to male child but no one came from the applicants family to look both of them. The applicants were insisting for dowry of Rs.3 lakhs by saying that if said amount is not paid they will not allow to her to co-habit with the applicant no.1/husband. On the basis of these allegations FIR has been registered against present applicants.

5. Applicant no.1 is the husband, applicant no.2 is the father-in-law, applicant no.3 is the mother-in-law, applicant nos. 4 to 6 are the brother-in-law and applicant no. 7 to 9 are the sister-in-law of the informant.

6. The applicants who approached before this Court to challenge the registration of FIR, states that non-applicant no.2 has performed second marriage after she left the company of applicant no.1. When applicant no.1/husband came to know, he has issued legal notice to the non-applicant no.2/wife on 19.07.2018 requesting to handover custody of minor child to him. In the reply to the said legal notice, the informant stated that in the year 2014 itself, in the meeting of relatives, she had given 'Talaq' in the presence of Quazi and since then she has no relations with applicant no.1. As such, the child is not born out of the wedlock with applicant no.1. Accordingly, she denied to give the custody of minor child to the applicant no.1.

7. It is pointed out from the record that applicant no.1 has filed an application before the District Judge, Khamgaon for grant of custody of minor child from non-applicant No.2 and the same is pending since 29.10.2018 hence it is stated that Only to settle her personal goal in the matter and to counter attack the applicant and

their family, the informant registered the FIR by making vague and false allegations.

8. Learned Additional Public Prosecutor strongly opposed the application by stating that considering the allegations in the FIR, *prima facie* case is made out against the present applicants under Sections 498A, 323, 504 of the IPC. It is further submitted that investigating Officer has recorded the statement of witnesses and collected ample evidence against the applicants. Hence application deserves to be dismissed.

9. Non-applicant No.2 strongly objected the application by stating that allegations made in the complaint are trustworthy and therefore, present application deserves to be rejected.

10. We have heard the learned counsel appearing for the respective parties and perused the record.

11. From the perusal of the record it is clear that applicant no.1 and non-applicant no.2 are not residing together since 2015. Furthermore, it is clear from the reply of notice dated 25.07.2018 the non-applicant no.2 herself stated that she has given Talaq to applicant no.1 and since 2014 she is not having any physical relation with the applicant/husband. It is further pertinent to note that though the

applicant no.1 in his notice made a specific averment that non-applicant no.2 had performed second marriage, the same was not denied by the informant.

12. In view of the evidence available on record it is *prima facie* clear that after initiation of proceedings for grant of custody of child, after a period of almost 7 years, the FIR has been lodged by the non-applicant no.2. The non-applicant no.2 nowhere explained the delay of 7 years caused in lodging the complaint against the present Applicants under Section 498A of the IPC

13. In the above said circumstances, *prima facie* allegations level against the present applicants falsify the case of the informant. In that view of the matter, it would be profitable to refer the relevant judgments of the Hon'ble Supreme Court as the First Information Report in question emanates from matrimonial discord.

(i) Preeti Gupta and another vs. State of Jharkhand 2010(7) SCC 667;

(ii) Geeta Mehrota and another vs. State of Uttar Pradesh and another 2012(10) SCC 741;

(iii) Arnesh Kumar vs. State of Bihar 2014(8) SCC 273;

(iv) Rajesh Sharma vs. State of Uttar Pradesh 2018(10) SCC

472;

(v) Kahkashan Kausar alias Sonam and another vs. State of Bihar 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 of the 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”.

14. A bare perusal of the First Information Report shows that allegations made by the informant are vague and omnibus. Further informant has not provided any specific details nor described any particular incident of instigation on the part of applicants, she has also not mentioned the time, date, place or manner in which the alleged instigation has occurred. Therefore, the First Information Report in question does not make out ingredients of Section 498-A of Indian Penal Code against the applicants.

15. In the light of vague and omnibus allegations against the applicants ,we are of the opinion that no offence is made out under Section 498-A of Indian Penal Code against the present applicants and continuation of criminal proceeding against them would amount to abuse of process of law, therefore, the same is liable to be quashed and aside. Hence, we proceed to pass the following order :

(a) The Criminal Application is allowed.

(b) The First Information Report No.213/2023 dated 25.07.2023 registered with the Ansingh Police Station, District Washim

for the offence punishable under Sections 498A, 323, 504 read with Section 34 of the Indian Penal Code is hereby quash and set aside.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR , J.)

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