



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

Criminal Application (APL) No. 1601 of 2024

1. Chaitali Yogesh Daf,
Aged 33 Years, Occu:
R/o New Gadge Nagar, Near Patne
Jwellers, Ramna Maroti Road,
Nandanwan
2. Yogesh Ramaji Daf
Aged 40 years, Occu: Service
R/o New Gadge Nagar, Near Patne
Jwellers, Ramna Maroti Road,
Nandanwan

... Applicants

// VERSUS //

1. State of Maharashtra
through its Police Station Officer,
Police Station Wathoda, Nagpur
2. Sau. Chandni Bhushan Khodke
Aged 24 Years, Occu. Nil
R/o 174, Kamal Nagar, Behind Maa
Ganga Celebration Lawn, Wathoda,
Nagpur

... Non-applicants

Shri Anil Dhawas, Advocate for the applicants.

Ms. Shamsi Haidar, APP for the non-applicant/State

Shri Akash Tiwari, Advocate for the non-applicant no.2.

**CORAM : NITIN B. SURYAWANSHI &
PRAVIN S. PATIL, JJ.**

Reserved on : 3rd February, 2025.

Pronounced on : 10th February, 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 way of present application, the applicants are challenging the First Information Report registered vide Crime No. 0445 of 2024 at Police Station Wathoda, Nagpur under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. In short, the case of prosecution is that the informant/non-applicant no.2 married with Bhushan Khodke on 30th May, 2023. The accused no.1 i.e. Bhushan Khodke is the husband of the informant, accused no.2 is the mother-in-law of the informant, accused no.3 (present applicant no.1) is the sister-in-law of the informant and accused no.4 (present applicant no.2) is the husband of accused no.3.

4. The informant by her complaint dated 20th August, 2024 alleged that she was physically and mentally harassed by accused nos. 1 to 4, on the count of dowry. It is further alleged by the informant that in her name, accused nos. 1 to 3 obtained the loan of Rs.1,50,000/- and the same was distributed amongst them. The Bachat Gut members from whom the loan was obtained are approaching to her for repayment of loan amount. As such, on the basis of these omnibus allegations against the accused persons, the Police Station Wathoda, District Nagpur on 20th August, 2024 registered crime no. 0445 of 2024 under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code against the present applicants.

SUBMISSION OF APPLICANTS.

5. The applicants before this Court are admittedly sister-in-law and brother-in-law of the informant. It is the submission of the applicants that they are not residing with the accused nos. 1 and 2. After the marriage of applicant no.1, they are residing separately at address given in the application i.e. New Gadge Nagar, Near Patne Jewellers, Ramna Maroti Road, Nandanwan, Nagpur. As such they are not frequently visiting the family of informant. It is further stated by the applicants that there are no specific allegations against them in the report. All the allegations against the applicants are of vague in nature. Applicants to demonstrate that they are residing separately filed on record their Aadhaar-Cards. In respect of allegation that informant borrowed loan from Bachat Gut, it is stated that such allegation is purely a civil dispute concerning financial transaction and accordingly no offence is made out against them under Sections 498-A, 323, 504 or 506 of Indian Penal Code.

SUBMISSION OF PROSECUTION

6. Learned Additional Public Prosecutor by relying on affidavit dated 25th October, 2024 supported the case of informant and stated that all the accused persons were harassing / ill-treating the informant as alleged by the informant in her First Information Report. As such, it is the submission of the learned Additional Public Prosecutor that there is a

strong *prima facia* case against the applicants about their involvement in the commission of offence and therefore application deserves to be rejected.

SUBMISSION OF INFORMANT.

7. Learned counsel appearing for the informant supported the case of prosecution and stated that allegations made in the First Information Report clearly makes out the case under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code against the applicants.

8. Heard learned advocate for the applicants, learned Additional Public Prosecutor for the non-applicant no.1/State and learned advocate for the informant/non-applicant no.2.

9. Admittedly, applicants are sister-in-law and brother-in-law of the informant. It is further clear that both the applicants never resided with the informant after her marriage with accused no.1.

10. That after going through the record, it is seen that allegations made by informant against present applicants are of general and vague in nature. Allegations are not specific. For attracting the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, it is necessary for the prosecution to *prima facie* establish that accused did any overt act in harassing the informant on account of unlawful demand of money or for causing cruelty to her. In absence of such material, offence

under Section 498-A of the Indian Penal Code is not made out against applicants and they cannot be compelled to face the trial.

11. In the First Information Report dated 20th August, 2024, the allegations against the applicants are that, she had obtained the loan of Rs.1,50,000/- from one Bachat Gut, but said amount was distributed by accused no.1 (husband), accused no.2 (mother-in-law) and accused no.3 (sister-in-law) i.e. present applicant no.1 amongst them. It is further stated that accused nos. 1 to 3 refused for repayment of same. But such allegation being a purely civil dispute concerning financial transaction. Further allegation against present applicants is that applicant no.1 along with accused nos. 1 and 2 asked her to establish physical relation with other persons for getting amount from them. However, except this statement, no material is available on record nor the allegation is specific for *prima facie* reliance to show the involvement of applicants in present crime.

Hence, on the basis of these allegations Section 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code are not *prima facie* attracted against the present applicants in the matter.

12. Hon'ble Supreme Court of India in the case of Preeti Gupta and another Vs. State of Jharkhand and another reported in (2010) 7 SCC 667, observed as under :-

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean

task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of 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 take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of 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 complainant are required to be scrutinized with great care and circumspection.

36. Experiences reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

13. Hon’ble Supreme Court of India in the case of Ramesh and others Vs. State of Tamil Nadu reported in (2005) 3 SCC 507, observed as under :-

“6.....Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged offence, viz., Sections 498-A, 406 of the I.P.C; and Section 4 of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time, i.e., between March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under Section 498-A or any other offence of which cognizance was taken..... The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible.

Neither the FIR nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.”

14. As such the Hon’ble Supreme Court of India repeatedly held that, if the First Information Report (FIR) as it stands does not disclose specific allegation against co-accused, specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial, which would persuade the Court to take cognizance of the offence alleged against the relatives who are *prima facie* not found to have indulged in physical and mental tortures of the complainant.

15. In addition to this, it is necessary to point out here the principles of law laid down by the Hon’ble Supreme Court of India in the case of State of Haryana Vs. Bhajanlal and others reported in 1992 AIR 604, wherein it is laid down that 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 and where a criminal proceeding is manifestly attended with mala fide 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, it is always necessary to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure to prevent abuse of

process and to prevent the commencement of complaint from unnecessary harassment of trial.

16. In view of above said factual and legal position, it is crystal clear that no offence is made out against the applicants, even though First Information Report is accepted as it is in this matter. In view of this, First Information Report registered against the present applicants is liable to be quashed and set aside.

18. For the aforesaid reasons, Criminal Application No. 1601 of 2024 is allowed. First Information Report vide Crime No. 0445 of 2024 registered at Police Station Wathoda, Nagpur for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code against the **applicant no.1-Chaitali Yogesh Daf** and **applicant no.2- Yogesh Ramaji Daf** is hereby quashed and set aside.

19. Rule is made absolute in the above terms.

[PRAVIN S. PATIL, J.]

[NITIN B. SURYAWANSHI, J.]