

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

CRIMINAL APPLICATION (APL) NO.233 OF 2022

1. Shri Rajesh s/o Himmat Pundkar,
Aged 40 years, Occ. Advocate,
R/o Mahesh Colony, Akot,
Tah Akot, District Akola
2. Shri Himmat s/o Uttamrao Pundkar
Aged 65 years, Occ. Nil.
3. Sau. Maya w/o Himmat Pundkar,
Aged 58 years, Occ. Housewife,
Applicant Nos. 2 and 3
R/o Rajkhed, P.O. Yevda, Sub-
District/Tahsil Daryapur, Amravati
Tah and Distt. Amravati.
4. Shri Lalit s/o Himmat Pundkar,
Aged 36 years, Occ. Service,
R/o Quarter No.21/B, Type-3 Samata
Vihar, MES Colony, MDA
Khadakwasla, Pune City, Pune-411023
Tahsil and District Pune
5. Smt. Pradnya w/o Pratap Chakre,
Aged 38 years, Occ. Household,
R/o C/o Pratap Laxmanrao Chakre,
Shegon Zhopadpatti, Near ZP School
Shegoan, Vidharbha Mahavidyalaya
(Amrawati), Maharashtra-444604
6. Smt. Suwarna Kailash Thakre,
Aged 36 years, Occ. Nil,
R/o Mukkam Akot,
Tah. Akot, Distt. Akola

APPLICANTS

// VERSUS //

1. State of Maharashtra,
Through P.S.O., Akot Police
Station, Tah. Akot, Dist. Akola

2. Sau. Suchita w/o Rajesh Pundkar,
Aged about 35 years, Occ. Housewife,
R/o C/o Bhanudas Bhaduji Seje,
Satnavari, Police Station, Kondhali
Post Satnavari, Th and Dist. Nagpur
(behind H.P. Petrol Pump)

.... **RESPONDENTS**

Mr. A.B. Moon, Advocate for applicants.
Mr. I.J. Damle, APP for respondent No.1/State.
Ms Kirti Satpute, Advocate for respondent No.2

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 08/06/2022.

ORAL JUDGMENT: [PER SUNIL B. SHUKRE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The applicants who are accused Nos.1 to 6 in Crime No.62/2022 registered at Police Station Akot District Akola for the offence punishable under Section 498 read with Section 34 of the Indian Penal Code have approached this Court seeking quashing of the First Information Report.

3. It is the contention of the learned counsel for the applicants that the First Information Report has been registered under Section 498 of the Indian Penal Code and this offence is not the offence of cruelty but offence of enticing or taking away or detaining with criminal intent a married woman, which offence is not at all disclosed by the allegations made in the complaint filed against the applicants.

4. We have gone through the printed First Information Report and as rightly submitted by learned APP, there appears to be a typographical error in registering the offence. The Investigating Officer ought to have registered the offence punishable under Section 498-A of the Indian Penal Code which is an offence of cruelty by husband against his wife. Then, in the case diary, which is produced before us, the offence which has been registered against the applicants has been clearly stated to be one punishable under Section 498-A of the Indian Penal Code. So, it is clear that there is some typographical error in the printed First Information Report where instead of Section 498-A, Section 498 has been recorded. The mistake committed by the Investigating Officer shall be rectified by him in due course of time.

5. It is the further contention of learned counsel for the applicants that the allegations in the First Information Report are of general nature and that they are also vague, which do not disclose any cognizable offence much less any offence of cruelty punishable under Section 498-A of the Indian Penal Code. He further submits that there is a tendency among a distraught wife to make false allegations against all the relatives and try to rope in all the relatives, so that some pressure is created upon the husband. He relied upon the law laid down in this regard by Hon'ble Supreme Court in the case of *Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others* reported in *2022 SCC Online SC 162*.

6. Disagreeing with the afore-stated contentions of learned counsel for the applicants, learned APP and so also learned counsel for the respondent No.2 submit that the allegations are not of general nature, that they are very specific in nature and that the complainant has not filed her complaint against all these applicants with some hidden motive.

7. The rival arguments can be appreciated, if the First Information Report and the statements of witnesses recorded by the

Police during the course of investigation are examined and considered appropriately. It is well settled law that the allegations made by the witnesses against the accused persons are to be scrutinized on their face value taking them to be true and it is not permissible for the Court to go into the aspect of reliability or credibility or trustworthiness of the witnesses as the later aspect belongs to the domain of trial of the accused persons. Bearing in mind the principles of law, let us now proceed to scrutinize and examine the First Information Report and also the statement of witnesses, which have been made available to us for perusal by learned APP.

8. On going through the allegations made in the First Information Report, we find that the allegations are not vague in nature. They are not general in nature either and that they specifically assign a role to each of the applicants which they had performed while subjecting the respondent No.2 to cruelty and harassment.

9. It appears to us that the entire story of woes of respondent No.2 began, going by the allegations made against

applicant No.1, after the applicant No.1 established extra marital relations with applicant No.6 and even performed second marriage with her clandestinely. The respondent No.2 got married to applicant No.1 in the year 2007 and the respondent No.2 also bore three children from out of the wedlock. Out of three children, one is son and two are daughters. The eldest daughter of respondent No.2 is aged about 14 years, second daughter is aged about 7 years and the son, who is the youngest, is aged about 4 years. It is further seen that the year 2017 proved to be a disaster for respondent No.2 as it was from this year and on wards the marital discord began. From this year hence, the applicant No.1 started harassing the respondent No.2. It is alleged that he even used to subject her to severe beating. Soon thereafter, it is further seen, the respondent No.2 learnt about the extra marital affair that applicant No.1 was having with the applicant No.6 and when questioned by respondent No.2, applicant No.1 would further subject respondent No.2 to cruelty. The acts of cruelty and harassment have been specifically stated by respondent No.2 in the FIR as well as in police statement. The respondent No.2 has also alleged that when she brought all these facts to the notice of remaining applicants, they being her in-laws and probably in a position to control and regulate the conduct

of applicant No.1, unexpected reaction came from the remaining applicants. The remaining applicants instead of exercising proper control over the applicant No.1, according to respondent No.2, started instigating applicant No.1 against respondent No.2. As alleged by respondent No.2, these applicants even raised illegal demand of Rs.50,000/- from respondent No.2 and upon her failure to meet that demand, the respondent No.2 was subjected by all these applicants to verbal abuses. They even instigated husband i.e. applicant to drive respondent No.2 out of his house.

10. The afore-stated allegations, we do not think, could be called as vague and general. These allegations have been made not only against the applicant- husband but also against all the in-laws i.e. remaining applicants and they are all specific in nature. They disclose sufficiently commission of cognizable offence cruelty, punishable under Section 498-A of the Indian Penal Code. It also does not appear to us that they have been made with some hidden motive to just rope in all in-laws.

11. In the case of ***Kahkashan Kausar*** (supra) referring to the observations made by Hon'ble Supreme Court in another case

K. Subba Rao Vs. The State of Telangana reported in ***2018(14) SCC 452*** the Supreme Court has held that Courts must be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The Court has further held that the relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

12. This is a case wherein specific instances of involvement of not only the husband but also his relatives have been stated and therefore, with due respect, we would say that the case of *Kahkashan Kausar* would not assist the applicants in any manner. In the case of *Kahkashan Kausar*, it is also held that when there are general omnibus allegations made in the course of matrimonial dispute and if they are not checked, it would result in misuse of the process of law. As stated earlier, in this case, there are no general omnibus allegations made against all the applicants rather, these allegations make out a *prima-facie* case against all the applicants and therefore, on this count also the case of *Kahkashan Kausar* would not help the applicants.

13. It is also submitted by learned counsel for the applicants that the applicant Nos.2 and 3 are residents of village Rajkhed District Amravati and applicant No.4 is a resident of Pune and applicant Nos. 5 and 6 do not reside with the husband i.e. applicant No.1 and therefore, the allegations made against these applicants who are in-laws or relatives of the husband cannot be said to be true. The argument cannot be accepted. Firstly there is no presumption in law that a relative living at a distance is always innocent, unless proved otherwise. A relative staying away from the husband and wife can and has been seen in many cases meddling in affairs of the married couple and that too of such a nature and to such an extent, as to amount to real harassment. Secondly, investigation is still going on and one does not know what more material would come on record in further investigation. Then, up till now, we have found that the allegations made by respondent No.2 against all the applicants are specific in nature and if their genuineness is to be tested, it would be possible only at the time of trial and not at this stage. Therefore, just because the remaining applicants are not residing alongwith applicant No.1, husband of respondent No.2 and respondent No.2 it cannot be said that the allegations made against the in-laws do not disclose any offence.

14. In the result, we find that there is no merit in the application. The application deserves to be dismissed.
15. The applications stands dismissed.
16. Rule is discharged.

JUDGE

JUDGE

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