

Bombay High Court

Shaikh Imran @ Irfan Shaikh ... vs The State Of Maharashtra And Anr on 29 November, 2022

Bench: V. V. Kankanwadi, Abhay S. Waghware

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1993 OF 2019

1. Shaikh Imran @ Irfan Shaikh  
Habiboddin Shaikh
2. Shaikh Habiboddin Abdul Samad Shaikh
3. Ruksana Habiboddin Shaikh
4. Sana Sumaiyya Habiboddin Shaikh
5. Shaikh Wasim Habiboddin Shaikh .. Applicants

Versus

1. The State of Maharashtra,  
Through In-charge  
Police Station, Gevrai, Dist. Beed.
2. Shaikh Tabassum Imran @ Irfan Shaikh  
Age: Major, Occu.: Nil,  
R/o. Lukhamasla, Tq. Gevrai,  
Dist. Beed. .. Respondents

...

Mr. Suvidh S. Kulkarni, Advocate for applicants.  
Mr. M. M. Nerlikar, APP for respondent No.1 - State.  
Mr. Yogesh K. Bobade, Advocate for respondent No.2.

...

CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.

DATE : NOVEMBER 29, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed by invoking the inherent  
powers of this Court under Section 482 of the Code of Criminal

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Procedure for quashing the FIR bearing Crime No.118 of 2019 registered with Gevrai Police Station, Dist. Beed on 26.03.2019 for the offence punishable under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code as well as the further proceedings in R.C.C. No.99 of 2019 pending before the learned Judicial Magistrate First Class, Gevrai.

2. Applicant No.1 is the husband of respondent No.2. Applicant Nos.2 is the father-in-law of respondent No.2. Applicant No.3 is the mother-in-law of respondent No.2. Applicant Nos.4 is the sister-in-law of respondent No.2 and applicant No.5 is the brother-in-law of respondent No.2.

3. Heard learned Advocate Mr. S. G. Kawade for applicants, learned APP Mr. S. D. Ghayal for respondent No.1 - State and learned Advocate Mr. L. H. Kawale holding for learned Advocate Mr. A. R. Dand for respondent No.2.

4. After hearing learned Advocate for the applicants for sometime, when this Court expressed its disinclination to grant any relief in favour of applicant No.1, learned Advocate for the applicants, on instructions, seeks withdrawal of the application in

respect applicant No.1. Hence, the application stands disposed of as withdrawn in respect of applicant No.1. Now, the matter to proceed

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for the reliefs claimed by applicant Nos.2 to 5

5. Perusal of the contents of the FIR lodged by respondent No.2

would show that she got married to applicant No.1 - husband on

15.05.2017. It is then stated that at that time since there was

demonetization, amount of Rs.2,00,000/- was given to the applicants at the time of marriage, but it was as loan. After her

marriage, she was treated properly for about 3 to 4 months and,

thereafter it is stated that the mother-in-law and sister-in-law of

respondent No.2 started saying that she is unable to do household

activities properly. After hearing that the husband of respondent

No.2 used to assault her. She then states that the father-in-law

and brother-in-law used to abuse her on one or the other pretext.

She then states that the husband had assaulted her because of the

instigation by the other accused persons and then the accused

persons started asking her to bring amount of Rs.5,00,000/- for

purchasing house. All these allegations would show that the

allegations against applicant Nos.2 to 5 are vague and omnibus.

She has not given the details as to what abuses her father-in-law

and brother-in-law used to give her and on what count, because she has stated that on some or the other pretext they used to abuse her. Statement by mother-in-law and sister-in-law that she is not doing the work in proper way cannot be taken as an

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instigation. Even if it is taken as instigation by the husband, for that purpose the mother-in-law and sister-in-law will not be responsible. In fact, such statement that a work is not done properly can be attributed to any family member by another family member, but it will not amount to instigation unless it is accompanied by some action in demand. Perusal of the charge-sheet would show that there are statements of her parents and other relatives and it would show the same facts, which could be seen from the FIR i.e. given on 26.03.2019. It is also stated that the statement of the father was also taken on 26.03.2019 and it appears that he has given more details than the informant. Those facts which are stated in detail by the father could have been told by the informant only to him, but the informant is not making those facts as the formation of the FIR. Therefore, on the basis of omnibus allegations, without assigning active role attracting the ingredients of offence punishable under Section 498-A of IPC, it would be unjust to ask applicant Nos.2 to 5 to face the trial.

6. Reliance can be placed on the decision in Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors., Criminal Appeal No.195 of 2022 decided by the Hon'ble Supreme Court on 08.02.2022, wherein the decisions in Rajesh Sharma and Ors. Vs. State of U.P. and Anr., [(2018) 10 SCC

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472], Arnesh Kumar Vs. State of Bihar and Anr., [(2014) 8 SCC 273], Preeti Gupta and Anr. Vs. State of Jharkhand and Anr., [(2010) 7 SCC 667], Geeta Mehrotra and Anr. Vs. State of UP and Anr., [(2012) 10 SCC 741] and K. Subba Rao Vs. The State of Telangana, [(2018) 14 SCC 452] have been considered and it has been observed thus :-

"18. The above-mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of section 498A IPC 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."

7. Taking into consideration the above noted decisions, we are of the opinion that the ingredients of offence punishable under Section 498-A of IPC are not attracted as against the applicant Nos.2 to 5. Therefore, in our view, this is a fit case wherein we should exercise

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our discretion under Section 482 of the Code of Criminal Procedure to quash and set aside the the FIR and the proceedings arising therefrom as against the applicant Nos.2 to 5. Hence, the following order :-

ORDER

I) Application stands allowed in respect of II) Application stands disposed of as withdrawn in respect of applicant No.1.

III) The FIR bearing Crime No.118 of 2019 dated 26.03.2019 registered with Gevrai Police Station, Dist. Beed for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of IPC as well as the further proceedings in R.C.C. No.99 of 2019 pending before the learned Judicial Magistrate First Class, Gevrai, stand quashed and set aside, as against applicant Nos.2 to 5.

[ABHAY S. WAGHWASE]  
JUDGE

[SMT. VIBHA KANKANWADI]  
JUDGE

scm

