**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.40 OF 2021**

1. Sarang Diwakar Amle
Age: 41, Occu.: Business,
R/at F201, Stargaze Society,
Near Windmill Society, Bavadhan,
Pune 411 021

2. Saroj Diwakar Amle
Age: 71, Occu.: Housewife,
R/at F201, Stargaze Society,
Near Windmill Society, Bavadhan,
Pune 411021

3. Dipti Ashutosh Athalye
Age: 43 years, Occu.: Housewife,
R/at F202, Stargaze Society,
Near Windmill Society, Bavadhan .. Applicants

**Versus**

1. State of Maharashtra
Through the Inspector of Police,
Bhagyanagar Police Station,
Nanded, Dist. Nanded.

2. Shruti Sarang Amle alias Shruti
Shantaram Palnitkar,
Age: 30 years, Occu.: Housewife,
R/at. C/o Atmaram Vinayak Palnitkar,
House No.12, Varad, Parimal Nagar,
Nanded Dist. Nanded. .. Respondents

...

Mr. Sagar Bhingare, Advocate for applicants.
Mr. S. J. Salgare, Advocate for respondent No.1 - State.
Mr. S. S. Khoche, Advocate for Respondent No.2.
Mr. S. B. Solanke, Advocate for respondent No.2. (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI AND RAJESH S. PATIL, JJ.**

**RESERVED ON : 13-09-2022**
**PRONOUNCED ON : 21-10-2022**

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

. Present application has been filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") for quashing the First Information Report (for short "FIR") bearing Crime No.341 of 2020 registered with Bhagyanagar Police Station, Dist. Nanded for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of Indian Penal Code (for short "IPC") and also the proceedings in R.C.C. No.850 of 2020 pending before the learned Additional Chief Judicial Magistrate, Nanded.

2. Applicant No.1 is the husband of respondent No.2. Applicant No.2 is the mother of applicant No.1 and mother-in-law of respondent No.2. Applicant No.3 is the elder married sister of applicant No.1 and sister-in-law of respondent No.2.

3. The informant - respondent No.2 lodged report with the Bhagyanagar Police Station, Dist. Nanded on 09.09.2020. Her marriage was performed with applicant No.1 on 12.12.2019 at Pune. According to her, the entire marriage expenses were borne by her father and at the time of marriage gold weighing 21 Tolas,

one gold chain of one and half Tola, ring of 5 gm. and cash of Rs.1,00,000/- was given. She states that she was treated properly for about a month by the applicants and thereafter, she was treated like maid servant. The applicants started demanding amount of Rs.4,00,000/- for purchasing four wheeler. When she told that her father doesn't have that much amount, then applicant No.1 - husband had harassed her physically as well as mentally. Thereafter, she was taken to Doctor so that there should be son born to the couple, but the Doctor told that the gestation period is not complete. Thereafter, applicant Nos.2 and 3 had assaulted her by slap and kicks and abused her, threatened her by saying that she has defrauded them. She then states in the FIR that applicant Nos.2 and 3 went to her father's place at Parimal Nagar, Nanded and told to the informant that if amount of Rs.4,00,000/- is brought as stated by applicant No.1 then only she would be allowed to cohabit. She was assaulted at that time and this incident had taken place at about 12.00 p.m. on 27.06.2020. She has then lodged the report.

4. Heard learned Advocate Mr. Sagar Bhingare for the applicants, learned APP Mr. S. J. Salgare for respondent No.1 - State, learned Advocate Mr. S. S. Khoche for respondent No.2 and learned Advocate Mr. S. B. Solanke for respondent No.2 (Appointed).

5. It has been vehemently submitted on behalf of the applicants that the FIR appears to be a concocted version. It was the second marriage of respondent No.2. She had earlier married to one Sunil Divakar Jahagirdar and against said Sunil Jahagirdar and his family members, respondent No.2 had lodged FIR on 04.02.2017 and charge-sheet was filed against them vide R.C.C. No.51 of 2017 before learned Judicial Magistrate First Class, Degloor. All those persons came to be acquitted by the concerned Court on 26.03.2019. The copy of the charge-sheet and the judgment in that case has been produced on record. She had also filed application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against her earlier husband and others before learned Judicial Magistrate First Class, Degloor and ultimately, that application came to be withdrawn on 19.03.2019 in view of pursis Exhibit-33. Respondent No.2 had also filed petition for divorce against said Sunil Divakar Jahagirdar before learned Civil Judge Senior Division, Biloli, Dist. Nanded bearing Petition No.33 of 2018. The said petition came to be allowed on 11.04.2019. However, perusal of the said judgment granting her divorce would show that there was a compromise and the said petition was then converted into Hindu Marriage Petition under Section 13-B of the Hindu Marriage Act. She had also filed application under Section 125 of Cr.P.C. before Family Court, Aurangabad against her earlier

husband and that came to be withdrawn by filing pursis on 02.04.2019 stating that the matter has been settled amicably out of the Court. All these documents would show that respondent No.2 is in habit of making such allegations. After dissolution of marriage on 11.04.2019, present applicant No.1 has performed marriage with respondent No.2 on 12.12.2019. Her stay with the applicants was very much short. She has lodged report with police on 09.09.2020 and the FIR is silent on which date she went back to her parental home. The alleged incident at Nanded is stated to have taken place on 27.06.2020. Within a period of 5-6 months, it is hard to believe that any such incident would have taken place. Further, it can be seen from the documents produced by the applicants that he had purchased a four wheeler of Rs.17,29,000/- on 28.02.2020 with the bank loan, therefore, there is no question of demanding amount of Rs.4,00,000/- to respondent No.2 for purchase of car. The allegations against the applicants are omnibus in nature. Same is the case with the statement of the witnesses, who had for the obvious reasons are in echo with respondent No.2. The medical documents of respondent No.2 would show that in fact she was suffering from gynec problem and her own aunt had initially given treatment, but thereafter she was taken by the applicants to Dr. Manisha Risbud, who is gynecologist and when the Sonography was done, it was found that there is a cyst to her ovaries which was

causing difficulty in conception. She did not take further treatment from the said Doctor and under such circumstance, she cannot blame applicant Nos.2 and 3. It would be a futile exercise and harassment to the applicants to face the trial when they are at no fault.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly objected the application and submitted that since the investigation has been done and evidence has come, this is not a fit case where the FIR as well as entire proceedings should be quashed and set aside.

7. At the outset, it is to be noted that the marriage between respondent No.2 and applicant No.1 had taken place on 12.12.2019. Neither in her FIR nor in the statements of her parents they have given the date on which respondent No.2 either left her matrimonial home or she was driven out of the house and she started residing with her parents. Admittedly on 27.06.2020 it appears that she was residing with her parents. She has not stated in the FIR that for some purpose only, she had gone to her parents house. According to her own FIR, which is then supported by in stereotype way by her parents and other relatives that she was treated properly for about a month, it is then vaguely stated that she was treated like a maid servant. She has not given details of

the same. If a married lady is asked to do household work definitely for the purpose of the family, it cannot be said that it is like a maid servant. If she had no wish to do her household activities, then she ought to have told it either prior to the marriage so that the bride-groom can rethink about the marriage itself or if it is after marriage, then such problem ought to have been sorted out earlier. Her FIR is also silent on the point as to whether there was maid servant at her matrimonial home for doing the work of washing utensils, wash clothes, sweeping etc., which is generally given to the maid servant.

8. Further, it is to be noted that in the FIR as well as the statements of the witnesses under Section 161 of Cr.P.C. it is stated that after one month of her marriage, the husband started demanding amount of Rs.4,00,000/- for purchasing four wheeler. When she had stated that her father does not have amount, it is stated that applicant No.1 had harassed her physically and mentally. Again the details are lacking. Mere use of the word harassment "mentally and physically" are not sufficient to attract ingredients of Section 498-A of IPC. Unless those acts are described it cannot be concluded that whether those acts amounted to harassment or subjecting a person to cruelty. It appears that as against applicant No.1, it is the allegation about demand of amount

of Rs.4,00,000/- for purchase of four wheeler. There are no allegations against him that he had made accusations about defrauding him on account of the medical treatment. Even if we take the further allegations in the FIR as it is, what respondent Nos.2 says is that "मला मुलगा व्हावा म्हणून मला तेथील डॉक्टराकडे नेवून तपासणी केली असता डॉक्टरांनी मला दिवस भरले नसलेचे सांगितले", meaning thereby she was got medically checked through Doctor for birth of a son and, thereafter, the Doctor told that the gestation period is not complete. She has not specifically stated that it was revealed to her that she is pregnant and she is carrying pregnancy of some days/weeks or month. Unless she would have become pregnant, there was no question of completion of the period of pregnancy and delivery of the child. It appears that those things have been intentionally kept vague. Now, there are medical documents of respondent No.2 on record and she has not whispered anything by way of affidavit-in-reply. From those medical documents, it appears that she was rather referred for her gynecological problem which had showed that there is cyst in the ovaries, meaning thereby she was not pregnant at all and there could not have been then insistence for birth of son. In this connection respondent No.2 says that applicant Nos.2 and 3 abused her, assaulted her by saying that she has cheated them. Again no further details have been given as to on what count they felt that they have been cheated. When such

omnibus allegations are made, it does not attract the ingredients of Section 498-A of IPC. Further, as regards the incident dated 27.06.2020 is concerned, as aforesaid, the evidence collected is silent on the point when respondent No.2 went to her parental home and if that incident had happened on that day, then why she had kept quiet for about two and half months to lodge the report. The documents have been produced on record in respect of her earlier marriage, the proceedings those have been filed by her etc. We do not want to go into those details. The fact remains is that there was divorce. She had filed complaints/applications against her earlier husband and his family members, that does not mean that she is in a habit of levelling such allegations and extracting money. That would be the submission that is required to be proved by any person who would make such allegations. However, when in this case, the allegations those have been made and the collection of evidence is not sufficient even at this *prima facie* stage to attract the ingredients of offence punishable under Section 498-A of IPC, further as regards offence under Section 323, 504, 506 read with Section 34 of IPC is concerned, it is in fact already conferred under Section 498-A of IPC and unless those other offences are shown which would amount to "cruelty", offence under Section 498-A of IPC cannot be made out and, therefore, it would be a futile exercise to ask the applicants to face the trial. With such allegations and the

evidence, the application deserves to be allowed. Hence, the following order :-

**ORDER**

I) Application stands allowed.

II) The FIR bearing Crime No.341 of 2020 registered with Bhagyanagar Police Station, Dist. Nanded for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of IPC as well as the proceedings in R.C.C. No.850 of 2020 pending before the learned Additional Chief Judicial Magistrate, Nanded, stand quashed and set aside.

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

**[RAJESH S. PATIL]**
**JUDGE**

**[SMT. VIBHA KANKANWADI]**
**JUDGE**

scm