IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2982 OF 2015

1. Darrshan Kumar Vilayatiram Khanna,
(Since deceased Deleted.)

2. Narresh Darshan Kumar Khanna
An adult, aged about 54 years,

3. Raajesh Darshan Kumar Khanna,
An adult, aged about 50 years,

4. Sonam Narresh Khanna
Aged about 44 years, female

5. Poonam Darshan Kumar Khanna
Aged about 47 years, female
All Indian Inhabitants of Mumbai
All residing at 14/A, Gulab View,
Mishad CHS Ltd. (A), Near Basant
Cinema Chotiram Gidwani Road,
Chembur, Mumbai – 400 074. .....Petitioners

Vs.

1. The State of Maharashtra,
To be served through the Public
Prosecutor High Court Bombay.

2. The Senior Inspector of Police R.C.F.
Police Station, Ghatkopar-Mahul
Road, Chembur (E), Mumbai-400 074.

3. Anshu Virendra Khanna,
Aged about 40 years, female,
Indian inhabitants of Mumbai
residing at 14/A, Gulab View,
Mishad CHS Ltd. (A), Near Basant
Cinema, Chotiram Gidwani Road,
Chembur, Mumbai – 400 074. .....Respondents

Mr. Ashish Mishra, for the Petitioners.
Mr. Anand S. Shalgaonkar APP, for Respondents Nos.1 & 2-State.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.
RESERVED ON : 9th JULY, 2024.
PRONOUNCED ON : 18th JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J.) :-

1) The Petitioners seek quashing of F.I.R.No.3 of 2013 dated 1st March 2013 registered with R.C.F. Police Station for offences punishable under Sections 498-A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code ('IPC'). They also seek quashing of the final report filed by the police dated 14th May 2013 before the Metropolitan Magistrate, 52nd Court at Kurla, Mumbai.

2) By Order dated 27th January 2016, the Petition was admitted and the proceedings pursuant to the filing of final police report were stayed by this Court, during the pendency of the Petition. An attempt of mediation was made by Mr. S.G.Deshmukh, Advocate of this Court, but it appears to have failed. Despite service and representation of Respondent No.3 through her Advocate Ms. Rachita Dhruv, none appears for her today. We have thus proceeded to hear the matter finally.

3) This is a peculiar case where the Petitioners being the in-laws of the Respondent No.3-wife (original complainant) are accused of committing an offence under Section 498-A of IPC, without a single allegation against her husband. Surprisingly, these allegations against the

Petitioners are made by the complainant-wife at the behest of her own husband. Although Section 498-A envisages cruelty inflicted upon a woman by a relative of the husband, it is rare to see such allegations aimed at the relatives de *hors* any accusation against the husband. But no sooner than a plain reading of the F.I.R. begins to unravel this mystery.

4) Petitioner No.1-father-in-law of the complainant is deceased on 15th January 2022 and hence pursuant to Order dated 12th June 2024 of this Court, he is deleted from the array of Petitioners. Petitioners No.2,3 and 5 are the brothers and sister respectively of the complainant's husband Virendra. Petitioner No.4 is wife of the 2nd Petitioner.

5) The allegations of the complainant in the F.I.R. details allegations of incidents of cruelty meted out to the complainant by the Petitioners. It is her case that, she married Virendra on 15th February 2009. Her husband was engaged in the business of construction activities and real estate consultant. Complainant herself was serving in a private company. She has listed five items of jewellery with their valuation in the F.I.R. which according to her, were gifted to her, her husband and his relatives by her mother.

5.1) It is her allegation that, the Petitioners started digging up quarrels on petty issues with her husband to drive him and the complainant out of the house. Her deceased father-in-law demanded that, she and Virendra should ask her to provide a flat for their residence. She also

alleged that, she and Virendra were abused on trivial matters. The list of ill-treatment includes refusing to allow her to use kitchen and other domestic appliances; restraining her from using the terrace and garden; practicing black magic on her; making offensive remarks on her relatives; restraining domestic help from doing the complainant's work, amongst other things. She quotes one incident of being beaten up by the Petitioners. She has listed twelve other cases filed by her and Virendra against the Petitioners in the R.C.F. Police Station for offences under 504, 506 and 323 of the IPC between the period 1st May 2010 and 11th April 2011. There are two other cases filed by them in Worli Police Station. These are the allegations made by her in the F.I.R. impugned herein.

6) Mr. Ashish Mishra, learned counsel represents the Petitioners and Mr. A.S.Shalgaonkar, learned APP represents the State.

7) At the outset, Mr. Mishra contends that, the F.I.R. is filed by the complainant and her husband Virendra against his own family members with the only object of grabbing property of his deceased father. Mr. Mishra submitted that, there is a series of civil litigation pending before various Courts, initiated by and against the parties *inter* se. The deceased father had instituted a suit bearing No.1272 of 2010 in the City Civil Court against the complainant and Virendra, restraining them from entering into their home on 1st June 2010. The said plaint was returned to be presented before the Small Causes Court. The deceased father had also filed a private

complaint before the Metropolitan Magistrate against the complainant and Virendra under Sections 385, 504, 506(2) read with 34 of the IPC on 2nd May 2012. In it process was issued on 6th August 2012 which was challenged by the complainant before this Court. The same stands dismissed for default. In 2013, the deceased father had transferred most of his assets to the remaining Petitioners vide a Gift Deed. On 10th September 2022, Virendra challenged the Gift Deed by instituting a suit No.343 of 2022 in this Court seeking its cancellation and partition of property. As per Mr. Mishra, no interim relief was granted to Virendra save and except a direction that he should not be dispossessed from the portion of the suit property occupied by him, without following due procedure of law. Thus, it is the contention of Mr. Mishra that, the F.I.R. is a counterblast to the cases filed by the deceased father and no offence is made out.

8) Mr. Shalgaonkar, learned APP reiterated the contents of the F.I.R. and also pointed to a statement recorded by the police of the complainant's mother Usha Sharma which also reiterates the contents of the F.I.R. to the extent of gifting jewellery to the complainant and Virendra, however no receipts are available for verification.

9) We have heard both the counsels and perused the documents with their assistance.

10) Before we appreciate the merits in the present case, it is necessary to refer to the view taken by the Apex Court while dealing with

situations akin to that which arises in the present matter. In a recent decision in the matter of *Mamidi Anil Kumar Reddy v. State of A.P.*[1] the Apex Court held as under:

> *"**14**.....A bare perusal of the complaint, statement of witnesses' and the charge-sheet shows that the allegations against the Appellants are wholly general and omnibus in nature; even if they are taken in their entirety, they do not prima facie make out a case against the Appellants. The material on record neither discloses any particulars of the offences alleged nor discloses the specific role/allegations assigned to any of the Appellants in the commission of the offences.*
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> ***15.*** *The phenomenon of false implication by way of general omnibus allegations in the course of matrimonial disputes is not unknown to this Court. In Kahkashan Kausar alias Sonam v. State of Bihar 2022 SCC 6 599, this Court dealt with a similar case wherein the allegations made by the complainant-wife against her in-laws u/s. 498A and others were vague and general, lacking any specific role and particulars. The court proceeded to quash the FIR against the accused persons and noted that such a situation, if left unchecked, would result in the abuse of the process of law."*

11) In a series of earlier decisions, the Supreme Court has discussed the legal position and provided guidance in matters where vague and general allegations are made against the Accused and a bunch of

1 2024 SCC OnLine SC 127.

relatives of the husband are sought to be roped in criminal proceedings. In its decision in the matter of *Mahmood Ali* v. *State of U.P.*,[2] while considering the principles applicable to the exercise of jurisdiction u/s. 482 CrPC, observed as follows:

> "*12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many*

2 2023 LiveLaw (SC) 613.

other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation."

12) A plain but careful reading of the F.I.R. and the charge sheet indicates that the allegations against the Petitioners are quite general and vague. Undoubtedly, she has given a list of incidents of cruelty in the F.I.R., however the instances are also of a nature that do not fulfill the ingredients of Section 498(A) of the IPC. Moreover, the allegations are made only against the husband's relatives. In fact, some of the ill-treatment as alleged is aimed against Virendra and not even the complainant herself. Allegations of ill-treatment by a man against his own family members do not fall within the scope and ambit of Section 498(A) of the IPC.

13) The history of civil litigation between the complainant and Virendra on one side and the Petitioners on the other lays bare the intention of the complainant in making the complaint. It demonstrates his personal interest in settling scores with his family members in respect of the family property. All the litigations involve property disputes. The F.I.R. clearly discloses a proxy litigation engaged by Virendra through his wife, the

complainant against the Petitioners to settle his own property dispute. Most pertinent is a challenge mounted by Virendra assailing the gift deed which exposes his ruse and intention completely. The F.I.R. is nothing but a shot fired by Virendra from his wife's shoulder to espouse his own cause of his interest in his father's property. It is evident from the attending circumstances in the case that the entire law enforcement machinery has been set in motion by the complainant only at Virendra's behest. This is so because all the parties are yet residing together in their family home. We thus have no hesitation in holding that the F.I.R. is filed with an ulterior motive for wreaking personal vengeance on the Petitioners.

14) The Supreme Court in its recent decision in the matter of *Achin Gupta v. State of Haryana & Ors.,*[3] has succinctly laid down the legal position in this regard, as under:

> *"20. It is now well settled that the power under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr.P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may*

3 Criminal Appeal No.2379 of 2024 (Arising out of SLP (Cri.) No.4912 of 2022) decided on 3rd May 2024.

be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

"21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.. While exercising powers under Section 482 of the Cr.P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact.

When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

15) Having given our anxious consideration to the facts of the present case and the settled legal position, we are of the opinion that the F.I.R. impugned herein is a complete abuse of the process of law. The police machinery has been used for realizing private interest of the complainant and her husband. The present case is a classic example of gross abuse of Section 498(A) of the IPC.

16) In the circumstances, we are inclined to quash the F.I.R.No.3 of 2013 dated 1st March 2013 registered with R.C.F. Police Station for offences punishable under Sections 498-A, 406, 323, 504 and 506 read with 34 of the Indian Penal Code ('IPC') and the final report filed by the police dated 14th May 2013 before the Metropolitan Magistrate, 52nd Court at Kurla, Mumbai and it is so quashed.

17) Petition is accordingly allowed.

(DR NEELA GOKHALE, J.) (A.S. GADKARI, J.)