

**(2014) 12 BOM CK 0003**

**In the Bombay High Court**

**Case No : Criminal Application No. 5429 of 2014**

Kailas

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision : 23-12-2014**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 323, 34, 406, 498A, 498A

**Citation :** (2015) ALLMR(Cri) 1 : (2015) 1 BomCR(Cri) 759

**Hon'ble Judges :** S.S. Shinde, J;N.W. Sambre, J

**Bench :** Division Bench

**Advocate :** H.V. Tungar, Advocate for the Appellant; S.D. Kaldate, A.P.P,  
Advocate for the Respondent

## Judgement

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, heard finally.

2. This application is filed with following prayer :

"(B) The proceedings of RCC No. 53/2012 pending in the court of Judicial Magistrate, First Class, Gangapur for the offence u/s 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code may kindly be quashed."

3. So far as applicant No. 1, the brother in law of the original complainant is concerned, his application was not pressed and as a result, same was dismissed as not pressed as per order of this Court dated 8th October 2014.

4. The applicant Nos. 2 and 4 are the married sisters-in-law of the respondent No. 2 i.e. original complainant. The applicant No. 3 is the husband of applicant No. 2 whereas the applicant No. 5 is the husband of applicant No. 4. The respondent No. 2 herein, on 3rd January 2012 lodged the F.I.R. with the Gangapur Police Station, Gangapur, District Aurangabad vide Crime No.I-03/2012.

5. It appears that the Police have conducted investigation and thereafter filed

charge-sheet vide No. 01/2012 in the Court of Judicial Magistrate, First Class, Gangapur. The case is registered as R.C.C. No.53/2012. The Counsel appearing for the applicants informs this Court that the charge is not yet framed.

6. This application is filed praying therein for quashing pending proceedings in R.C.C. No.53/2012 before the learned Judicial Magistrate, First Class, Gangapur.

7. The learned Counsel appearing for the applicants invited our attention to the allegations in the F.I.R. and also the statements of the witnesses and other material placed on record and submits that allegations in the F.I.R. are general in nature, no specific instances have been stated and, therefore, in absence of specific instances about ill-treatment or illegal demands, ingredients of provisions of Section 498A of the Indian Penal Code would not get attracted and when there is no prima facie case, this application deserves to be allowed. It is also submitted that the applicants are residing at different places. The applicants No. 2 and 4 are married long back and they are staying with their family at the places which are mentioned in the title cause. It is submitted that even if the allegations in the F.I.R. are taken at its face value, no offence is disclosed and, therefore, the application deserves to be allowed. The Counsel appearing for the applicants further submits that even if the allegations in the F.I.R. and the statements of the witnesses are carefully read and taken as it is, no offence, as alleged can be attracted so far present applications are concerned. In support of aforementioned contentions, the learned Counsel for the applicants invited our attention to the exposition of the Supreme Court in case of Ramesh & Ors., Vs. State of T.N., reported in 2005 ALL MR (Cri) 1795 (S.C.).

8. On the other hand, learned Counsel appearing for the original complainant submits that allegations in the F.I.R. and the statements of the witnesses will have to be read as it is. It is further submitted that the prosecution agency has collected sufficient material and case is triable. Therefore, this Court may not entertain this application. It is submitted that, upon reading allegations in the F.I.R. and the statements of the witnesses, offence is disclosed. The prosecution agency has collected the sufficient material and, therefore, this Court may not entertain this application. The learned A.P.P. also adopted the arguments advanced by the learned Counsel for the original complainant.

9. We have given anxious consideration to the rival submissions. With the assistance of learned Counsel for the applicants, learned A.P.P. for the State and learned Counsel for the original complainant, we have carefully perused the allegations in the F.I.R., the statements of the witnesses and also the affidavit-in-reply filed by respondent No. 2. So far present applicants are concerned, allegations as they appear in the F.I.R. are as under :

10. Upon perusal of the statements of the witnesses, what is stated in the F.I.R. by the complainant against the applicants have been repeated and there is no material particulars quoting any specific instances of ill-treatment or harassment by the applicants so as to attract ingredients of Section 498A of the Indian Penal

Code. In the first place, allegations in the F.I.R. are general in nature, no specific overt act is attributed to each of the applicants. Secondly, even if the allegations in the F.I.R. are taken at its face value, there are no specific instances or material particulars which would strengthen the contention of the complainant that there was harassment or ill-treatment which is contemplated by the provisions of Section 498A of the Indian Penal Code so as to even make out the prima facie case against the applicants. We find considerable force in the arguments of the Counsel appearing for the applicants that mere general utterances like in the facts of the cited case in the case of Ramesh and others Vs. State of T.N. would not attract the provisions of Section 498A of the Indian Penal Code. Paragraph 6 of the said judgment reads thus :

"6. Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant - Gauri Ramaswamy. Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged offences, 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. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the F.I.R. is that on some occasions, she directed the complainant to wash W.C. and used to abuse her and used to pass remarks such as "even if you have got much jewellery, you are our slave". It is further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gauri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. 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 F.I.R. nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant - Gauri Ramaswamy. The High Court ought not to have relegated her to the order of trial. Accordingly, the proceedings against the appellant - Gauri Ramaswamy are hereby quashed and her appeal stands allowed."

11. In the light of discussion in foregoing paragraphs and upon considering the

provisions of Section 498A of the Indian Penal Code and other sections which are invoked by the prosecution agency in the light of material brought on record and also the legal position settled by the Supreme Court, in our considered view, this application deserves to be allowed.

12. The Supreme Court, in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has laid down the categories so as to find out under which category case falls while exercising jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure, which read thus :

- 1 Whether the allegations made in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the applicant;
- 4 Where the allegations in the F.I.R. do not constitute a cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
5. Where the allegations made in the F.I.R. 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;
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide 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.

Upon perusal of the categories laid down by the Supreme Court in case of State of Haryana Vs. Bhajanlal, the present case would fall under Categories No. 1 and 5 inasmuch as the allegations made in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the applicants and secondly, the allegations made in the F.I.R. 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 applicants.

13. In that view of the matter, the application is allowed and Rule is made absolute in terms of prayer clause (B). Application stands disposed of accordingly.