

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2063 OF 2017

1. Mrs. S [REDACTED] S [REDACTED] D [REDACTED]

[REDACTED]

2. S [REDACTED] S [REDACTED] D [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Parvati, Pune-411009.

... Petitioners

V/s.

1. The State of Maharashtra
Through the Dattawadi Police Station,
Pune.

2. S [REDACTED] S [REDACTED] D [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Katraj, Pune 411 046

... Respondents

Mr.Himanshu Nagarkar a/w. Kajal S. for Petitioners.

Ms.S.S.Kaushik, APP for the Respondent No.1-State.

Ms.Radhika Samant a/w. Pooja Bhide for the for Respondent No.2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 26th FEBRUARY 2026

PRONOUNCED ON : 10th JUNE 2026

JUDGMENT :-

1) By the present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC.)

the Petitioners seek to quash and set aside the FIR bearing C.R. No. 350 of 2016 dated 22nd September 2016 registered with Dattawadi Police Station, Pune for offences punishable under Sections 498-A, 504, 506 read with 34 of the Indian Penal Code, 1860 (IPC).

2) Heard Mr.Himanshu Nagarkar, learned Advocate for the Petitioners, Ms. S. S. Kaushik, learned APP for the Respondent–State and Ms. Radhika Samant for Respondent No.2. Perused the entire record.

3) By Order dated 24th March 2023 this Court while admitting the Writ Petition confirmed the ad-interim relief granted vide Order dated 11th July 2017 as interim relief. Rule notice issued has been duly served upon the Respondent No.2. Respondent No.2 is duly heard.

4) The prosecution's story as alleged is as under:-

4.1) The FIR has been registered at the instance of Respondent No.2 under Sections 498-A, 504,506 read with 34 of the IPC, against [REDACTED] [REDACTED] as accused No.1, accused No.2 [REDACTED] (Petitioner No.1), accused No.3 [REDACTED], accused No.4 [REDACTED] (Petitioner No.2), accused No.5 [REDACTED] and accused No.6 [REDACTED] (Petitioner in Writ Petition No. 2064 of 2017). That, accused No.1 and Respondent No.2 met each other through the Matrimony Site. That, on 17th September 2016, after accused No.1 returned to India, he met Respondent No.2 at Swargate ST Stand, Pune. That, between 20th September 2015 to 24th September 2015, Respondent No.2 and accused No.1

met on various occasions. That, during the said meetings accused No.1 repeatedly told Respondent No.2 that, after the wedding he would take her to Australia and that she should get visa procedure/compliance done, so as to enable him to take her to Australia. That, accused No.1 was working as a chef at Adelaide Casino ABN 72082362061 Mademi, Hanoi Tax Invoice, Australia. That, accused No.1 assured Respondent No.2 that, he would keep her happy after the wedding and that, she should not worry about anything. That, the wedding of Respondent No.2 and accused No.1 took place on 26th September 2015 at Pune. That, the wedding was attended by relatives of both the families and the friend of accused No.1 i.e. [REDACTED] (accused No.6) and his wife. That, Respondent No.2 was residing with her mother-in-law [REDACTED], brother-in-law [REDACTED] and sister-in-law [REDACTED] and [REDACTED]. That, they were residing at Aurangabad. Thereafter, Respondent No.2 and accused No.1 went to Ashtavinayak and Mahabaleshwar. That, their marriage has been consummated. On 12th October 2015, the accused No.1 left for Australia. That, Respondent No.2 occasionally used to reside at her matrimonial house and occasionally at the house of her parents. That, when Respondent No.2 used to reside in the matrimonial house, her mother-in-law [REDACTED] and sister-in-law [REDACTED] used to taunt her on small issue/fight with her. That, Respondent No.2 for the purposes of taking her visa gave the required PTE exam, despite which accused No.1 avoided to take the visa for

Respondent No.2. That, Respondent No.2 made inquiries through agent and found out that it was possible for her to get the visa. Upon telling the same to accused No.1, accused No.1 told her to remain silent. That, when she complained about the visa, relatives of the accused No.1 started troubling her. That, relatives started making demands for financial help and a flat. That, accused No.6/ [REDACTED] told Respondent No.2 that, she should comply with demands of accused No.1 and his relatives. That, if Respondent No.2 does not comply with the said demand she would not be taken to Australia. That, accused No.1 listens to everything what [REDACTED] tells him. That, accused No.6 used to interfere at all times with her family/married life. That, he used to give wrong information to accused No.1 resulting in fights between accused No.1 and Respondent No.2. That, when Respondent No.2 informed accused No.1 of the aforesaid facts, accused No.1/ [REDACTED] did not believe her. That, accused No.1 used to avoid talking with Respondent No.2. That, when Respondent No.2 informed the aforementioned facts to the mother-in-law, at that time the mother-in-law quarreled with Respondent No.2 and told her that the family of accused No.1 had never approved the marriage of accused No.1 with Respondent No.2. That, on 5th May 2016, Respondent No.2 complained to the Police Commissioner Office at Pune. That, accused were called to the office of the Police Commissioner, Pune at which time they created a ruckus and quarreled with Respondent No.2. That, on 24th August 2016, the Respondent No.2 went to Australia on a tourist visa to meet the

accused No.1. That, she was in Australia till 3rd September 2016 but the accused No.1 avoided to meet Respondent No.2. That, he quarreled with the Respondent No.2 on family issues and abused her. That, on one occasion the accused No.1 left the Respondent No.2 mid way. That, accused No.1 told Respondent No.2 that, he would leave Respondent No.2 at such a place that she would not understand nor would be able to find her way back. That, her various attempts to meet accused No.1 failed and accused No.1 avoided meeting her. Based on the aforesaid facts, Respondent No.2 has filed the present FIR claiming that, there were financial demands as also a demand for a flat. That, due to the non-fulfillment of the said demands, Respondent No.2 had received threats to her life. Based on the aforesaid facts, the present FIR has been filed.

5) Mr. Himanshu Nagarkar, learned Advocate for the Petitioners submitted that :

5.1) The perusal of the FIR clearly indicates that the allegations made against the present Petitioners are vague and general in nature. That, the FIR is totally misconceived, legally untenable and a clear abuse of the process of law.

5.2) That, the marriage between original accused No.1/Sunny Dimber and the Respondent No.2 was solemnized on 26th September 2015 and lasted only for a period of 16 days. That, in the FIR, the Respondent No.2 herself admits that, the sister-in-law resides in Aurangabad whereas the Respondent

No.2 never resided in Aurangabad nor with the Petitioners during the said period of 16 days.

5.3) The Respondent No.2 has herself admitted that, she used to occasionally visit the family of the husband. During the period of 16 days when the marriage subsisted there was no demand of dowry.

5.4) That, the present FIR is a classic example of an omnibus complaint where the Respondent No.2 has roped in the entire family and a friend of the husband without there being any specific and/or detailed credible allegation. That, during the 16 days of cohabitation there has been no act of cruelty and/or demands. That, the allegations in the FIR are vague and generic.

5.5) The very fact that, Respondent No.2 travelled to Australia demolishes her case of cruelty. That, the allegations made in the FIR are vague and general and do not amount to any wilful conduct or any conduct of such a nature that is likely to drive the women to commit suicide or cause grave injury. That, during the cohabitation there has been no harassment in connection of a demand of property or valuable security.

5.6) That, Respondent No.2 has in fact admitted that, the Petitioner Nos. 1 and 2 i.e. the in-law's of Respondent No.2 were not residing with the Respondent No.2. That, she used to only visit the house of the in-laws for short durations and at intervals. The said conduct of Respondent No.2 assumes significance.

5.7) That, Respondent No.2 was in fact a married lady when she entered into the second marriage, her first marriage with Mr Bhausahab Shinde was subsisting. That, Respondent No.2 had cheated Petitioners and accused No.1 in as much as the fact of her previous marriage which was suppressed from the Petitioners as well as the accused No.1.

5.8) The certified copies of the proceedings filed by Respondent No.2 before the Family Court, Pune make it clear that, the Respondent No.2 before her marriage with the accused No.1, was known as Swati Bhausahab Shinde and was, in fact, married to one Bhausahab Raghunath Shinde as is evident from the record of the Family Court proceedings.

5.9) That, the Respondent No.2 had initiated proceedings under section 498-A, 323, 504 and 506 read with 34 of IPC against her first husband Bhausahab Shinde. The said criminal proceedings were numbered as RCC No. 165 of 2007 and were tried by the learned Judicial Magistrate First Class, Shirur, Pune. That, the said proceedings were disposed off by an Order dated 14th October 2016 as the accused therein was acquitted.

5.10) That, Respondent No.2 in her application for registration of marriage with accused No.1 has shown her marital status as “unmarried” which was a material suppression. That, the first husband of Respondent No.2 i.e. Bhausahab Shinde has filed the Divorce Petition against Respondent No.2 under Section 13(1)(ia)(ib) of the Hindu Marriage Act.

5.11) That, the said divorce petition has in fact been filed after the

registration of the present FIR. That, the divorce petition is filed on 20th February 2017, while the present FIR has been registered on 22nd September 2016. That, the present FIR is nothing but a gross abuse and misuse of the process of law. That, the copy of the Judgment and Order dated 14th October 2016, the copy of the Divorce Petition dated 20th February 2017, the copy of the Application of registration of marriage between the Respondent No.2 and accused No.1 clear the facts and indicate the malicious and malafide conduct of the Respondent No.2.

5.12) That, the present FIR is a counterblast and filed with an intention to cover up the misdeeds and wrongdoings of Respondent No.2 herself. That, prima facie reading of FIR indicates that no offence is made out under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

5.13) That, the marriage between accused No.1 and Respondent No.2 has been declared null and void as per Section 11 read with Section 5(i) of the Hindu Marriage Act by Judgment and Order dated 9th December 2021. That, in view of the aforesaid facts the present Petition be allowed and the FIR be quashed and set aside as against the Petitioners.

6) Ms. Radhika Samant, learned Advocate for Respondent No.2 submitted that :

6.1) The perusal of the FIR indicates that, a clear case has been made out against the Petitioners. That, the conduct of original accused No.1 Sunny Dimber in not taking the Respondent No.2 with him to Australia shows his

intentional conduct of depriving her to cohabit with her own husband, which amounts to mental cruelty.

6.2) That, Respondent No.2 has been intentionally and deliberately deprived of marital cohabitation and companionship, which has caused her mental agony, emotional distress and humiliation. That, the said conduct clearly falls within the ambit of cruelty as defined under section 498-A of the Indian Penal Code.

6.3) That, the relatives of accused No.1 i.e. the Petitioners herein started asking for money and a flat in Pune. That, Respondent No.2 was threatened that unless she fulfills the demand the original accused No.1 Sunny Dimber will not call her to Australia.

6.4) That, accused No.1 was informed about the first marriage of Respondent No.2 which had taken place 11 years ago when Respondent No.2 was minor. That, thereafter she had separated in the year 2007. That, Mr Bhausahab Shinde had remarried another lady in the year 2010 without taking a divorce from Respondent No.2 and has two children from the said marriage. That, accused No.1 was aware of and had knowledge of all the said facts.

6.5) That, the reference to the marital status as 'unmarried' in the marriage certificate was given under a bonafide belief that, Respondent No.2 was neither a widow nor a divorcee, as no decree of divorce was in existence or in her possession at the time when she got married to accused No.1. That,

the said Mr Bhausahab Shinde had filed the Petition for divorce only in the year 2017, after 10 years of separation. That, the said filing of the Divorce Petition was at the instigation of accused No.1.

6.6) That, the Hon'ble Supreme in the case of *Reema Agarwal Vs. Anupam* reported in *(2004) 3 SCC 199*, has observed that the expression husband covers a person who enters into a marital relationship and under the colour of such proclaimed or feigned status of a husband subjects a woman to cruelty under section 498-A of the Indian Penal Code, whatever be the legitimacy of the marriage itself for the limited purposes of 498-A the offence would be made out. That, there are triable issues raised and therefore the present Petition for quashing of FIR No. 350 of 2016 should not be allowed and be dismissed with cost.

7) Before proceeding to consider the facts of the present matter, it would be apt to refer to the relevant provisions of law and the law as laid down by the Hon'ble Supreme Court in respect of Section 498-A of the Indian Penal Code.

7.1) Section 498-A reads as under;

“498-A Husband or relative of husband of a woman subjecting her to cruelty.

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. For the purpose of this section “cruelty” means

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to

life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person relative to her to meet such demand.”

7.2) Section 504 reads as under;

“504-Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

7.3) Section 506 reads as under;

“506. Punishment for criminal intimidation.—Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;”

7.4) The Hon’ble Supreme Court in the case of *Kahkashan Kausar Alias Sonam And Others V. State Of Bihar And Others* reported in (2022) 6 SCC 599 has observed as under:

*“12. This court in its judgment in *Rajesh Sharma v. State of U.P.* (2018) 10 SCC 472 has observed:(SCC pp. 478-79, para 14)*

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression "cruelty" in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of

serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

13. *Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, it was also observed: (SCC p. 276, para 4)*

" 4. There is a phenomenal increase in matrimonial disputes in recent years. The Institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

14. *Further in Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 it has also been observed: (SCC pp. 676-77, paras 32-36)*

"32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with

oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquility of the society remain intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.”

34. Unfortunately, at the time of filing of the complaint the Implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided

would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

15. In *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741 it was observed:(SCC p. 749, para 21)

"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V.* (2000) 3 SCC 693 Prasad wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

'12.... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in

a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts."

The view taken by the Judges in this matter was that the courts would not encourage such disputes."

16. Recently, in *K. Subba Rao v. State of Telangana*, (2018) 14 SCC 452 it was also observed that: (SCC p. 454, para 6)

"6. The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. 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."

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A 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."

7.5) The Hon'ble Supreme Court in the case of *Payal Sharma Versus State of Punjab and Another* reported in (2024) SCC Online SC 3473 has observed as under :-

11. In the decision in Geeta Mehrotra v. State of U.P., this Court held that mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the tendency of over implication viz., to draw the entire

members of the household in the domestic quarrel resulting in matrimonial dispute, especially when it happens soon after the wedding. In the decision in Kahkashan Kausar @ Sonam v. State of Bihar, this Court quashed proceedings in so far as family members of the husband on the ground that the allegations against them are general and ominous in nature. In matters like the one at hand when relatives not residing in the same house where the alleged victim resides, the courts shall not stop consideration by merely looking into the question where the accused is a person falling within the ambit of the expression 'relative' for the purpose of Section 498-A, IPC, but should also consider whether it is a case of over implication or exaggerated version solely to implicate such person(s) to pressurise the main accused. It is also relevant to refer to the decision of this Court in State of Haryana v. Bhajan Lal, wherein after considering the statutory provisions and the earlier decisions, this Court referred to various categories of cases where the inherent powers under Section 482, Cr. PC. could be exercised by High Court to prevent abuse of process of Court or otherwise to secure ends of justice. One among such categories is where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent man could ever reach a just conclusion that there is sufficient ground for proceeding against an accused.

7.6) The Hon'ble Supreme Court in the case of *Geddani Jhansi and Another V. State of Telangana and Others* reported in 2025 SCC OnLine SC 263 has observed as under:

"31. Invoking criminal process is a serious matter with penal consequences involving coercive measures, which can be permitted only when specific act(s) which constitute offences punishable under the Penal Code or any other penal statute are alleged or attributed to the accused and a prima facie case is made out. It applies with equal force when criminal laws are invoked in domestic disputes. Criminalising domestic disputes without specific allegations and credible materials to support the same may have

disastrous consequences for the institution of family, which is built on the premise of love, affection, cordiality and mutual trust. Institution of family constitutes the core of human society. Domestic relationships, such as those between family members, are guided by deeply ingrained social values and cultural expectations. These relationships are often viewed as sacred, demanding a higher level of respect.

“32. We have to keep in mind that in the context of matrimonial disputes, emotions run high, and as such in the complaints filed alleging harassment or domestic violence, there may be a tendency to implicate other members of the family who do not come to the rescue of the complainant or remain mute spectators to any alleged incident of harassment, which in our view cannot by itself constitute a criminal act without there being specific acts attributed to them. Further, when tempers run high and relationships turn bitter, there is also a propensity to exaggerate the allegations, which does not necessarily mean that such domestic disputes should be given the colour of criminality.”

“34. For a matrimonial relationship which is founded on the basis of cordiality and trust to turn sour to an extent to make a partner to hurl allegations of domestic violence and harassment against the other partner, would normally not happen at the spur of the moment and such acrimonious relationship would develop only in course of time. Accordingly, such a situation would be the culmination of a series of acts which turns, otherwise an amicable relationship, into a fractured one. Thus, in such cases involving allegations of domestic violence or harassment, there would normally be a series of offending acts, which would be required to be spelt out by the complainant against the perpetrators in specific terms to rope such perpetrators in the criminal proceedings sought to be initiated against them. Thus, mere general allegation of harassment without pointing out the specifics against such perpetrators would not suffice, as is the case in respect of the present appellants.”

“35. We are, thus, of the view that in criminal cases relating to domestic violence, the complaints and charges should be specific, as far as possible, as against each and every member of the family who

are accused of such offences and sought to be prosecuted, as otherwise, it may amount to misuse of the stringent criminal process by indiscriminately dragging all the members of the family. There may be situations where some of the family members or relatives may turn a blind eye to the violence or harassment perpetrated to the victim. and may not extend any helping hand to the victim, which does not necessarily mean that they are also perpetrators of domestic violence. unless the circumstances clearly indicate their involvement and instigation. Hence, implicating all such relatives without making specific allegations and attributing offending acts to them and proceeding against them without prima facie evidence that they were complicit and had actively collaborated with the perpetrators of domestic violence, would amount to abuse of the process of law.

36. Our observations, however, should not be generalised to mean that relatives cannot be brought under the purview of the aforesaid penal provisions when they have actively participated in inflicting cruelty on the daughter-in-law/victim. What needs to be assessed is whether such allegations are genuine with specific criminal role assigned to such members of the family or whether it is merely a spill over and side-effect of a matrimonial discord and allegations made by an emotionally disturbed person. Each and every case of domestic violence will thus depend on the peculiar facts obtaining in each case.”

7.7) The Hon’ble Supreme Court in the case of *Dara Laxmi Narayana*

V/S State Of Telangana reported in 2025 3 SCC 735 has observed that :-

27. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts

must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, Appellants 2 to 6, who are the members of the family of Appellant 1 have been living in different cities and have not resided in the matrimonial house of Appellant 1 and Respondent 2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

30. The inclusion of Section 498-AIPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498-AIPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinised, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498-AIPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.

8) Perusal of the FIR indicates that, the allegations made against the present Petitioners apart from being vague and general in nature are clearly devoid of any details and merits. It appears that, the main grievance of the Respondent No.2 is against the accused No.1 is about not helping/assisting her in applying for and getting the visa for Australia. As against the present Petitioners, the allegations are clearly general and vague in nature. There is

only a general allegation made that, financial demands were made and that a flat was demanded. Even a perusal of the FIR would indicate that, the contention of Respondent No.2 that, when she visited Australia on a tourist visa, accused No.1 avoided or did not meet her is contrary to her own allegation that accused No.1 met her and left her in the middle of the road. A bare perusal of the allegations in the F.I.R. make it clear that, the same are inconsistent and self contradictory.

9) Perusal of the record indicates that, Respondent No.2 was in fact married to one Mr. Bhausahab Shinde and entered into a second marriage with accused No.1, when her first marriage was subsisting. The Respondent No. 2 being aware of the true and correct factual position knowingly and intentionally suppressed the same. The Respondent No.2 had in fact made an application against the first husband i.e. Bhausahab Shinde on 16th July 2007 seeking maintenance under Section 125 of the Cr.P.C. The record further indicates that, during the hearing of the said Maintenance Application, Respondent No.2 and her first/ex-husband had filed consent terms on 17th November 2007 and decided to stay together. The copy of the consent terms is part of the record. The Respondent No.2 as per consent terms dated 16th February 2009 was to receive Rs. 700/- per month from her husband Bhausahab Shinde towards the maintenance. The record indicates that, criminal proceedings were filed by Respondent No.2 against her first husband Bhausahab Shinde under section 498-A, 323, 504, 506 read with 34 which

ultimately has culminated into an acquittal. The intention and the conduct of Respondent No.2 is clearly made out in her Application for registration of her marriage with accused No.1 Sunny Dimber where she has specifically stated that, her status at the time of the second marriage as “unmarried”. The marriage of Respondent No.2 and the accused No.1 has taken place on 26th September 2015 and the Petition for divorce, dissolution for marriage was filed by Mr. Bhausahab Raghunath Shinde against Respondent No.2 on 20th February 2017. This fact clearly indicates that, Respondent No.2 was already married and had a valid subsisting first marriage when she entered into the second marriage on 26th September 2015 with accused No.1.

10) In the background facts, it would be necessary to refer to Section 3 of the Prohibition of Child Marriage Act, 2006, which provides that, a child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage. The proviso to sub-section (1) provides that a petition for annulling the child marriage by a decree of nullity may be filed before the District Court. Sub-section (2) of Section 3 provides that, if the petitioner is a minor, the petition may be filed through his or her guardian or next friend, along with the Child Marriage Prohibition Officer. Sub-section (3) of Section 3 of the said Act provides that, such petition may be filed at any time, but before the child filing the petition completes two years of attaining majority.

11) Section 4 of the Prohibition of Child Marriage Act, 2006 makes

provisions for maintenance and residence to the female contracting party to the child marriage. Sub-section (1) of Section 4 provides that, while granting a decree under Section 3, the District Court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party is a minor, his parents or guardian, to pay maintenance to the female contracting party until her remarriage. Sub-section (2) of Section 4 provides that, the quantum of maintenance shall be determined by the District Court, having due regard to the needs of the child, the lifestyle enjoyed by the child during the marriage, and the means and income of the paying party. Under sub-section (3) of Section 4, the maintenance may be paid monthly or in lump sum. Sub-section (4) of Section 4 further provides that, where the party making a petition under Section 3 is a female contracting party, the District Court may pass suitable orders for her residence until her remarriage.

12) Reference is also required to be made to Sections 5 and 11 of the Hindu Marriage Act, 1955. Section 5 of the Hindu Marriage Act provides for the conditions of a Hindu marriage, which reads as under:

“5. Conditions for a Hindu Marriage.— A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

- (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
- (c) has been subject to recurrent attacks of insanity;*
- (iii) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage;*
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits a marriage between the two;*
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits a marriage between the two.”*

13) Section 11 provides for void marriages and states that any marriage solemnized after the commencement of the Hindu Marriage Act shall be null and void and may, on a petition presented by either party against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv), and (v) of Section 5.

14) It is the case of the Respondent No. 2 that, she was a minor when her first marriage took place on 21st June 2004. Though she separated in the year 2007, Respondent No. 2 filed an application for maintenance under Section 4 of the Prohibition of Child Marriage Act, 2006 but did not invoke Section 3 for annulment of the child marriage by a decree of nullity. The marriage between Respondent No. 2 and accused No.1 took place on 26th September 2015. While filing the application for registration of marriage with Sunny Dimber, Respondent No. 2 declared her marital status as “unmarried”. The said declaration was made on oath before the Marriage

Registrar.

15) The record indicates that, Respondent No. 2 was previously married to one Bhausahab Shinde and that the said marriage was subsisting when she married accused No.1. The contention of Respondent No.2 is that, under the Prohibition of Child Marriage Act, 2006 the first marriage is legally irrelevant as it is merely voidable. It is pertinent to note that, under Section 3 of the said Act, a child marriage is voidable at the option of the contracting party who was a child at the time of marriage. A petition for annulling the child marriage by a decree of nullity is required to be filed under sub-section (1) of Section 3 of the said Act. Further, under sub-section (3) of Section 3, such petition could have been filed at any time before completion of two years from attaining majority. Respondent No. 2 admittedly did not take any steps in that regard.

16) It is also pertinent to note that, the proceedings under Section 498-A of the IPC filed by Respondent No. 2 against her first husband, Bhausahab Shinde, ended in acquittal vide order dated 14th October 2016.

17) In my opinion, the conduct of Respondent No. 2 would be a fraudulent misrepresentation as she had concealed the fact that she was already married to one Bhausahab Shinde. The Respondent No. 2 had an option to file a petition for annulling the Child Marriage under Section 3 of the Prohibition of Child Marriage Act, 2006. The Respondent No. 2 has not invoked the said provision, but has proceeded to file an application for

maintenance under Section 4 of the Prohibition of Child Marriage Act.

18) The Hon'ble Supreme Court in the case of *P. Sivakumar And Ors. Vs. State Rep. By the Deputy Superintendent of Police reported in 2023 SCC OnLine 1737* has held that, once a marriage has found to be null and void, the conviction under Section 498-A of IPC would not be sustainable. The Supreme Court has observed that :-

“7. Undisputedly, the marriage between the appellant No.1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible.”

19) From the record and the facts of the present case, it is clear that when the marriage of Respondent No. 2 and accused No.1 took place Respondent No. 2 was already married and had a living spouse viz Mr. Bhausahab Shinde. The Orders of the concerned Courts and the evidence of Respondent No. 2 clearly established that, at the time of her marriage with accused No.1, Respondent No. 2 had a living spouse. The record in the present case as indicates that, the marriage between Accused No. 1 and Respondent No. 2 has been declared null and void as per Section 11 read with Section 5(i) of the Hindu Marriage Act by an Judgment and Order dated 9th December

2021.

20) As regards the present FIR bearing No.350 of 2016 filed under Section 498-A and other Sections of the IPC against accused No.1, and his family members i.e. the present Petitioners and friend of accused No.1 viz. Chirag Trivedi, it would be clear, that the provisions of Section 498-A cannot be made applicable to the present Petitioners because on the date of FIR, the Respondent No. 2's first marriage with Bhausahab Shinde was existing and therefore Sunny Dimber could not have been termed as her husband and his family could not have been termed as relatives of the husband. In my view, invocation of section 498-A of the Indian Penal Code is totally untenable and unsustainable. Even otherwise perusal of the FIR No. 350 of 2016 indicates that, the allegations made therein are vague, general and lacking details and particulars. The allegations are omnibus, and unsustainable. As noted hereinabove the Court proceedings and the Orders passed therein so also the statement of Respondent No. 2 clearly make out a case against Respondent No. 2 of bigamy under Section 17 of the Hindu Marriage Act and under Section 494 of the Indian Penal Code.

21) The Hon'ble Supreme Court in the case of *Shivcharan Lal Verma and Anr. Vs. State of M.P reported in (2007) 15 SCC 369*, while dealing with a criminal Appeal against conviction under Section 498A and 306 of IPC, held that alleged second marriage of a person, during the subsistence of a first valid marriage is null and void. The conviction under Section 498A of IPC was

set aside and conviction under Section 306 IPC was confirmed, but sentence was reached to 5 years from 7 years. The Judgment in the case of *Shivcharan Lal Verma (Supra)* is delivered by a bench of three Hon'ble Judges of the Supreme Court. The Hon'ble Supreme Court in the case of *Reema Agarwal (Supra)*, after a detailed analysis of the law regarding Section 498A of IPC concluded that a husband enters into a marriage, continuous in the union and declares to the society by conduct or otherwise that he is the husband and subjects the wife to cruelty, then in that case whatever is the legitimacy of marriage, the husband may be charged for an offence under Section 498A of IPC. This was done by pressuring into service the 'Heydon Rule' for purposive interpretation and the mischief rule.

22) The Hon'ble Supreme Court in the case of *P. Ramchandra Rao Vs. State of Karnataka, reported in (2002) 4 SCC 578* has observed that :-

“28.The well-settled principle of precedents which has crystallised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom. ..”

22.1) The Hon'ble Supreme Court in the case of *Trimurthi Fragrances (P) Ltd. Vs. State (NCT of Delhi) reported in (2024) 20 SCC 709* has observed that :-

“19. In view of Article 145(5) of the Constitution of India concurrence of a majority of the Judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the

decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.”

22.2) Judicial decorum and the rule of precedents is clear and well settled as a principle that the decision and ratio of the larger bench has to be followed. Therefore, the law laid down by the Hon'ble Supreme Court in the case of *Shivcharan Lal Verma (Supra)* would required to be followed.

23) In my view welfare or beneficial legislation cannot be used as a weapon to terrorise and harass people as is done by the Respondent No. 2 in the present case. This is not the object or intent of the legislation. Welfare legislation is for genuine cases and cannot be misused as a tool for seeking revenge, settling scores and/or for personal vendetta. Even though section 498-A is a beneficial legislation the interpretation of the section would generally have to be in line with and compatible to the objects of said section. There can be no doubt or debate on the said preposition. In the present case the Respondent No. 2 being aware, has suppressed the fact of a subsisting first marriage, misrepresented her marital status on a matrimonial website and simultaneously filed proceedings in respect of both the marriages. The conduct of such a party/litigant ought to be taken into consideration as it is smacks of malafides and dishonest intentions, to say the least Courts cannot permit and be mute spectators when a welfare legislation is misused to harass and threatened the citizens of the country. The conduct of Respondent No. 2, clearly amounts to a misuse of the provisions of Section 498A of the IPC,

which is a social welfare legislation. The same has been weaponized as against the Petitioners and the husband of Respondent No. 2. Considering the law, the FIR would not have been entertained, but for the acts of suppression practiced by the Respondent No. 2. The conduct of Respondent No. 2 and the record in the present case, are clearly demonstrative of the malicious and mala fide intentions of the Respondent No. 2. The Respondent No. 2 is said to have demanded an amount of Rs. 25 lacs from her second husband and his family towards alimony as is her case in Writ Petition No. 2578 of 2018. Considering the facts of the present case and the surrounding circumstances, it is clear that, Respondent No. 2 has misused and abused the process of law by filing the present FIR No. 350 of 2006. In case the correct facts were placed on record, the FIR would not have been registered. The Petitioners have made out a case under Section 482 of CrPC for seeking quashing of the FIR. This is a fit case where the inherent powers be exercised to quash the proceedings and to prevent the abuse of process of law and secure the ends of justice.

24) Considering the aforesaid Judgments and the facts in the present case, I am of the view that, the present Petitions ought to be allowed.

25) In view thereof, Petition is allowed in terms of prayer clause (a).

(RANJITSINHA RAJA BHONSALE, J.)