

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12673 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-**

Approved for Reporting	Yes	No

SALIMBHAI ABUBAKARBHAI LAKHANI & ORS.

Versus

AKSANABANU SAMIRBHAI LAKHANI D/O ABDUL RASIDBHAI DHOLIYA & ORS.

Appearance:

MR. KULDEEP D VAIDYA(7045) for the Applicant(s) No. 1,2,3,4

MR.ADITYA J PANDYA(6991) for the Respondent(s) No. 1,2,3

MR ROHAN SHAH, APP for the Respondent(s) No. 4

CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE**Date : 21/08/2026****ORAL JUDGMENT**

1. **RULE.** Learned Advocate Mr.Aditya Pandya waives service of Rule on behalf of respondent Nos.1 to 3 and learned APP Mr.Rohan Shah waives service of Rule on behalf of respondent No.4.

2. At the outset, learned Advocate for the petitioners does not press this petition qua petitioner Nos.1 and 2 being father-in-law and mother-in-law of respondent No.1-complainant. The petition stands disposed of as not pressed qua petitioner Nos.1 and

2. Rule is discharged.

3. The present petition is filed by the petitioners seeking quashment of the complaint registered as Criminal Misc.Application No.316 of 2022 pending before 10th Additional Chief Judicial Magistrate, Bhavnagar under Sections 18, 19, 20, 22 and 23 of the Domestic Violence Act.

4. It is the case of the petitioners that marriage between the son of petitioners Nos.1 and 2 and respondent No.1 was solemnized on 01.11.2013 at Bhavnagar as per the customs of Muslim religion. Out of the said wed lock a daughter "██████", respondent No.2 herein and Son "██████", respondent No.3 herein were born. In spite of the petitioners making all possible efforts to save the married life of the couple, respondent No.1-complainant kept on misbehaving, quarreling and insulting the petitioners and ultimately on 21.07.2022 respondent No.1-complainant left the matrimonial home along with both the children and since then she is living at her parental home. After returning to her parental home, respondent No.1-complainant filed application under the provisions of Domestic Violence act against all the family members of her husband vide CRMA No.316 of 2022.

5. Learned Advocate for the petitioners submitted that respondent No.1 herein filed the impugned complaint under the

Domestic Violence Act against all the family members as a part of strategy to harass the petitioners herein. It is submitted that in fact, respondent No.1 was subjected to any domestic violence as alleged by the petitioners herein.

5.1 It is submitted that the allegations leveled against the petitioners in the complaint are totally false and baseless and the family members of the husband have unnecessarily been arraigned as respondents in the said complaint solely with a view to cause hardships and harassment to them as otherwise there is no specific allegations in the complaint against the family members and only vague and general allegations have been leveled against them.

5.2 It is submitted that petitioner Nos.3 and 4 are sisters-in-law of respondent No.1-complainant, who have never lived with respondent No.1 and have always been living separately as they were married much before the marriage between the respondent no.1 herein and their brother and therefore also, complaint under the Domestic Violence Act is not at all maintainable against them.

5.3 It is submitted that even as per the law laid down by the Supreme Court as well as this Court in a catena of judgments, a complaint under the Domestic Violence Act against the family members who have played no role is liable to be quashed.

5.4 It is to be submitted that admittedly, in the complaint

filed by the respondent No.1 herein herself, she has mentioned that previously also, respondent No.1 had filed various proceedings including under the Domestic Violence act in the year 2017, against the petitioners herein and their son/brother, but after settlement between the parties, all the proceedings including the proceeding under the Domestic Violence Act was withdrawn by respondent No.1 on 29.09.2018.

5.5 It is to be submitted that the respondent No.1 herein has ensured that she leaves no stone unturned in harassing the petitioners herein and therefore, she has also filed an application for maintenance under Section 125 of the Cr.P.C. vide CRMA No.467 of 2022 in the Family Court, Bhavnagar on the same day of filing the complaint under the Domestic Violence Act, i.e. on 26.08.2022 against her husband, wherein the husband-son of petitioners Nos.1 and 2 herein has filed reply stating the correct facts therein.

6. As against this, learned Advocate for respondent Nos.1 to 3 strongly opposed the petition submitting that all the petitioners herein and her husband have subjected respondent No.1-complainant to mental and physical torture. It is submitted that respondent No.1 was living in joint family at her matrimonial home and some time after marriage, her husband was harassing her by asking for laptop, watch, mobile phone, etc. and for this, the

petitioners herein were instigating her husband.

6.1 It is submitted that respondent No.1-complainant was kept as domestic help by her in-laws and she was asked not to make any contact with her parents. It is submitted that though respondent No.1 was mentally and physically harassed by her in-laws, hoping that one day everything would be fine, she continued living with them.

6.2 It is submitted that even expense incurred at the time of birth her daughter [REDACTED]-respondent No.2 herein was borne by father of respondent No.1 herein. At that time also, she was told that her in-laws wanted a boy and they did not like girl child.

6.3 Learned Advocate for respondent No.1 to 3 submitted that in view of these facts and specific allegations made by respondent No.1 herein against all the petitioners herein, the petition deserves to be dismissed.

7. Having heard learned Advocates for the parties and having perused documents on record, it appears that it is a case where mainly allegations are levelled against husband of respondent No.1 herein, who is not a party in the present proceeding. The allegations are to the effect that respondent No.1 herein was harassed mentally and physically by her husband asking for dowry in the form of laptop, watch, mobile phone, etc and in

that, her in-laws were instigating her husband. The husband of respondent No.1-complainant is Dentist by profession and even as per the case of the complainant, she went to reside with her husband at Pune, when he was pursuing his further studies, where they were residing separately.

8. The Court is of the opinion that looking to the complaint as a whole, the allegations are general in nature. Moreover, the only allegation against petitioner Nos.3 and 4 herein is that they used to instigate husband of respondent No.1 for demanding dowry from the complainant. Apart from this, there is no other allegation against petitioner Nos.3 and 4. Moreover, admittedly, petitioner Nos.3 and 4-sister-in-law of respondent No.1-complainant were married much prior to marriage of complainant and are residing separately. So question of mental and physical torture by them does not arise.

9. The Court also finds that even earlier also, respondent No.1-complainant had filed various complaints, including maintenance application, application under Section 498A and application under the Domestic Violence Act against all the family members of the petitioners, which was later on withdrawn by her, stating that the same were settled due to intervention of elders and community leaders. Therefore, after withdrawing complaint under the Domestic Violence Act once, respondent No.1 has against filed

the impugned complaint.

10. In case of **Arnesh Kumar Vs. State of Bihar & Anr.**, reported in **(2014) 8 SCC, 273**, the Apex Court, in somewhat similar fact situation, has observed in para-4 as under:-

“4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the 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 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 a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections

of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.”

11. In case of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.***, reported in **(2010) 7 SCC, 667**, while dealing with the the proceedings filed under Section 498A against married sister-in-law, has observed in paras-32 to 37 as under:-

“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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber 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 fiber, peace and tranquility of the society remains 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 visualized 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 husband and all his immediate relations is also not uncommon. At times, even after the conclusion of 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 scrutinized 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 amicable settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

12. Moreover, the Court also finds that from the facts of the case, no ingredients are made out against petitioner Nos.3 and 4 under Sections 18, 19, 20, 22 and 23 of the Domestic Violence Act.

13. In view of the aforesaid, the petition is allowed qua petitioner Nos.3 and 4. The complaint registered as Criminal Misc.Application No.316 of 2022 pending before 10th Additional Chief Judicial Magistrate, Bhavnagar under Sections 18, 19, 20, 22 and 23 of the Domestic Violence Act and all the proceedings arising out of the same are quashed and set aside qua petitioner Nos.3 and 4.

14. Rule is made absolute.

Direct service is permitted.

SHITOLE

Sd/-
(A.Y. KOGJE, J)