

CNR NO. MHGA090005482023
R.C.C. No. 46/2023
State-Vs- Mukesh and Ors.
Order below Exh. 36



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, CHAMORSHI
(Presided Over by Diksha D. Vighne)

Regular Criminal Case No.46/2023

State of Maharashtra
Through Police Station, Chamorshi
Tah. Chamorshi, Dist. Gadchiroli.

----- **Prosecution**

-Versus-

Mukesh Thakurpad Roy +4

----- **Accused**

Order Below Exh.36

(Passed on 28/06/2024)

This is an application for discharge of accused no. 4 and 5 from the offence punishable under section 498-A, 494, 323, 504 & 506 r/w. Section 34 of Indian Penal Code, under section 239 of Cr.P.C.

2. Perused application and say thereon. Heard, learned advocate Shri. D. H. Gayali for accused no. 4 and 5 and learned A.P.P. Shri. D. V. Donadkar for the State.

3. Learned advocate for accused no.4 and 5 has stated in the application that charge-sheet against present accused for commission of alleged offence vide crime no. 103/2023 has been filed by P.S.O. Chamorshi. The F.I.R. is registered on the oral complaint of informant Supriya Mukesh Roy. The allegation made in oral report is that informant's marriage was solemnized with Mukesh Thakurpad Roy on 13-10-2019 R/o. Killa Ward, Ektanagar, Bhadrawati, Dist.-Chandrapur at village Navgram. After 10 to 15 days of marriage her husband use to abuse her and forbidding her for use of household articles. The

informant further stated that accused Mukesh Roy, mother-in-law Arpana Roy, Father-in-law Thakurpad Roy, Sister-in-law Champa Hawaladar and her husband Santosh Hawaladar are living in the same house. Her husband use to tell her that her marriage cost is Rs. 15 Lakh and her father did not help him. They did not give as dowry, they all told her she should bring Rs. 7 Lakhs from her father by this all accused persons abuse her. The informant also alleged that in the month of May 2019 she came back her at her parental house at Chamorshi. Her father, mother and relatives given understanding that small thing happened between husband and wife but she should go to her husband's house. Her father called meeting with the relatives of her husband. Relatives namely the Dukhiram Roy, Nimai Das, Bidhan Bishwas, Subhodh Mistri, Diwakar Roy and her relatives namely Sunil Mishra, Arun Hawaladar, Vishwanath Mandal, Pratima Haldar, Ratan Das were present. But, her husband and in laws did not present. In that meeting all relatives console her and ask her to go to her husband's house. After 4-5 days she again went to her matrimonial house for co-habitation. Then in the month of August 2019 the behaviour of her husband change and he has started fighting, quarreling and abusing her and also kick out her from matrimonial house. Therefore, on 28-08-2019 she came back at her parental house.

4. Thereafter, informant thought that her husband and relatives would come to take her back but they did not come therefore she had filed complaint against her husband and relatives under section 12 of D.V. Act. Hearing is going but no alimony has received by informant. The informant came to know that her husband accused no.1 Mukesh Roy secretly perform marriage with one Chayana Nimai Kundu R/o. Narendrapur, Tq-Chamorshi in the month of April 2022 and they

are living together in Bhadrawati. The informant alleged that since 13-03-2019 to 20-08-2019 accused no.1 to 5 have harassed her and they forced to get money from her parents house. Her husband performed second marriage while informant is still alive. For aforesaid reason informant has lodged report at police station on 22-03-2023. Accordingly, crime no. 103/2023 under section 498-A, 494, 323, 504 & 506 r/w. Section 34 of Indian Penal Code registered against accused person.

5. According to, submission of learned advocate for accused on perusal of F.I.R., statements of all the witnesses and all relevant documents alongwith charge-sheet it shows that informant has made vague, general and ominous, allegations against the accused persons. The F.I.R. shows that informant left her matrimonial house on 28-08-2019 and report has been lodged on 22-03-2023 after lapsed of three years of so called allegations. Even though, on reading of statements of the witnesses and F.I.R. no prima faice case is made out against the applicants accused no. 4 and 5. Therefore, they are entitled for discharge from above mentioned allegation.

6. It is further stated and submitted by learned advocate for accused that applicant no. 4 and 5 are residing separately at Ghodpeth, Tq-Bhadrawati, Dist.-Chandrapur. In the charge-sheet no any specific allegations has made against the applicants neither any specific date of incident is mentioned in F.I.R. or statement of the prosecution witness. Only allegation is that they used to visit the matrimonial place during school time of their children. Even though, if the statement of the witness and F.I.R. are taken at their face value and accepted in their entirety do not prima facie constituted any offene made out against the

applicants for framing of charge or trial. Therefore, he has submitted that accused no. 4 and 5 are entitled for discharge from the offence punishable under section 498-A, 494, 323, 504 & 506 r/w. Section 34 of Indian Penal Code in the interest of justice.

7. In support of his application he has relied on authority of Hon'ble Bombay High Court Aurangabad Bench in the case of Shashikant Samarth Pawar Versus The state of Maharashtra, 2017(2) BCr.C 480 and authority of Hon'ble Bombay High Court Aurangabad Bench in the case of Vikas S/o. Bhimrao Chavhan Versus The State of Maharashtra 2017(2) B.Cr.C 406.

8. Learned A.P.P. filed his say and submitted that all accused persons are relatives of accused no.1. The informant is wife of accused no.1. Their marriage solemnized on 13-03-2019. After marriage the informant was resided at Bhadrawati with her husband alongwith all accused persons in the same house. The all accused persons used to ill-treat informant on account of demanding money from her father and used to give harassment physically and mentally to the informant. The same ill-treatment given to informant since performance of her marriage. The accused persons ill-treated by saying that her father did not give any article in marriage, even they demanded money of Rs. 7 Lakh. But, father of informant is poor therefore the demand of accused did not fulfilled. On this account all accused persons ill-treated and abuses in filthy language also beat informant.

9. The fact narrated by complainant is also stated by prosecution witness in their statements. There is sufficient evidence against all accused persons to frame charge against them. Also specifically name and their act also stated by prosecution witness. The

offence under section 498-A is a continuous offence. Accused no.4 and 5 are relatives of accused no.1 they are severally and jointly liable for the offence with common intention. On perusal of wordings of section 498-A shows that all the ingredients of this section are cover in the F.I.R. As well as, accused no.1 has solemnized marriage during the lifetime of his first wife i.e. informant and keep his second wife at his house by calling her as the maid. Even though the complaint has lodged against accused after lapsed of 03 years does not entitled accused no. 4 and 5 for discharge because under section 472 of Cr.P.C. this offence is a continuous offence. Thus, he has prayed for rejection of this application.

10. Heard both parties. Perused application and say thereon. Following points are arise for my determination. There findings alongwith reason are as follow.

Sr. No.	Points	Findings
1.	Whether accused no.4 and 5 are entitled for discharge for the offence punishable under section 498-A, 494, 323, 504, 506 r/w. Section 34 of I.P.C. vide section 239 of Cr.P.C. ?	No.
2.	What Order ?	Application is rejected.

Reasons

As To Point No.1 & 2 :-

11. I have gone through the charge-sheet and documents filed alongwith it. It is stated in the oral report that on 13-03-2019 her marriage was solemnized with accused no.1 Mukesh Roy. After marriage her husband started quarrel with her and abusing informant on small reasons. Thereafter, he forbidden her from using household articles. It is stated in the oral report that accused no. 1 to 5 are residing at the same house and in furtherance of their common

intention they used to demand Rs. 7 Lakh from the informant by saying that Rs. 15 Lakh expenses have occurred in marriage and your father did not provide any money as dowry. It is a specific allegation leveled against accused no. 1 to 5 by informant by specifically mentioning their names. As well as, it is seen that on failure of providing dowry accused no.1 to 5 used to abuse her, beat her and also did not give meal to her.

12. As per the submission of learned advocate for accused no.4 and 5 that they are residing at mouza-Ghodpeth, Tq.-Bhadrawati, Dist.-Chandrapur. He has also filed the certified copy of application under section 12 of D.V.Act filed by informant. In that complaint, the address of accused no.4 and 5 is shown as Ghodpeth, Tq.-Bhadrawati. However, on perusal of that complaint entirely it is seen that the daughter of accused no.4 and 5 is pursuing her education from school at Bhadrawati. That means, the distance between Ghodpeth and Bhadrawati is not so far because of which accused no. 4 and 5 cannot reach the place of matrimonial house of informant. As well as, specific allegations have been made against accused no. 4 and 5 in the oral report of informant about harassment caused by them for demand of dowry and ill-treatment on non fulfillment of their demand of dowry.

13. According to informant, accused no.1 has solemnized second marriage with one Chayana Namai Kundu and she is living with the accused person at their house in Bhadrawati. If the alleged Chayana Kundu is residing at Bhadrawati then the fact of alleged marriage is within knowledge of accused no.1 to 5. Despite knowing this fact they are supporting this fact and concealing it since April 2022. Therefore, they are liable for this offence also in furtherance of common intention with accused no.1.

14. Moreover, as submitted by learned A.P.P. the offence of cruelty is the continuous offence which is covered under section 472 of Cr.P.C. The marriage between accused no.1 and informant is still in existence. Their dispute was pending before court of Judicial Magistrate, Chamorshi. Therefore, even though informant had left the house on 28-08-2019 then also their marriage was in existence. Therefore, even though the delay has caused in lodging F.I.R. but it is covered under section 472 of Cr.P.C. Therefore, accused no.4 and 5 are not entitled to take advantage of this delay for their discharge.

15. It is guided by Hon'ble Apex Court and Hon'ble High Court in series of judgments that in matrimonial cases series of acts has to be seen to gather the act of cruelty. In this offence as alleged by informant the cruelty to her was started when she went to her matrimonial home after marriage. There is specific allegation against accused no.4 and 5 that they had collectively demanded dowry from informant and on non fulfillment of their demand had committed physical cruelty to her. Thus, prima facie seen that sufficient material has been brought on record to frame charge against accused no.4 and 5 under section 498-A, 494, 323, 504 & 506 r/w. Section 34 of Indian Penal Code.

16. The learned advocate for accused no.4 and 5 has filed following authorities where the Hon'ble High Court had discharged accused from section 498-A of I.P.C.

1. Shashikant Samarth Pawar Versus State of Maharashtra 2017 (2) B.Cr.C.480.
2. Vikas S/o. Bhimrao Chavhan Versus The State of Maharashtra 2017(2) B.Cr.C 406.

17. I have gone through this authorities. In this cases Hon'ble High Court had quash the F.I.R. against accused by using their inherent power under section 482 of Cr.P.C. The powers vested with High Court under section 482 is vast in nature. This scope is not available while deciding discharge application under section 239 of Cr.P.C. Therefore, above cited authorities are not applicable in the present case.

18. Considering aforesaid reasons, I find that there are prima facie material available against accused no.4 and 5 for framing charge under section 498-A, 494, 323, 504 & 506 r/w. Section 34 of Indian Penal Code. Therefore, at this stage it is not justified to discharge them from that offences. Hence, I answer point no.1 in negative and record my findings accordingly. In answer to point no. 2, I pass following order.

ORDER

Application is rejected.

Date: 28/06/2024

(Diksha D. Vighne)
Judicial Magistrate First Class,
Chamorshi.