

CNR No.MHGA090010142019  
R.C.C. No. 130/2019  
State -Vs- Amit +5  
Order below Exh No.49



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

**Regular Cri. Case No. 130/2019**

State of Maharashtra,  
Through Police Station Officer,  
Police Station, Mulchera  
Tq.-Mulchera, Dist.-Gadchiroli

... **Prosecution**

**-VERSUS-**

1.Amit Abnikant Biswas  
Age- 32 Years, Occ.- Labour,

2.Maya Abnikant Biswas  
Age- 55 Years, Occ.- Household,  
Both R/o. Vivekanandpur,  
At present D-1/187 Sagamvihar Talimabag  
South Delhi 110062

3.Dipa Rajiv Singh  
Age- 30 Years, Occ.- Household,  
R/o. G 377 Fase, 6 Ayanagar South Delhi 1100047

4. Shobha Abnikant Biswas,  
Age- 24 Years, Occ.- Education,  
R/o.- D-1/187 Sagamvihar Talimabag  
South Delhi 110062

5. Sapan Dhiredranath Day  
Age- 49 Years, Occ.- Labour,  
R/o.- Vivekanandlpur,  
At present D-1/187 Sagamvihar Talimabag  
South Delhi 110062

6. Gurucharan Girija Tati  
Age- 70 Years, Occ.- Agriculture,  
R/o.- Vivekanandlpur, Tq.- Mulchera,  
Dist.-Gadchiroli.

... **Accused**

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Appearance :- For State : Learned Spl. A.P.P Shri. S. S. Bhat  
For the accused : Learned advocate Shri. D. H. Gayali  
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**ORDER BELOW EXH NO. 49**

(Passed on 23/03/2023)

This is an application for discharge of accused no. 3 and 4 from the offence punishable under section 498-A, 324, 323, 504, 506 r/w. Section 34 of Indian Penal Code, under section 239 of Cr.PC.

2. Perused application and say thereon. Heard learned advocate Shri. D. H. Gayali for accused no. 3 and 4 and learned A.P.P Shri. S. S. Bhat for the State.

3. Learned advocate for accused no.3 and 4 has stated in the application that accused no. 1 to 5 are the in-laws of complainant. The complainant alleged that her marriage took place at Mulchera on 19-01-2015 with accused no.1. After marriage she went to her husband house at New Delhi. In the house of her husband accused no. 1 to 4 harassed her by calling her "Shanichar" and they demanded dowry and other household articles. In between she was pregnant that time her husband sent her at Mulchera with her father. Further the complainant alleged that accused no.1 demanded two lakh rupees. In June-2015 she left her husband house and came back to Mulchera. On 13-08-2018 accused no.1 has come to the house of complainant and demanded ten lakh rupees. He abused complainant, her father, mother and brother. On 14-08-2018 again accused no.1, 2 and 5 went to the house of complainant. All the accused person abused complainant and assaulted her and

her father, mother and brother by stick. On the basis of said incident report was lodged by complainant to P.S.O. Mulchera on 14-08-2018. The investigation officer on investigation submit the charge-sheet against accused no. 1 to 6 in this court.

4. It is further stated in the application that, the informant / complainant had left the house of accused on June-2015. Since, then she is living at Mulchera. Later on, incident as claim by complainant was committed on 13-08-2018 and 14-08-2018 at Mulchera. On that day, accused no.3 and 4 were at New Delhi. They did not know about the alleged incident. The accused no.3 is unmarried and accused no.4 is a married sister of accused no.1. The complainant know this fact that on the day of alleged incident the accused no. 3 and 4 were not present on the spot. The allegation made by complainant in F.I.R. is way and general in nature. Prima faice no any material against accused no.3 and 4 are made out for offence punishable under section 498-A, 324, 323, 504, 506 r/w. Section 34 of I.P.C. Therefore accused no. 3 and 4 are entitled for discharged.

5. It is submitted by learned advocate for accused no. 3 and 4 that, in oral report of informant there is mention of accused no. 3 and 4 in the incident alleged to take place in the year 2015. That allegation are vague and general in nature. Thereafter, in June-2015 informant was come back to Vivekanandpur at her parental home. There is no mention in oral report about communication with accused no.3 and 4. As well as, there is no mention in the report that on 14-08-2018 the accused no.3 and 4 went to her house and caused injury to her. Therefore, no offence has made out against accused no.3 and 4. In the allegation of 2015 the informant has

stated that accused no.3 and 4 had called her "Shanichar". Calling any woman "Shanichar" is not sufficient to drive that woman to commit suicide. The informant has willfully taking their name in F.I.R. to falsely implicate them. No prima faice offence has made out against accused no.3 and 4. Therefore, he has prayed for discharged of accused no.3 and 4.

6. Learned A.P.P. for State has filed his say and opposed the application. It is stated that the accused no.3 and 4 are sisters of accused no.1. The all accused persons before reception had ill-treated the informant by saying her "Shanichar" and a reason for problem in their house. The all accused alongwith accused no.3 and 4 demanded dowry from the father of complainant. On that account the accused persons ill-treated and gave mental and physical cruelty to her. On non fulfillment of their demand for dowry the accused persons beat her and demanded dowry. The complainant and other prosecution witnesses stated in their evidence and there is sufficient evidence against the present accused no.3 and 4. Therefore, he has prayed for rejection of this application.

7. It is submitted by learned A.P.P. that the marriage of informant and accused no.1 was took place on 29-01-2015. Their reception of marriage was scheduled on 08-02-2015. It is obvious that on their marriage the accused no.3 and 4 were present because they are sisters of accused no.1. The incident stated by informant is committed in between marriage and their reception ceremony. The accused no1 to 4 called her "Shanichar" and reason for problem in their house. Calling her "Shanichar" is a mental cruelty. Accused no.1 to 4 has also told informant that she does not bring anything in

marriage. It shows that they were expecting dowry from informant. After marriage the informant was resided at the house of her husband till June-2015. The residential address of accused no. 1 to 4 are shown as same in charge-sheet. Therefore, it cannot be said that during the stay of informant at house of accused no.1 to 4 they did not harassed her. This is a collective report filed by informant for the incident took place in the year 2015 to 2018. Therefore, it is a continuing offence thus limitation is not applicable in this case. Cruelty under section 498-A is a social offence therefore the accused no.3 and 4 cannot be discharged.

8. 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.3 and 4 are entitled for discharge for the offence punishable under section 498-A, 324, 323, 504, 506 r/w. Section 34 of I.P.C. vide section 239 of Cr.P.C. ?	Accused no.3 and 4 are entitled for discharge from the offence p/u/sec. 324, 504 and 506 of I.P.C.
2.	What Order ?	Partly allowed.

### Reasons

#### As To Point No.1 & 2 :-

9. I have gone through the charge-sheet and documents filed alongwith it. It is stated in the oral report of informant that on 29-01-2015 her marriage was solemnized with accused no.1 Amit Abani Bishwas. After marriage she went to her matrimonial house. Their reception of marriage was scheduled on 08-02-2015. But, before reception her mother-in-law and 2 sister-in-law started harassing her by calling her "Shanichar", she is a reason behind

problem at their house. What her father has given them in marriage? Other people has give things like car in dowry. But, you does not bring anything. By saying this things her husband accused no. 1 Amit Bishwas, mother-in-law Maya Bishwas, Sister in law Dipa Rajiv Singh and Shobha Abani Bishwas had beaten her and verbally tortured her. During her 3-4 month stay at her matrimonial home she was subject to cruelty from her husband. Her husband told her to do a job at her paternal home and sent him money or ask her father to give two lakh Rs. Immediately. Thereafter, she was sent to her paternal home in June 2015. Since then she is living at her paternal house. In December 2016 informant had filed domestic violence case against accused which was compromised between them. Thereafter, accused no.1 had demanded her Rs. Ten Lakh on phone call. On 13-08-2018 her husband comes to Vivekanandpur at 08:00 to 09:00 O'clock and demanded Ten Lakh Rs. and abused informant, her father, brother and mother. On 14-08-2018 at 04:00 O'clock accused no. 1, 2, 5 and 6 come at her house and abuses and caused hurt to informant, her father, mother and brother.

10. On perusal of this first information and other documents filed alongwith it. I have prima facie seen that it is a collective complaint of allegations of cruelty caused against informant since the solemnization of her marriage till filing of this case. It is alleged by learned advocate for accused no. 3 and 4 that they were not present at the time of alleged incident on 14-08-2018 on the basis of which this case was registered. But, it is guided by Hon'ble Apex Court and Hon'ble High Court in series of judgment 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.3 and 4 that they had called her 'Shanichar' and beaten her before reception ceremony. It is not alleged by accused no. 3 and 4 that they were not present at their brothers wedding. Accused no.4 is unmarried sister of accused no.1. Her address is shown as same which is of accused no. 1 and 2. Therefore, there is likelihood that during 3-4 months of informants stay at matrimonial home, accused no.3 was involve in the commission of cruelty against informant. As well as, accused no. 4 is also resident of Delhi and she was also present in her brother wedding. Thus, there is prima facie likelihood that she was also involve in offence of cruelty against informant as alleged by her. Moreover, calling a women as 'Shanichar' and demand of dowry is a verbal and emotional abuse as describe in protection of woman from domestic violence rules 2006. The offence under section 498-A is a continuing offence. Therefore, limitation provided under section 468 of Cr.PC. is not applicable to it. On considering the charge-sheet and documents filed alongwith it I have prima facie find that there are grounds for framing charge against accused no. 3 and 4 under section 498-A and 323 of I.P.C. However, there is no allegation against accused no. 3 and 4 at the time of incident dated 14-08-2018 as stated by their learned advocate, they were not present on the date of 14-08-2018 when the alleged offence of voluntarily causing hurt by dangerous weapon or means and threatening to cause death and criminal intimidation was committed. Therefore, it is just and proper to discharge them from offence punishable under section 324, 504 and 506 of I.P.C.

11. The learned advocate for accused no.3 and 4 has filed

following authorities were the Hon'ble High Court had discharge accused from section 498-A of I.P.C.

1. Sanjay S/o. Bhimrao Tathe Versus State of Maharashtra 2017 (2) B.Cr.C.113.
2. Girish s/o. Upendra Karade Versus State of Maharashtra 2017 (2) B.Cr.C.116.
3. Shashikant Samarth Pawar Versus State of Maharashtra 2017 (2) B.Cr.C.480.

12. 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.

13. Considering aforesaid reasons I find that there are prima facie material available against accused no.3 and 4 for framing charge under section 498-A and 323 of I.P.C. Therefore, at this stage it is not justified to discharge them from that offences. However, in the absence of any prima facie allegation of their involvement on the incident of dated 14-08-2018, they are entitled for discharge from the offence punishable under section 324, 504 and 506 of I.P.C. Hence, in answer to point no.1 and 2, I pass following order.

**ORDER**

1. Application is partly allowed.
2. Accused no. 3 and 4 are discharge from the offence punishable under section 324, 504 and 506 of I.P.C.

3. Charge will be framed against accused no. 3 and 4 under section 498-A and 323 of I.P.C.

Date: 23/03/2023

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

**CERTIFICATE**

I affirm that the contents of this P.D.F. file are word to word same, as per original Judgment.

Name of Stenographer : Mr. M.R.Mohurle, Stenographer (Grade-3)

Name of Court : Jt. Civil Judge (Jr.Dn.) & JMFC, Chamorshi.

Date of Judgment : 23/03/2023.

Judgment checked and

signed by Presiding Officer on : 23/03/2023.

**Judgment uploaded on : 27/03/2023.**