

(2017) 04 BOM CK 0263
In the Bombay High Court
Case No : 5493 of 2016

Abhijit s/o Damodhar Hamand & Ors.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#), [Section 506](#), [Section 504](#) - Acts done by several persons in furtherance of common intention - Husband

Citation : (2017) 04 BOM CK 0263

Hon'ble Judges : S.S. Shinde, K.K. Sonawane

Bench : DIVISION BENCH

Advocate : N.T. Tribuwan, S.Y. Mahajan, R.G. Joshi

Judgement

1. Rule. Rule made returnable forthwith and heard finally at the request of the learned counsel appearing for the parties.
2. At the outset, learned counsel appearing for the applicants, on instructions, seeks leave to withdraw the application to the extent of applicants no. 1 to 3 with permission to avail of appropriate remedy of filing application for discharge before the concerned Court, in the event of filing chargesheet by the Investigating Officer.
3. The brief facts for filing this application are as under : It is the case of the respondent no.2 that, her marriage came to be performed with applicant no.1 on 15th May, 2015 as per Hindu Rites and Rituals at Aurangabad and in the marriage, father of respondent no.2 had given utensils and cash of Rs. 7 Lacs. After the marriage, she had been to the house of applicants at Nashik for cohabitation, wherein for about 3 months she was treated well and thereafter, from 5th August, 2015, the applicants started ill treating her. It is the case of respondent no.2 that, applicant no.1 was saying that, he needs a boy child and on that count there was ill treatment to her. It is the case of the respondent no.2

that, respondent no.2 was driven out of house by the applicants on 17th November, 2015, thereby stating that, she should bring an amount of Rs.22 to 25 lacs from her parents for construction of house / Wada. In spite of understanding given by the parents of respondent no.2 to the applicants, the applicants stated them that they should not send respondent no.2 without money. It is the case of respondent no.2 that, respondent no.2 also filed a complaint on 5th April, 2016 with the Women Help Desk, Office of Commissioner of Police, Aurangabad, but the applicants did not remain present there, and therefore, she filed a complaint with the Police Station, CIDCO, Aurangabad against the present applicants and one Shantanu Manik Yelmane. On the basis of above complaint, the police authorities have registered an offence bearing Crime No. 473/2016 with the Police Station, CIDCO, Aurangabad for an offences under Sections 498A, 504, 506 read with 34 of the Indian Penal Code. It is the case of respondent no.2 that, the respondent no.2 has also filed Misc. Criminal Application No.311/2011 before the Chief Judicial Magistrate, Aurangabad under Section 12 of the Protection of Women from Domestic Violence Act on 27th May, 2016 i.e. prior to registration of above offence.

5. The learned counsel appearing for the applicants invites our attention to the allegations in the first information report and submits that, even if the allegations in the first information report are considered/read in its entirety, the alleged offences are not disclosed. There are general allegations without attributing any specific overt acts to each of the applicants. It is submitted that, the entire series of alleged incidents had taken place at Nashik but with an intention to harass the applicants, respondent no.2 filed the complaint with Police Station CIDCO, Aurangabad. It is submitted that, the applicants are educated and from reputed family and there is no question of demand of amount of Rs. 22 to 25 Lacs as alleged in the first information report. He submits that, applicant no.3 - Sarika W/o Manik Ylmane, applicant no.5 - Shubhangi W/o Dattatraya Akhade and applicant no.6 - Suvarna W/o Mukunda Gore are the sisters of husband of respondent no.2 and are residing separately with their husbands at different places. Applicant no.7 - Dattatraya S/o Ganpat Akhade and applicant no.8 - Mukunda S/o Bishwambhar Gore are the husbands of inlaws of respondent no.2. Therefore, there is no question of illtreating respondent no.2 by the applicants. It is further submitted that, applicant no.4 is minor, aged of 16 years and no way he is connected with the allegations in the first information report. He submits that, applicant no.10 is not a relative of husband of respondent no.2, and therefore, the offence punishable under Section 498A of Indian Penal Code cannot be attracted as against him. Therefore, relying upon the pleadings/grounds in the application, annexures thereto, the learned counsel appearing for the applicants submits that, the application deserves to be allowed.

6. The learned A.P.P. appearing for respondent/State, relying upon the investigation papers, submits that, prima facie alleged offences have been disclosed and the same needs investigation. Therefore, he submits that, the application may be rejected.

7. The learned counsel appearing for respondent no.2, relying upon the allegations in the first information report, and also the affidavit filed on behalf of respondent no.2, submits that, the ingredients of an alleged offences have been attracted and consequently, the alleged offences have been disclosed. There was continuous illtreatment and harassment at the hands of the applicants and therefore, respondent no.2 was compelled to even earlier file complaint but the same was registered as N.C. on 6th March, 2016 against applicant nos.1, 3 and 6. He submits that, the allegations in the first information report will have to be taken as it is and those can be tested only during the trial. Therefore, he submits that, the application may be rejected.

8. We have given anxious consideration to the submissions of the learned counsel appearing for the applicants, the learned A.P.P. appearing for the respondent/State and the learned counsel appearing for respondent no.2. We have carefully perused the allegations in first information report and there is no specific allegations attributing specific overt acts qua applicant nos. 4 to 10. There are general allegations of illtreatment, harassment and assault. There is also allegation that, the applicants have demanded Rs.20 to 25 Lacs and respondent no.2 was driven out of the matrimonial home on 17th November, 2015.

9. Upon careful perusal of the material placed on record, it is abundantly clear that, applicant nos. 1 to 4 are residing in matrimonial home. Applicant nos. 5 to 10 are residing at different places. Applicant nos. 5 and 7 are residing at Dhule. Applicant nos. 6 and 8 are residing at Rahata, Dist. Ahmednagar. Applicant no.9 is residing at Pune and applicant no.10 is residing at Nashik. Admittedly, applicant nos. 5 to 9 are residing at different places and not at Nashik. Though applicant no.10 is residing at Nashik, he is a friend of applicant no.1. He is not relative of applicant no.1, who is husband of respondent no.2, and therefore, the provisions of Section 498A of Indian Penal Code would not attract qua him. Apart from it, even the allegations in the first information report are read in its entirety, as already observed, there are omnibus allegations, without any specific incident or date of incident.

10. The Supreme Court in the case of Geeta Mehrotra and another Vs. State of Uttar Pradesh and another, (2012) 10 SCC 741 in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference of the judgment of the Supreme Court in the case of G.V.Rao Vs.L.H.V. Prasad, (2000) 3 SCC 693 wherein para 12 it is observed thus: "12. There has been an outburst of matrimonial disputes 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."

11. The Supreme Court in the case of "State of Haryana V/s Bhajan Lal" [AIR 1992 SC 604] held that, in following categories the Court would be able to quash the F.I.R. 108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. 1. Where the allegations made in the First Information Report 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 a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR 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 accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable 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 FIR 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 provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide 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.

12. Upon considering the allegations in the first information report and documents placed on record, in the light of the investigation papers, the case of applicant nos.4 to 10 would fall under the aforementioned category No. 1. Hence we pass the following order

ORDER

i) The application of applicant no.1Abhijit S/o Damodhar Hamand, applicant no.2Shobha W/o Damodhar Hamand and applicant no.3 - Sarika W/o Manik Yelmane is dismissed as withdrawn with liberty to avail of an appropriate remedy of filing application for discharge before the concerned Court, in the event of filing chargesheet by the Investigating Officer.

ii) The application of applicant nos. 4 to 10 is allowed in terms of prayer clause "B". The F.I.R. bearing Crime No.473/2016 registered with Police Station, CIDCO, Aurangabad for an offences punishable under Sections 498A, 504, 506 read with section 34 of the Indian Penal Code is quashed and set aside qua applicant nos. 4 to 10.

iii) However, we make it clear that the observations made in this judgment are confined only to the adjudication of this application and shall not have any bearing on other cases pending, if any.

iv) The application is disposed of accordingly.

V) Rule made partly absolute in the above terms.