
(2011) 06 BOM CK 0154

In the Bombay High Court

Case No : Criminal Application No. 1995 of 2010

Ajmal Khan and Others

APPELLANT

Vs

State of Maharashtra and Smt. Afrin Faisal

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 307, 34, 498A, 504

Citation : (2011) 06 BOM CK 0154

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : S.A. Mohta, for the Appellant; D.B. Yengal, APP for Respondent No. 1 and Jagirdar, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard Mr. S.A. Mohta, learned Counsel for the applicants; Mr D.B. Yengal, learned APP for Respondent No. 1 and Mr. S.I. Jagirdar, learned Counsel for Respondent No. 2.

2. Rule, returnable forthwith. With the consent of respective learned Counsel, the matter is taken up for final disposal

3. By this application u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code") the applicants pray for quashing and setting aside the FIR No. 253/2010 dated 13th March 2010 reported at Old City Police Station, Akola for offence punishable under Sections 307, 498A, 504 read with Section 34 of the Indian Penal Code (in short "IPC").

4. The facts in nutshell are these: On 13.9.2010 Mrs Aliya Afrin w/o Faisal Sohail Khan lodged FIR No. 253/2010, in which the first informant alleged that she had tied the knot with Faisal Sohail Khan, ten months prior to the incident. She was residing jointly along with her husband, father-in-law, mother-in-law, brothers-in-law and sisters-in-law etc. According to the first informant, she was constantly

harassed by her husband and his near relatives for some reason or the other. When she became pregnant, her husband and in-laws insisted to get herself examined in the Hospital so as to know beforehand whether the foetus conceived by her is a male or female and if it is female they used to tell her to abort the foetus. Her husband and in-laws were also insisting upon the first informant to bring a sum of Rs. 5 lakhs from her parents to enable her in-laws to purchase a flat and get some employment for Faisal. Thus, she was subjected to ill-treatment and was assaulted time and again. As a result of this precarious condition, the first informant was constrained to reside with her parents at Khidkipura. Meanwhile, she was blessed with a baby-girl who was unwell and was receiving treatment in ICU in Hospital of Dr. Kothari. On 13.9.2010 after feeding her child at midnight she was returning along with her mother, when they were on the road in front of the house of her husband and in-laws, it is alleged that her mother-in-law Farzana her husband Faisal, her father-in-law Jeemalkhan and sister in law Rukhwana, her another sister in law Farhana and Shabana came from behind them and abused her saying that they had told her (first informant) not to deliver a female child and assaulted her; she was also subjected to threatening. As a result of the assault, her bangles were broken and she received abrasion injuries. Her mother's bangles too were broken and received injuries. At that time, her mother-in-law had brought a plastic can containing kerosene and poured it on her person. At that time, her husband had caught hold of her and others were threatening to kill her. When she ran towards the house due to fear of her life, others were threatening to kill her; she was followed by her husband and in-laws and was assaulted. They had also thrown household articles in the house of her father. Frightened to the hilt, the first informant called people in the locality and police by shouting. Hearing the shouts, the accused took to their heels. Under these circumstances, she lodged the report at Police Station which gave rise to FIR No. 253/2010 on 13.9.2010 at Old City Akola Police Station. It also appears the case of the first informant that she was threatened by her in-laws and her husband because her father had made complaint at Akot Police Station, Dist. Akola about the threats given.

5. It is the contention on behalf of the applicants that the accusations levelled against them are not specific and they are bereft of details ; that the accusations are made only with a view to drag the applicants to the Court in respect of the alleged crime without assigning any specific role to each of the applicants/accused in respect of the alleged incident. It is further submitted that the applicants have not committed any crime as alleged either under Sections 307, 498A read with Section 34 IPC etc. It is submitted that the applicants are not at all involved in the alleged crime. According to the applicants, applicant No. 5-Safwana Tabassum was residing separately at her matrimonial home; while applicant No. 8 Farhana she is a married lady; applicant No. 1 Ajmal was not present at the time of the alleged incident as he was in Mumbai; while applicant No. 2 Akmal Khan was working at Amravati. Thus, it is alleged that although the applicants were not present, they are being implicated on the basis of false

accusations made against them.

6. Learned Counsel for the applicants placed reliance upon the ruling in Arulvelu and another State and Anr. reported in 2010 Cri.L.J. 453 (SC) in order to submit that FIR shall, at least mention broad story of the prosecution and because of non-mentioning of material and vital facts, it would affect credibility of the FIR. Reference is made to another ruling in Preeti Gupta and Another Vs. State of Jharkhand and Another, in order to submit that when there were no specific allegations against the applicants in the complaint and their implication is only with a view to harass and humiliate them, under such circumstances, the Apex Court had concluded that it would be unfair to compel the accused to undergo the rigour of the criminal trial and, therefore, the complaint was quashed against the accused on the ground that criminal trial lead to immense sufferings for all concerned and even ultimate acquittal in trial may not be able to wipe out the deep scars of suffering of ignominy. The accusations in Preeti Gupta's (supra) case were in the nature of the offence punishable u/s 498A IPC. Therefore, the Apex Court considered that it is a matter of common knowledge that unfortunately matrimonial litigation which is rapidly increasing in our country Courts are flooded with the matrimonial cases and exaggerated versions of the incident are reflected in large number of complaints. The tendency of over implication is also reflected in a very large number of cases. In the facts and circumstances of that case it was considered by the Apex Court that it would be unfair to compel the accused to undergo the rigour of a criminal trial. Therefore, the complaint was quashed. Next ruling referred to by learned Counsel for the applicants, is Vijeta Gajra v. State of NCT of Delhi JT 2010 (6) 498 in respect of accusations u/s 498A IPC. The Apex Court has expressed the opinion that in the facts and circumstances of that case there will be no question of prosecution of Petitioner Vijeta and she shall not be tried for the offence u/s 498A. However, in the concluding paragraph, it appears that the Apex Court while directing that Appellant - Vijeta shall not be tried for the offence punishable u/s 498A IPC; however, it desisted from quashing the FIR in view of the allegations made u/s 406 IPC as well as the Apex Court expected the trial Court to be careful while considering the framing of charge; while directing that Appellant shall be granted benefit of bail by the trial Court. Further, reference is also made to ruling in Kans Raj Vs. State of Punjab and Others, to submit that in a cases of alleged dowry deaths in-laws of the deceased cannot be roped in only on the ground of being close relations of the husband of deceased. The overt acts attributed to them shall be proved beyond reasonable doubt. Lastly, reference is also made to ruling in Ravindra Pyarelal Bidlan and others Vs. State of Maharashtra, in order to submit that mere harassment or mere demand of property could not amount to cruelty punishable u/s 498A of IPC. This Court (Principal Seat: Bombay) in the concluding paragraph 27 found that the prosecution had not proved beyond reasonable doubt that the accused had demanded many articles from Rukmini or Meena and that the accused had harassed or beaten them for the purpose of coercing them to meet those demands. Ultimately it was held that the accused

were entitled to benefit of doubt.

7. Learned Counsel for the applicants taking recourse to the above referred rulings, submitted that the applicants ought not to be subjected to undergo the ordeal of criminal trial and, therefore, the proceeding may be quashed.

8. Learned APP Mr D B Yengal, representing the State of Maharashtra assisted by Mr S I Jagirdar, learned Advocate for Respondent No. 2 stoutly opposed the prayer of the applicants on the ground that the first information report is not expected to be an encyclopedia giving minute details of the incident in question. It is submitted that in the present case, the victim had approached the Police Station after the incident and as such, there was no possibility of any deliberation to falsely implicate any of the applicants and their relatives. It is further submitted that the applicants had their remedy to make their defence as also to seek discharge from the case. According to learned APP and the Advocate for Respondent No. 2 the broad picture of crime was revealed in the FIR and as held in *Naurangi Lal (in Jail) Vs. State of U.P.*, by the Division Bench of Allahabad High Court, it is well settled that the first information report need not contain the minute details of the crime, it is enough if broad picture presented by the prosecution was revealed in the FIR. The Allahabad High Court placed reliance upon *P. Narayan v. State of A.P.* 1975 SCC 427. Reference was also made to *Tapan Kumar Mukherjee Vs. State of West Bengal and Others*, in order to submit that once investigation is complete and enquiry report u/s 173 of the Code is placed before the High Court, the High Court's jurisdiction to quash proceeding under Article 226 cannot be invoked at the premature stage.

9. Thus, the learned APP as also learned Advocate for Res. No. 2 contended that the FIR was bound to be investigated further and statements of eye witnesses have also been recorded, namely, Sk. Mohanis Sk. Shakil; Ahmed Mobin Ahmed Hakim, Ahmed Khalik Sk. Mannu; Haji Abdul Sattar Sk. Ibrahim ; Nisar Ahmed Feroz Khan and Mohammed Alim Mohd. Hakim, who stated about the presence and involvement of the applicants. Documentary evidence regarding the discharge card from Kothari Hospital of the complainant (first informant) is also collected, apart from articles such as, kerosene can, clothes of four accused. Thus, it is submitted that the applicants are deeply involved in the crime and were active participants and material collected during the course of investigation is against them.

10. It appears that the charge sheet in the case is not yet filed. My attention is invited to the interim order passed by this Court dated 28.4.2011 whereby the Investigating agency was directed not to file the final report till the hearing of this application. Be that as it may; according to learned APP investigation has been completed and the charge sheet will be filed shortly.

11. Learned Counsel for applicants submitted with reference to paragraph 4 of the affidavit in reply dated 20.1.2011 that the investigating agency had also recorded the statements of persons who have seen the harassment of the

complainant at the hands of the accused as per the memorandum and only four persons were named. Learned APP countered this submission on the ground that the names of all the applicants were figured in the FIR and accused were not limited to four in number although statements of only some of the persons (accused) may have been recorded.

12. Looking to these submissions in the light of the rulings cited supra, it may be observed that the accusations in the facts and circumstances of the present case were not limited to Section 498A alone but serious accusations were also made u/s 307 read with Section 34. IPC. The nature of accusations in the FIR appear aggravated on account of the legislation like Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (in short "the Act of 1994") by which, since 1994 it is now law of the land that no woman shall be insisted upon by any person to undergo pre-natal Diagnostic techniques, in order to arrest the skewed sex ratio, for the purposes other than those permitted according to law and any such person who insists upon a women to have sex selection at prenatal stage, may invite serious charge of abetment of offence punishable under the Act of 1994. Prima facie, it appears the case triable as a sessions trial considering the nature of accusations punishable u/s 307 read with Section 34 IPC. Under these circumstances, it would be open for the applicants to apply for discharge before the trial Court while seeking benefit of bail as it is necessary on the part of the prosecution to state the evidence collected against the accused on the basis of which the prosecution proposes to prove the guilt. The accused can apply for discharge before charge is framed.

13. Learned Counsel for the applicants also submitted that applicant No. 4 is minor girl and a student and she is not related to the first informant. Be that as it may, the committing Magistrate or Sessions Judge is expected to pass an appropriate order considering the minority or young age of the applicant No. 4. Charge sheet, if any, against the applicants shall be filed at the earliest, preferably within 15 days. In the facts and circumstances of the present case, therefore, I do not find any rare or exceptional case so as to interfere with the FIR and the criminal proceedings. Hence application is rejected. Rule discharged.