
(2019) 09 BOM CK 0054

In the Bombay High Court

Case No : Criminal Writ Petition No. 459 Of 2019

Arpan Amarish Parikh And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 404, 406, 498A, 506

Citation : (2019) 09 BOM CK 0054

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Manoj Mohite, A.K. Maheshwari, Gunjan Mangla, A.R. Patil

Final Decision : Patly Allowed

Judgement

1. Rule. Rule made returnable and heard finally with the consent of learned counsel appearing for the parties at the stage of admission.

2. This petition takes an exception to the order dated 17/09/2018 passed by the Ld. Sessions Court in Criminal Revision Application No. 1012 of 2017 and the order dated 14/08/2017 passed by the Ld. M.M. 40th Court at Girgaon, Mumbai, in C.C. No. 1248/PW/2016 (arising out of C.R. No. 237 of 2015), registered with Gamdevi Police Station, Mumbai.

3. Factual matrix disclosed in the petition is as under-

It is the case of the Petitioners that the complainant first met the Petitioner No. 1 in the month of December 2009, and that somewhere in 2013 there was proposal between both the parties and their parents and that before marriage in April 2014, she with her parents had been to New York (USA) where Rooka and/or engagement ceremony took place in New York USA and thereafter, she again had been to USA in baby shower of the Petitioner No. 2. The marriage between Petitioner No. 1 and Respondent No. 2 was solemnized on 27/08/2014 at Municipal Ward 'D' Mumbai simply by garlanding each other and it was a registered marriage. After 3-4 days of marriage, Petitioner No. 1 left for USA and

informed Respondent No. 2 that, he would apply for green card and then call her. It is further submitted that, there were 2-3 occasions Petitioner No. 1 came to India when Petitioner No. 1 and Respondent No. 2 had been to places like Goa and Pune. In the month of April 2015, Respondent No. 2 was called for a trip to Barcelona, however, Respondent No. 2 refused to go due for her CFA exams.

4. In the month of June 2015, Respondent No. 2 was called to Amsterdam for tour when Petitioner No. 1 and Respondent NO. 2 went to Paris and Petitioner No. 2, her husband and friend Bhavesh also joined them. In Amsterdam and Paris, Petitioner Nos. 1 and 2 humiliated Respondent No. 2 and did not talk in appropriate manner, and that the Petitioner No. 1 has allegedly asked Respondent No. 2 to do some vulgar acts which the Respondent No. 2 denied. She also declined their request to sing the National Anthem. The Petitioner No. 1 raised a demand of their marriage reception in a 5 star hotel. On 05/10/2015, there was a complaint filed by Respondent No. 2 through her advocate and thereafter the statement of Respondent No. 2 came to be recorded on 14/10/2015. Thereafter, First Information Report bearing C.R. No. 237 of 2015 came to be registered against the Petitioners on 29/11/2015. Thereafter, the police filed charge-sheet against all Petitioners and the same was numbered as C.C. No. 1248/PW/2016. The Magistrate issued summons and that in response to the summons, Petitioner Nos. 1, 3, and 4 appeared and came to be released on bail. The Petitioners had initially challenged the subject FIR before this Court vide Criminal Writ Petition no. 994 of 2016, however, the same came to be withdrawn by the Petitioners with liberty to file application for discharge before the Trial Court during pendency of the aforesaid petition as the charge-sheet came to be filed before the Trial Court.

5. It is the case of the Petitioners that, there is no iota of evidence against the Petitioners in the entire charge-sheet and therefore, the Petitioners filed discharge applications vide Exhibit- 17, 18 and 19 respectively by Petitioner No. 1 to 4 before the learned Metropolitan Magistrate 40th Court at Girgaon, Mumbai. The learned Magistrate rejected the same vide common order dated 14/08/2017. Thereafter, the Petitioners approached the learned Sessions Court vide Criminal Revision Application No. 1012 of 2017 against the said orders of Trial Court dated 14/08/2016 which came to be dismissed vide order dated 17/09/2018. Hence this petition.

6. Learned counsel appearing for the Petitioners submit that, if the allegations in the charge-sheet are read in its entirety alongwith the statement of witnesses, the alleged offences are not disclosed. The Petitioners are falsely implicated in the alleged crime due to petty issues between Petitioner No. 1 and Respondent No. 2. Respondent No. 2 made 3 to 4 statements and that every further statement of Respondent No. 2 shows improvement in her version, so as to make story more interesting by adding different allegations.

Learned counsel invites attention of this Court to the various statements made by Respondent No. 2. Learned counsel further invites attention of this Court to

the FIR of which copies placed at Exhibit-A of the compilation of writ petition and submits that, the said FIR appears to have been registered on 29/11/2015 and only Section 498A and 34 of Indian Penal Code (for short "IPC") is mentioned. However, copy of very same FIR which is part of the charge-sheet shows addition of Section 406, 404 and 506 of IPC. It is submitted that, the entire prosecution case is concocted and the allegations made against the Petitioners are palpably false. It is submitted that, if the allegations of the charge-sheet are taken at its face value, no case is made out under Section 498A or 406 of the IPC. The learned Sessions Court did not properly appreciate that, the subject FIR is nothing but an improvement to the complaint lodged by Advocate of Respondent No. 2 as well as of her own statement. Learned counsel invites attention of this Court to the statement of prosecution witnesses and submits that, there are general allegations and no specific overt act has been attributed qua each of the Petitioner. It is submitted that, entire family of the Petitioners resides in USA. The parents of Petitioner No. 1 never visited India after performing marriage. It is submitted that, all the allegations against the parents of Petitioner No. 1 are general in nature and do not constitute any specific offence. In support of aforesaid contentions that, there are general allegations, unnecessarily roping in relatives of husband, the entire proceedings deserves to be quashed, learned counsel placed reliance upon following exposition of Hon'ble Supreme Court and the Division Bench of the Bombay High Court, bench at Aurangabad.

1. Ramesh And Other Vs. State of Tamil Nadu (2005) 3 SCC 507.
2. Shushil Kumar Sharma Vs. Union of India & Other (2005)6 SCC 281.
3. Geetal Mehrotra And Another Vs. State of Uttar Pradesh & Another (2012) 10 SCC 741.
4. Kailas S/o. Damodar Pathe & Ors. Vs. The State of Maharashtra & Anr. 2015 ALL MR (Cri) .

7. It is submitted that, Petitioner No. 2 is married sister of Petitioner and nothing to do with the allegations in the FIR. The demand of alleged amount by the parents of the Petitioner is an improvement afterthought. Such allegations are not made by Respondent No. 2 in her first statement given to the police. It is submitted that, allegations during the Europe trip by the Petitioner No. 1 and 2 and Respondent No. 2 are general in nature and do not constitute offence under Section 498A of IPC. Therefore, learned counsel appearing for Petitioners relying upon pleadings in the petition, grounds taken therein, annexures thereto and the judgments cited across bar submits that, petition may be allowed.

8. On the other hand, learned APP appearing for Respondent-State and learned counsel appearing for Respondent No. 2 invites attention of this Court to the reasons assigned by the learned Sessions Court in the impugned order, so also, contents of notice given by Advocate for Respondent No. 2, the statement of Respondent No. 2 given in the month of October and also two statements in the month of November 2019, so also other material collected during the course of

investigation and accompaniments of the charge-sheet and submitted that, the prosecution agency has collected sufficient material and on the basis of said material the trial can proceed against the present Petitioners. Learned counsel for Respondent No. 2 in support of her contention that, there are allegations and statements of witnesses which would clearly spell out the alleged offences, in that case the trial needs to be allowed against the accused, placed reliance on the judgment of Hon'ble Supreme Court in the case of National Commission For Women Versus Bhaskar Lal Sharma And Others (2014) 4 SCC 252. Learned counsel for Respondent No. 2 submits that, Respondent No. 2 in her statement at the earliest opportunity in the month of October 2015 has categorically stated the role of the Petitioner No. 1 and 2 in giving her cruel treatment and harassment during the Europe trip. Learned counsel relying upon the statement of witnesses submits that, the Petitioner No. 1 asked Respondent No. 2 to get 1000 Euros from her father and also demanded more ornaments. Petitioner No. 1 also asked to book hotel and also tickets for said trip. On the same tour in a bar, Petitioner No. 1 started discussion about their personal details in front of a random bartender. The Petitioner No. 1 was also talking about having threesome with another girl. The bartender started describing in front of another 2-3 friends of Petitioner No. 1 elaborately about the same. Respondent No. 2 was not given proper food and was weak and dizzy. The behaviour of Petitioner No. 1 has changed and he started avoiding any kind of physical contact with Respondent No. 2. Despite Respondent No. 2's ill health Petitioner No. 1 and Petitioner No. 1's friend bullied her and made her sing the national Anthem in front of everyone. On the same tour, when Respondent No. 2 was sleeping in the room and Petitioner No. 1's friend came into the room and started jumping on the bed and Petitioner No. 1 was enjoying the scene. Petitioner No. 1 put Respondent No. 2 into the cab and then told her to leave. For 22 hours Respondent No. 2 had to travel alone and because of all this she was in a shattered physical condition. After coming back to India, Petitioner No. 1 said that, he is not comfortable in continuing the relation and is not interested in staying married. Even when Respondent No. 2's parents went to discuss about the same matter, he ultimately discussed about the lavish party which did not take place; and dowry which was not sufficient during marriage.

8. Learned counsel further invites attention of this Court to the statement of Respondent No. 2, statement of her parents and her friends. So far as Petitioner No. 2 is concerned learned counsel for Respondent No. 2 invited attention of this Court to the statements of Respondent No. 2 and submits that, asking the Respondent No. 2 to take the non veg against her wish or asking her to dance or any other acts attributed to Respondent No. 2, which certainly amount to cruelty and harassment. Learned counsel also submits that, even prior to marriage, Petitioner No. 2 started ill treating Respondent No. 2. Learned counsel invites attention of this Court to the statements of complainant and witnesses, notice given through Advocate, FIR, charge-sheet and its accompaniments and prays that, petition may be rejected.

10. Heard learned counsel appearing for the Petitioner, learned APP appearing for Respondent-State and learned counsel appearing for Respondent No. 2 at length. With their able assistance perused the charge-sheet so also accompaniments of the charge-sheet and all other material placed on record. It appears from the perusal of the statement of Respondent No. 2 at the earliest opportunity on 14/10/2015 that she was asked to bring 1000 Euros to join the Europe trip with Petitioner No. 1 and 2. If the allegations against Petitioner No. 1 and 2 are read carefully in the statement of Respondent No. 2 recorded on 14/10/2015, so also the notice given by her through Advocate to Petitioners on 11/10/2015 those allegations would attract alleged offence under Section 498A of IPC and the material collected by the prosecution agencies including statement of parents of Respondent No. 2 so also her friend is sufficient to proceed with the trial against Petitioner No. 1 and 2. From the statements of the complainant and other witnesses which are recorded in the month of November 2015, an alleged offences under other section which are mentioned in the charge-sheet are disclosed against other accused except Petitioner No. 1. Those statements needs to be tested during the trial.

11. So far, Petitioner No. 3 Smt. Mira Amarish Parikh is concerned, in the notice given by Respondent No. 2 through Advocate at the earliest opportunity, it is specifically stated in the said notice that, "when Kanika asked to have some of her ornaments which were taken away by Arpan and her mother-in-law immediately after marriage, her mother-in-law indirectly refused to part with Kanika's Stridhan properties stating that her father was dealing in diamonds and that she was yet asking for her ornaments. She also asked Kanika to claim from her father for more ornaments if required." In the statement of Respondent No. 2, she has specifically alleged against Petitioner No. 3 that she asked parents of Respondent No. 2 to pay Rs, 1,00,00,000/- (in words Rs. One Crore only) to Petitioner No. 1. Therefore, there is sufficient material collected by the prosecuting agencies and on the basis of said material trial can proceed against Petitioner No. 3.

12. So far, Petitioner No. 4 Amrish Parikh is concerned, upon careful perusal of the notice issued through Advocate of Respondent No. 2 on 11/10/2015, there is no specific allegation against Petitioner No. 4 who is father of Petitioner No. 1. Even in the statement of Respondent No. 2 on 14/10/2015, there is nothing specifically stated against Petitioner No. 4. Even if other statements are perused, there are general allegations that Petitioner No. 3 and 4 demanded Rs. 1 Crore and also asked the parents of Respondent No. 2 to give lavish reception. There are no any specific allegation against Petitioner No. 4. Even if the statements of witnesses and accompaniments of charge-sheet are read in its entirety, the said material is not sufficient to proceed against Petitioner No. 4. Admittedly, after marriage, Petitioner No. 4 who is residing in USA, had no occasion to visit India.

13. Since, the Petitioner No. 1 to 3 will have to face the trial, giving detail reasons would unnecessarily prejudice their case. Suffice it to say that, the

prosecution has collected enough material/evidence and trial can proceed against Petitioner No. 1 to 3. As already observed, there is no sufficient material to proceed against Petitioner No. 4.

14. In the light of discussion in foregoing paragraphs, the writ petition partly succeeds to the extent of Petitioner No. 4. The writ petition to the extent of Petitioner No. 4 Amrish Parikh is allowed and, accordingly the impugned orders dated 17/09/2018 passed by the Ld. Sessions Court in Criminal Revision Application No. 1012 of 2017 and the order dated 14/08/2017 passed by the Ld. M.M. 40th Court at Girgaon, Mumbai, in C.C. No. 1248/PW/2016 (arising out of C.R. No. 237 of 2015) to the extent of Petitioner No. 4 is quashed and set aside. Petitioner No. 4 (Amrish Parikh) stands discharged. The petition on behalf of Petitioner No. 1 to 3 stands rejected.

15. Rule is made absolute to above extent and petition stands disposed of accordingly.

16. The observations made herein above are prima facie in nature and confined to the adjudication of the present writ petition only.