

(2018) 09 BOM CK 0062

In the Bombay High Court

Case No : Criminal Writ Petition No. 1303 of 2017

Arun S/O. Ambaji Dhatrak And Others

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 03-09-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 177, 482
Indian Penal Code, 1860 — Section 34, 323, 406, 498A, 504
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 09 BOM CK 0062

Hon'ble Judges : T.V. Nalawade, J;Vibha Kankanwadi, J

Bench : Division Bench

Advocate : Sanket N. Suryawanshi, P.V. Diggikar, Amol S. Sawant

Final Decision : Partly Allowed

Judgement

Vibha Kankanwadi, J

1. Rule.Â Rule made returnable forthwith.Â By consent, heard finally.
2. Present writ petition has been filed under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973, in order to quash the first information report vide Crime No. 81/2017, registered with Azadnagar Police Station, Dhule, as well as, for quashing proceedings in Regular Criminal Case No. 513 of 2017, pending before learned Judicial Magistrate (First Class), Dhule, for offences punishable under Sections 498A, 323, 406, 504, read with Section 34 of the Indian Penal Code.
3. Petitioner nos.01 and 02 are parents of petitioner no.03.Â Petitioner no.03 is the husband of respondent no.02.Â Petitioner nos.04 and 05 are the sons of petitioner nos.01 and 02.Â Respondent no.02 informant had contended

that she got married to petitioner no.03 on 03.12.2016. Her father had incurred expenses to the tune of Rs. 30,00,000 as per the status of bridegroom. She was given gold ornaments worth Rs. 25 Tolas. High quality of sarees worth Rs. 60,000 were given to the relatives of the husband. Petitioner no.01 was given gold chain of two Tolas, bracelet of two Tolas and ring of one Tola at the time of marriage, as per his demand. After the marriage, she was sent to her parents as per customs on 05.12.2016. However, she was taken back again on 06.12.2016. Her husband is Senior Auditor in Income Tax Department working at Pune. Her husband was residing with his parents and both the brothers at plot no.301, Shubham Residency, Datta Mandir, Poster Colony, Wakad, Taluka & District Pune. On 07.12.2016, when she and her husband were supposed to go to State of Kerala, her father-in-law told that she should not take gold ornaments with her and, therefore, all her gold ornaments were taken by him. All the accused persons used to say that if the marriage would have been performed before Registrar, then the amount would have been utilized for the business by brothers-in-law. Thereafter, they started asking respondent no.02 to bring amount of Rs. 30,00,000/?. She was assaulted and abused from time to time.

4. The petitioners have come with a case, that respondent no.02 was not allowing the marriage to consummate. Because of the cruelty on her part, she had disclosed that she had love affair with one Sagar Gore. She was not allowing her husband to touch her. She was not at all interested in cohabiting with her husband. She had refused to do any household work. There was a marriage of cousin of petitioner no.03 at Sinnar, District Nasik, on 29.01.2017. Respondent no.02 attended that marriage and thereafter left for Dhule, accompanied by her mother under the pretext that her father would be operated. Since then, she has not returned to the matrimonial house. It is also stated that on 17.02.2017, respondent no.02 and her mother had come to the residence of the petitioners and had created a scene. Petitioner no.05 had lodged complaint about the same with Wakad Police Station, Pune. Petitioner no.03 had issued legal notice to respondent no.02 on 27.02.2017 and called upon her to take divorce by mutual consent. She has replied the said notice on 06.03.2017. She took a stand that she is ready and willing to cohabit with petitioner no.03.

Petitioner no.03 replied the said reply on 28.03.2017. She has also lodged a complaint under the Protection of Women From Domestic Violence

Act. The petitioners had appeared before the Women's Grievance Redressal Cell. However, they were assaulted by respondent no.02 and her

family members. With ill intention, the complaint was filed alleging that the petitioners have committed offences punishable under Sections 498A,

323, 406, 504, read with Section 34 of the Indian Penal Code.

5. Heard learned Advocate Mr. S.N. Suryawanshi for the petitioners. Heard learned Additional Public Prosecutor Mrs. P.V. Diggikar for

respondent no.01. So also, heard learned Advocate Mr. A.S. Sawant for respondent no.02.

6. Learned Advocate appearing for the petitioners has relied on the decision of the Hon'ble Apex Court in the case of Preeti Gupta and another Vs.

State of Jharkhand & another [2010 AIR SCW 4975], wherein observation has been made that it is a common knowledge that exaggerated version of

incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. When

no specific allegations in the complaint are made against the relatives and the relatives are residing at different place, it can be seen that the complaint

is meant to harass and humiliate husband's relatives. It was pointed out that only omnibus statements have been made stating that all the accused

persons had demanded amount of Rs. 30,00,000/.

7. It is to be noted that all the accused persons are residing under one roof. There are specific allegations against the father of the husband, that he

had taken out the gold ornaments from the respondent no.02. It is also to be noted that though it is stated that the amount was demanded for the

brothers in law, it would have been by the husband, father in law and mother in law only. Such demand would not have been made by the

brothers in law directly to the respondent no.02. It is also to be noted that supplementary statement has been given by respondent no.02 on

07.07.2017. Specific allegations are against husband, father in law and mother in law only. Under such circumstance, no case is made out

against brothers in law i.e. petitioner nos.04 and 05. It will be unjust to ask them to face the trial. However, as regards petitioner nos.01 to 03

are concerned, there is material on record and, therefore, the proceedings

cannot be quashed against them.

8. It is also to be noted from the contents of the FIR as well as supplementary statement, that whatever harassment or cruelty allegedly committed,

was at the matrimonial home which is at Pune.Â Cause of action has not taken place within the jurisdiction of Azadnagar Police Station, Dhule, or

within the jurisdiction of court at Dhule.Â As per Section 177 of the Code of Criminal Procedure, the case should be tried at the place where the

offence has been committed and, therefore, it is necessary to transfer this case to the appropriate court at Pune.

9. Hence, the following order :(a) The petition is partly allowed.

(b) The first information report bearing Crime No. 81/2017, registered at Azadnagar Police Station, Dhule, for offences punishable under Sections

498A, 323, 406, 504, read with Section 34 of the Indian Penal Code, to the extent of petitioner nos.04 and 05, namely, Abhijeet and Anurag,

respectively, is quashed and set aside.Â So also, proceedings in Regular Criminal Case No. 0513 of 2017, pending on the file of Judicial Magistrate

(First Class), Dhule, to the extent of said petitioner nos.04 and 05, are quashed and set aside.

(c) The petition, to the extent of petitioner nos.01, 02 & 03, namely, Arun, Rajeshree and Aniket, respectively, is hereby dismissed.

(d) It is hereby directed that, the Regular Criminal Case No. 513 of 2017, pending on the file of Judicial Magistrate (First Class), Dhule, be transferred

to the Court of Chief Judicial Magistrate, Pune, who in turn, shall assign the matter to the Judicial Magistrate (First Class) having jurisdiction over the

residential place of petitioner nos.01 to 03 herein.

(e) It is made clear that, the transfer of proceedings in Regular Criminal Case No. 513 of 2017 shall not come in the way of respondent no.02 Â first

informant to file proceedings as may be permissible in law.Â

(f) Rule made absolute in the above terms.