

(2015) 03 BOM CK 0286

In the Bombay High Court

Case No : Criminal Application No. 5240 of 2014

Arvind Kashinath Kadole and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 34, 498-A

Citation : (2015) 03 BOM CK 0286

Hon'ble Judges : T.V. Nalawade, J; I.K. Jain, J

Bench : Division Bench

Advocate : S.V. Gundre, for the Appellant; S.B. Pulkundwar, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The proceeding is filed under section 482 of Criminal Procedure Code for quashing of F.I.R. bearing C.R. No. 98/2014 registered in Shivaji Nagar Police Station, Latur, District Latur for the offences punishable under sections 498-A, 34 of Indian Penal Code. Now chargesheet is filed against the applicants in the said crime and the prayer for quashing of chargesheet is also made. Both the sides are heard.

3. The crime is registered on the basis of report given by Smt. Mainabai. Applicant No. 1 -Arvind Kadole is the husband of Mainabai. During arguments, the learned counsel for applicant No. 1 submitted on instruction that he wants to withdraw the proceeding of applicant No. 1 and so, the proceeding of applicant No. 1 came to be disposed of as withdrawn.

4. Applicant No. 2 -Gitabai is mother of applicant No. 1. Applicant No. 3 is real

brother of applicant No. 1 and applicant Nos. 4 and 5 are issues of applicant No. 1 born from other wife. Applicant No. 6 is married sister of applicant No. 1.

5. Allegations are made by the complainant that the first marriage of Arvind was concealed from her and she realized after six months that Arvind had already married and he had two issues from the first wife. It is her case that after her marriage, she started cohabiting with Arvind at Ahmedpur where he was in service. It is the case of complainant that after six months of the marriage, the husband and his relatives started harassing her and they started picking up quarrels on petty counts. It is her case that she was visiting the house of the relatives of husband from Latur as Kashinath, father of her husband, was sick. It is her case that the husband and his relatives, the present applicants, then started asking her to bring Rs. two lakh from her parents and on that count, the ill-treatment was given to her. It is her case that on many occasions, she had informed about ill-treatment and she had returned to the parents' house, but her parents had sent her back to the matrimonial house. It is her case that ultimately in the year 2005, due to the harassment, she returned to the parents house. After that she stayed with Arvind at other place for some time. But, according to her, there was also ill-treatment given to her and then from the year 2009 she started living with her parents. When she started living with parents from 2009, she gave report to police on 21.5.2014.

6. The learned counsel for applicants submitted that as the complainant had left the matrimonial house, the husband was required to file proceeding under section 9 of Hindu Marriage Act and the said proceeding came to be decided in favour of husband on 5.4.2014. It was submitted that only after the decision of the said proceeding, to give harassment, the report was given by the wife. The learned counsel submitted that the other accused were not living in the house, where the complainant was cohabiting with Arvind, but they are implicated in the case only to harass them. It is contended that the issues from the first wife like applicant Nos. 4 and 5 were living at out stations like Bangalore and Solapur and they had no reason to see the complainant. It was submitted that the married sister of the husband was living in Nanded and she had also no reason to see the complainant.

7. During investigation, some statements are recorded by police to show that the husband was asking the complainant to bring money from her parents and as the demand was not met with, he was not accepting the complainant in the matrimonial house. The main allegations are against the husband. The marriage took place in the year 1995 and the report came to be given on 21.5.2014. The record shows that subsequent to the filing of the report, she tried to exaggerate the things.

8. Allegations made against applicant Nos. 2 to 6 are vague in nature. If they are asked to face the prosecution, nothing can be achieved at the end. It will be unnecessary harassment to applicant Nos. 2 to 6. On this point, the learned counsel for applicants placed reliance on the case reported as Arun Vyas and

Another Vs. Anita Vyas, AIR 1999 SC 2071 : (1999) CriLJ 3479 : (1999) 3 Crimes 90 : (1999) 2 DMC 247 : (1999) 4 JT 421 : (1999) 3 SCALE 724 : (1999) 4 SCC 690 : (1999) 3 SCR 719 : (1999) 2 UJ 968 : (1999) AIRSCW 1793 : (1999) 5 Supreme 458 . This case is on the point of limitation. It was submitted that F.I.R. was given very late. Though the case is not squarely on the point involved in the present case, it can be said that power under section 482 of Cr.P.C. can be used when there are vague allegations and allowing the prosecution against applicant Nos. 2 to 6 on the basis of such vague allegations will amount to misuse of process of law. The age of the mother of the husband is given as 82 years.

9. In the result, the application of applicant Nos. 2 to 6 is allowed. The F.I.R. and the chargesheet filed against them for aforesaid offences is quashed and set aside. The application of husband, applicant No. 1 -Arvind Kashinath Kadole is disposed of as withdrawn.

Rule is made absolute in aforesaid terms.