
(2019) 10 BOM CK 0072

In the Bombay High Court

Case No : Criminal Writ Petition No. 1115 Of 2019

Babasheb Narayan Naik And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 327, 427, 452, 498A, 504, 506
Arms Act, 1959 — Section 4, 25
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 BOM CK 0072

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

Bench : Division Bench

Advocate : Rahul R. Karpe, D.R. Kale, V.D. Salunke

Final Decision : Partly Allowed

Judgement

K.K. Sonawane, J

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel appearing for the parties.

2. The petitioners-original accused preferred petition under Section 482 of the Code of Criminal Procedure seeking relief to quash and set aside First Information Report (FIR) bearing Crime No. I-334 of 2018 registered at Shrirampur City Police Station, District Ahmednagar, for the offences punishable under Sections 143, 147, 148, 452, 327, 427, 504 and 506 of Indian Penal Code and under Section 4/25 of Arms Act.

3. The prosecution case in short compass is that the Police recorded statement of the first informant - complainant Avinash Rangnath Bhokare, while taking medical treatment in the hospital. According to him, his son Amol and daughter-in-law Rupali were always quarreling with each other on account of domestic reasons. He always used to give understanding to them. He further added that

on 19-10-2018 at about 7.00 hours, there was an altercation in between his son Amol and daughter-in-law Rupali on account of Devdarshan. After that, his son went to the field for watering the crops. The complainant himself, his wife and daughter-in-law were at house. At about 9.30 hours, all the petitioners-accused barged into house of complainant and asked for what reasons they were abusing the Rupali. The first informant and his wife Shivnanda made endeavour to give understanding to them. But, the accused Rushikesh assaulted his wife Shivnanda on her nose and forehead by means of weapon fighter. The accused Rajaram dealt a blow of weapon sickle on the head of his wife Shivnanda. The present petitioners namely, Mai Naik, Nandini Naik and daughter-in-law Rupali Bhokare attacked the Shivnanda with fist and kick blows by pulling her hair. The complainant made attempt to extricate his wife from the clutches of assailants, the accused Babasaheb and Balasaheb assaulted him with the help of stick. The son of complainant Amol rushed to the spot after hearing the commotion. But, the accused Narayan Shinde, Vinayak Dhole, Balasaheb Kolse and Dattatrya Naik abused and thrashed his son with stick etc. He was also beaten up by means of fists and kicks blows. According to complainant, the accused assailant gave threats of life in case of any more maltreatment to daughter Rupali. They had caused damage to the Television set etc. The petitioners namely Rushikesh and Nandini Naik forcibly snatched away the Mangasutra from the neck of his wife. The accused Rajaram Naik also taken away the amount of Rs. 15,000/- kept in the temple of the house. Thereafter, the assailant accused took the daughter-in-law Rupali with them.

4. Pursuant to FIR, the Police of Shrirampur City Police Station, Ahmednagar, registered the crime and set the penal law in motion. Pending the investigation, petitioners moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR.

5. Learned counsel for petitioners vehemently submits that the present FIR is lodged with ulterior motive to give counter-blow to the FIR filed by Rupali for offence under Section 498-A of IPC. He contends that the petitioners have not committed any crime nor they attacked on the in-laws and other inmates of matrimonial home of Rupali. The petitioners are innocent of the charges levelled against them. The present petitioners are the distant relative of Rupali, though residing separately having no concern with the alleged incident. They have been falsely arraigned in the present FIR. He explained that the FIR did not disclose the commission of any cognizable offence against the petitioners. The petitioners- Babasaheb, Narayan, Balasaheb, etc., all are senior citizens. The occurrence of such incident by senior citizens like above petitioners was improbable and doubtful. But, the complainant filed present false and fabricated penal proceeding with an malafide intention to harass the petitioners. The learned counsel submits that the allegations made in the FIR are vague and general in nature. The present FIR is off-shoot of matrimonial litigation between Rupali and her husband Amol. He submits that the present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the

petitioners to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the petitioners.

6. The learned APP as well as learned counsel for respondent No.2 - first informant vociferously raised objections to the contentions put-forth on behalf of petitioners. They submit that the complainant categorically described the incident and overt-act of each of the petitioner in the incident of assault. The injuries caused to the complainant, his son and wife were serious in nature. The injuries were caused by hard and blunt object. The allegations nurtured on behalf of complainant-first informant in the FIR are sufficient to perceive the seriousness of crime. The FIR filed by daughter-in-law Rupali fortify the allegations about presence of accused -petitioners at the house of complainant at the relevant time. There are allegation prima facie in nature to attract the ingredients of Sections 452, 427, 327, 148, 504 read with Section 149 of IPC.

7. Having given anxious consideration to the arguments advanced on behalf of both sides and after perusal of contents of the FIR and other relevant documents placed on record, this Court was not inclined to nod in favour of petitioners No. 1 to 3 and 6 to 8 for exercise of inherent powers under Section 482 of Cr.P.C. There are circumstances on record prima facie to appreciate the allegations of assault, causing injuries to the complainant and others. The medical certificates of injured and photographs produced on record demonstrate the scenario occurred at the relevant time in the matrimonial home of Rupali. She has also filed the FIR for charges of cruelty under Section 498-A, etc. of IPC. Therefore, the circumstances did not permit this Court to favour the petitioners No. 1 to 3 and 6 to 8 for exercise of inherent powers under Article 226 of the Constitution of India. Eventually, learned counsel for the petitioners seeks leave to withdraw the proceedings filed on their behalf. Accordingly, leave was granted to the extent of petitioners No. 1 to 3 and 6 to 8.

8. In regard to allegations nurtured against petitioners No. 4 and 5, we find that the allegations cast on behalf of complainant against petitioners No. 4 and 5 are totally vague and general in nature. There are no specific allegations attributing overt-act of these petitioners in the incident of assault and causing any damage to the property. There were no detail particulars given in the FIR about participation of petitioners No. 4 and 5 for their act in the alleged incident. The allegations about beating to wife of complainant by petitioners No. 4 and 5 with kicks and fists blows by pulling hairs etc. all are omnibus and sweeping in nature. The allegation about damaging valuable property also found not sustainable and believable one against petitioners No. 4 and 5.

9. It is worth to mention that the Honourable Apex Court in the case of Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandojirao Angre and others, reported in AIR 1988 SC 709, categorically elucidated in paragraph No. 7 as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is

asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

10. The Honourable Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others reported in MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC) held that "where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR". Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

11. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against petitioners No. 4 and 5. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against petitioners No. 4 and 5 deserves to be quashed and set aside.

Therefore, we proceed to pass following order :

ORDER

- i. The Criminal Writ Petition is partly allowed.
- ii. The Criminal Writ Petition in respect of petitioners No. 1 to 3 and 6 to 8 stands disposed of as withdrawn.
- iii. The Criminal Writ Petition in respect of petitioners No. 4 and 5 is allowed.
- iv. The penal proceeding initiated against petitioners No. 4 and 5 bearing FIR No. I-334 of 2018, for the offences punishable under Sections 147, 148, 452, 327, 427, 504 and 506 of Indian Penal Code and under Section 4/25 of Arms Act, registered with Shrirampur City Police Station, District Ahmednagar, is ordered to be quashed and set aside to their extent only.
- v. Rule is made absolute in terms of prayer clause "B".

vi. The Criminal Writ Petition is disposed of in above terms. No order as to costs.