
(2022) 11 BOM CK 0026

In the Bombay High Court

Case No : Criminal Application No. 606 Of 2022

Dadasaheb And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 34, 323, 498A, 504, 506

Citation : (2022) 11 BOM CK 0026

Hon'ble Judges : Mangesh S. Patil, J; Abhay S. Waghware, J

Bench : Division Bench

Advocate : Sudheer R. Zambare, S. D. Ghayal, M. P. Kale, Pramod N. Muley

Final Decision : Allowed

Judgement

Abhay S. Waghware, J

1. By invoking Section 482 of the Code of Criminal Procedure, the applicants herein, i.e. father-in-law, mother-in-law, brother-in-law, wife of brother-in-law and husband of sister-in-law of complainant-respondent no.2 Rekha, are praying for quashing Crime No. 3 of 2022 registered at Majalgaon Rural Police Station, Taluka Majalgaon, District Beed for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of the Indian Penal Code and also praying to quash the consequential R.C.C. No. 44 of 2022 pending on the file of J.M.F.C., Majalgaon.

2. The learned counsel for the applicants appraised us about the relations inter se between the applicants and respondent no.2 and would further point out that respondent no.2 was married to the non-applicant i.e. son of the present applicant nos. 1 and 2 in the year 2009 and out of said wedlock, they had two children. The learned counsel for the applicants points out that conduct and behaviour of respondent no.2 was unbefitting that of a married woman and mother of two children. He would forcefully submit that rather, in spite of being married, complainant maintained extra-marital relation with one Saleem, who

was an immediate neighbour, and she eloped with him along with younger son and stayed with him for around seven months or so and only on learning that her husband has lodged missing complaint, she returned back. Only thereafter, with ulterior motive she filed instant false complaint levelling baseless allegations against husband and all in-laws. Learned counsel points out that when police machinery recorded her statement in the light of missing complaint, she herself has informed the police about her above illicit relation. Learned counsel invited our attention to the said statement of respondent no.2. She was treated well all the while still she, on her own, left the company of her husband and was never maltreated.

Thus, while concluding, learned counsel submits that it is crystal clear that present complaint at the instance of respondent no.2 is motivated one and has been filed merely with intention to harass her husband and in-laws.

3. Learned counsel for the applicants seeks reliance on the ruling of the Hon'ble Apex Court in the case of Kahkashan Kausar alias Sonam and others v. State of Bihar and others ; (2022) 6 SCC 599, more particularly para 18 of the judgment, and submits that the facts in the said case and the case in hand are identical and pointed out that the Hon'ble Apex Court had quashed such proceedings and therefore, he seeks similar relief at the hands of this Court also.

4. Learned APP opposed the application by submitting that there are specific allegations about demand of Rs.50,000/- for purchasing motorcycle. All the applicants are named in the FIR and therefore, according to him, it would not be just and proper to quash the proceedings at the initial stage itself.

5. We have heard both the sides at length. We have carefully perused the documents placed before us, including the FIR and the ruling relied upon.

6. The application shows that present applicant nos. 1 and 2 are the parents-in-law, applicant no.3 is brother-in-law, applicant no.4 is wife of applicant no.3 and applicant no.5 is husband of sister-in-law of respondent no.2.

On minutely going through the FIR dated 04.01.2022, it is seen that respondent no.2 has informed about her marriage with the non-applicant husband Sunil Dadasaheb Kokane in the year 2009. According to her, she was treated properly by her husband and in-laws up to 2021. She informs about money expended by her father in her marriage and then she alleges that her husband sometimes used to get drunk and under the influence of liquor he used to say to her that her conduct is improper and that she should not stay with him. Therefore, prima facie allegations are levelled against husband only.

So far as the present applicants are concerned, she has alleged that all of them, in connivance, asked her to arrange Rs.50,000/- from her parents for purchasing motorcycle and they used to mentally and physically ill-treat her. Finally, on 07.08.2021, she was driven out of the house and thereafter, she went to her parents' house. With such allegations, she requested for legal action against her

husband and in-laws.

7. Admittedly, in present proceeding, husband has not applied for quashment of criminal proceedings. We have carefully examined the papers. We have come across annexure "B" appended by the applicants which is a missing report lodged with M.I.D.C. Police Station, Ahmednagar by non-applicant husband informing police that he runs a saloon. That he has a wife, namely, Rekha, aged 28 years and two children aged 7 years and 5 years, respectively. He has informed that on 30.05.2021 at around 11.00 a.m., his wife Rekha along with younger son Om, left the house under the pretext of arranging poshan aahar (nutritious food) for children from the Anganwadi at Nandgaon, but she has not returned back. Husband has supplied detailed description of his wife to the police.

8. At exhibit "C" is a statement of respondent no.2-complainant Rekha, by which she has informed the police that she got acquainted with one Saleem Anwar Shaikh who was their neighbour. That her husband and in-laws learnt about it and so she was questioned by them. She has informed the police in her statement that on 30.06.2021 at around 12.00 noon, she left the house along with younger son Om under the pretext of doing some work on her sari and on the way she met Saleem. They both had a long talk. Love developed between them and they both decided to go to Chakan to stay together. Accordingly, she left with her son for Chakan and from there they hired a rickshaw and went to Mulshi. At such place, they hired a room and started residing there. She stated that from Saleem she learnt about missing report lodged by her husband and so she came back to MIDC Police Station, Ahmednagar and gave the statement.

Thus, statement of respondent no.2 is very explicit about her affair with neighbour Saleem and they both having eloped along with her son and reside together at Chakan.

9. On carefully examining the contents of FIR lodged at the instance of respondent no.2, it is clearly emerging that after getting married with non-applicant husband in 2009, everything was going on smoothly up to 2021 i.e. for almost a decade or so as there was no other previous complaint except present FIR. Allegations are only about husband intermittently getting drunk and under its influence uttering that he disliked her and she should not stay with him.

As far as allegations against present applicants are concerned, only allegation levelled is that they all connived and put up a demand of Rs.50,000/- for purchasing motorcycle. As to when such demand was actually put up has not been specified by her. It is not conceivable that all would in chorus put up such demand at one and the same time. Further, it is worth noting that according to her, she was driven out of the house on 07.08.2021, but surprisingly instant FIR is lodged on 04.01.2022 i.e. after immense delay.

10. It would be profitable to quote para 18 of the judgment of the Hon'ble Apex Court in Kahkashan Kausar alias Sonam and others (supra) which has been specifically relied on by learned counsel for the applicants :

"18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

11. Apart from above ruling, it would be also useful to refer to and rely on the rulings of Hon'ble Apex court in the case of Preeti Gupta v. State of Jharkhand ; AIR 2010 SC 3362 and in the case of Priya Vrat Singh v. Shyam Singh Sahai ; (2009) SCC Suppl. 709.

The Hon'ble Apex Court in the case of Preeti Gupta (supra) observed and held as under :

"29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code, 1860 which reads as under :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty-

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purposes of this section, 'cruelty' means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

Similarly, the Hon'ble Apex Court in the case of Priya Vrat Singh (supra), while dealing with the powers of the High Courts under Section 482 Cr.P.C., has held as under :

"6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative

enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: *Janata Dal v. H. S. Chowdhary* ((1992) 4 SCC 305); *Raghubir Saran (Dr.) v. State of Bihar* (AIR 1964 SC 1) and *Minu Kumari v. State of Bihar* ((2006) 4 SCC 359)."

Likewise, in the case of *State of Haryana v. Bhajan Lal* ; 1992 Supp (1) SCC 335, there are guidelines laying down as to in which circumstances abuse of process of law cannot be allowed to be continued.

12. Bearing in mind the above settled legal position and on minutely examining the nature of allegations herein, there is no hesitation to hold that the facts in case in hand and the facts in the cases before the Hon'ble Apex court are almost

identical. Ex facie, complaint is belated, motivated one and is apparently a counter blast to the missing report lodged by husband. Furthermore, it is clear that complainant herein seems to have developed affair with her neighbour and has spent considerable time with him after leaving her own house. It is only after missing was lodged by husband, present complaint appears to have been lodged by respondent no.2. It does appear to us that this is clear attempt to abuse the process of law.

13. Therefore, we do not find it desirable to make the present applicants, who are in-laws, face trial with such omnibus and vague allegations. Finding substance and merit in the case, applicants herein succeed. Hence, we proceed to pass the following order:

ORDER

I. The application is allowed.

II. The Crime No. 3 of 2022 registered with Majalgaon Rural Police Station, Taluka Majalgaon, District Beed, for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC and the criminal case bearing R.C.C. No. 44 of 2022 pending on the file of learned J.M.F.C., Majalgaon, District Beed, are quashed and set aside.