

(2018) 10 BOM CK 0156

In the Bombay High Court

Case No : Criminal Application No. 1122 of 2015

Ganesh S/O Krishna Male And Others

APPELLANT

Vs

State Of Maharashtra And Another

RESPONDENT

Date of Decision : 11-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 323, 498A, 504

Citation : (2018) 10 BOM CK 0156

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

Bench : Division Bench

Advocate : Govind Kulkarni, Rajendra S. Deshmukh, V.S. Choudhari, R.S. Sarvadnya

Final Decision : Partly Allowed

Judgement

Vibha Kankanwadi, J

1. Present application has been filed by original accused persons invoking the inherent powers of this Court under Section 482 of the Code of

Criminal Procedure in order to quash the First Information Report vide Crime No. 15 of 2015, registered with Bori Police Station, Bori, Tal. Jintur,

District Parbhani for the offences punishable under Section 498A, 323, 504 read with Section 34 of the Indian Penal Code.

2. Respondent No.2 got married to applicant No.1 on 24/05/2006. Applicant No.1 is the husband of respondent No.2, applicants No.2 and 3 are

the parents of applicant No.1, and applicant No.4 is brother of applicant No.3 (Uncle of applicant No. 1) and applicant No.5 is wife of applicant No.4.

Applicant No.6 is the aunt of applicant No. 1 and applicant No. 10 is her son. Applicants No. 7 and 9 are the sons of applicant No.4 (Cousin

brothers of applicant No. 1). Applicant No. 8 is the wife of applicant No. 7. Applicant No. 11 is the married sister of applicant No. 1.

3. Respondent No. 2 "informant has contended that, her father had given household articles at the time of marriage. She went to Vasmat to

cohabit with husband. She was residing with all the applicants. She was treated properly by all of them for about two years and thereafter they started

demanding amount of Rs.2 lakhs for the construction of house. Applicants No. 2 to 11 used to instigate applicant No. 1 for beating her in order to

fulfill their illegal demand. They used to drive her out of the house, by keeping her starved, when she used to say that it is not possible for her father

to give amount to them because of his poor financial condition. She had narrated the ill treatment to her parents. They had given understanding to

her and sent her back for cohabitation. She was thereafter treated properly for about 3-4 months, but again the demand was made and ill treatment

was given. She has daughter from her husband. She is at her parents' house since 4 years prior to FIR. Efforts were made for conciliation, but in vain.

Therefore, she has lodged the report.

4. The applicants have contended that, respondent No. 2 was cohabiting properly till she went for delivery. Daughter was born on 18-10-2007.

Thereafter, she has not resumed cohabitation. She was insisting since prior to her departure for delivery that she should be given share in the house of

applicant No. 4 (uncle) which is situated at Bank Colony Basmatnagar. It was told to her that the said house is the self acquired property of applicant

No. 4 and she can not get any share in the same. But she was insisting for the same. After three months of birth of daughter, applicant No. 1 and his

family had gone to informant's parents' house with gifts and requested her to come with them. She flatly refused. They were driven out of the house

by saying that unless that house is made in her name, she will not come. Again an attempt was made in 2009. Proposal was given that applicant No. 1

and respondent No. 2 would reside in rented premises with their daughter separately. She agreed and they started residing in a rented premises.

Informant's parents and brother came there and started demanding the house of applicant No. 4 to be made in the name of informant. They took her

with them on 22.03.2011. Applicant No. 1 had made effort to bring her back with the help of his friends. Her parents refused to send her on the same

ground. Applicant No. 1 had given application on 28-02-2013 to the Mahila Dakshata Samiti to make efforts for their union. She did not come. He

had thereafter filed petition for restitution for conjugal rights bearing HMP NO. 15 of 2013 on 06-04-2013 before C. J. S. D., Basmatnagar. She had

appeared and contested the petition. Her evidence was recorded in that matter. She has contended that she is ready to reside in old house, if it is

renovated. The Petition filed by applicant was decreed. She was directed to resume cohabitation.

However, she did not. Therefore, applicants contend that there is no prima facie evidence to show that they had ever harassed informant. Applicants

No 4 to 11 are not residing with applicants No. 1 to 3. They are residing at different places from each other. There is delay in lodging FIR. FIR is

based on false and concocted story. All the family members are unnecessarily involved. Therefore, they have prayed for quashment of the

proceeding.

5. Heard learned Advocate Mr. Govind Kulkarni h/f Mr. R. S. Deshmukh appearing on behalf of applicants, learned Addl. Public Prosecutor Ms.

V. S. Choudhari appearing on behalf of respondent no.01 and learned Advocate Mr. R. S. Sarvadnya, appearing on behalf of respondent No.2. When

it was pointed out to the learned advocate for the applicants that, this Court is not inclined to grant any relief to applicants No.1 to 3, he prayed for

withdrawal of the application as against them.

6. The application was considered only for the allegations against the married sister-in-law applicant No. 4 to 11 only. No specific role has been

attributed against them in respect of offence under Section 498A of the Indian Penal Code. Voluminous documents in the form of earlier petition and

contention of informant has been produced on record. Important point to be noted is that applicant No. 1 is the son of maternal uncle of informant.

That means they were knowing each other since their childhood. Applicant No. 4 is also her maternal uncle (brother of her mother). In clear terms

she has admitted in her cross-examination before Civil Court that she has not resumed cohabitation since the birth of her daughter. We can not forget

the fact that decree of restitution of conjugal rights has been passed in favour of applicant No. 1. Further admissions in respect of her desire to reside

in the house at Bank colony are also worth noting. Thus, the dispute is between

the husband and his parents at the most. She has also admitted that other applicants are residing separately from her husband and his parents. Respondent No. 2 has made allegations against all the applicants that they were demanding amount of Rs.2,00,000/-. If at all there would have been a demand, it would have been mainly by the husband and the father-in-law and mother-in-law. The perusal of the entire FIR would show that all of them had made the demand in chorus which is not possible. Nothing was demanded by applicants No. 4 to 11 for themselves as per the allegations in the FIR itself. So, it appears that, as a routine all the relatives of the husband have been roped with mala fide intention. It would be futile exercise to ask these applicants to face the trial. Under such circumstance, relief is required to be granted to the applicants No. 4 to 11 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure.

7. Hence, following order.

(a) The application is partly allowed.

(b) The first information report in Crime No. 15/2015, dated 01.02.2015, registered with Bori Police Station, Taluka Jintur, District Parbhani, for offences punishable under Sections 498A, 323, 504, read with Section 34 of the Indian Penal Code, to the extent of applicant nos.04 Narayan, 05

Rekha, 06 Nanda, 07 Gangaprasad, 08 Poonam, 09 Dipak, 10 Dinesh and 11 Yashoda, is quashed and set aside.

(c) Application to the extent of applicant nos.01 Ganesh, 02 Meera and 03 Krishna is disposed of as withdrawn.

(d) Rule made absolute in the above terms.

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