

(2019) 06 BOM CK 0042

In the Bombay High Court

Case No : Criminal Application No. 2927 Of 2018

Manoj And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 10-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 498A, 482
Indian Penal Code, 1860 — Section 34, 323, 498A, 504, 506

Citation : (2019) 06 BOM CK 0042

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

Bench : Division Bench

Advocate : S.A. Ambad, M.M. Nerlikar, P.R. Katneshwarkar

Final Decision : Partly Allowed

Judgement

K. K. Sonwane, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for parties at admission stage.

2. The applicants preferred present application resorting to remedy under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") to get quash and set aside the impugned First Information Report ("FIR") bearing Crime No. 319 of 2017 registered at Degloor Police Station, Tq. Degloor, District Nanded for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of the Indian Penal Code ("IPC") and criminal proceeding bearing RCC No. 121 of 2017 initiated pursuant to aforesaid FIR.

3. The prosecution case in nutshell is that, the complainant -Swati Puri on 24-06-2017 filed report to the Police of Degloor Police Station, District Nanded and ventilated the grievance that since 2011, she was employed as teacher in the Zilla Parishad Marathi School at village Sawata Ta. Dahanu, District Palghar. In the month of May, 2011 her marriage was solemnized with applicant No. 1 Manoj S/o Ram Puri as per customs in Krushna Mandir, Udgir. At the time of

marriage, there was vacation for the School, and after the vacation, the complainant -Swati Puri returned to the village Sawata for attending her duty in the School. It has been alleged that after about month of marriage her-in- laws as well as Aunt- applicant No. 6 Meena, sister-in-law - Priyanka, parental sister - applicant Shanta @ Malan Giri, all in connivance with each other used to instigate her husband to take the entire salary of wife-complainant. They were goaded the husband to make demand of Rs. 2,00,000/- to establish Medical Shop for livelihood. The husband used to visit to the place of avocation of the complainant at village Sawta for demand of salary to the wife. It has been alleged that husband after drinking liquor used to assault wife on flimsy ground. Whenever complainant visited to matrimonial home at Udgir that time she was being harassed and maltreated by the inmates of matrimonial home. There was demand of Rs. 2,00,000/- from the applicant to establish Medical Shop for husband. They kept the complainant-wife unfed. The parents of the complainant attempted to give understand to the husband and other inmates of matrimonial home for not to maltreat wife -Swati. But, there was no improvements in the behaviour of husband. The ordeals of the wife was continued. She was subjected to mental and physical torture. According to prosecution, on 02-02-2017 in the noon hours, husband and other inmates of matrimonial home visited to the parents home of the wife-Swati and demanded Rs.2,00,000/- for medical shop. They also assaulted the complainant- Swati by kick and fist blows and gave threat of life. They refused to allow the complainant-Swati for cohabitation. Eventually, she filed complaint against husband and other members of matrimonial for penal action. Pursuant to report, Police of Degloor Police Station registered the crime No. 319 of 2017 under Sections 498-A, 323, 504 and 506 read with section 34 of the IPC and set the penal law in motion. The Investigating Officer carried out investigation and recorded statements of witnesses acquainted with facts of the case. After completion of investigation, IO preferred the charge-sheet against the applicants vide RCC No. 121 of 2017 and it is pending before the learned Judicial Magistrate, First Class, Degloor for its adjudication on merit.

4. Learned counsel for the applicants submitted that applicants are innocent of the charges pitted against them. The complainant - wife cast false allegations for cruelty against applicants. There were no physical or mental torture to the complainant, when she was cohabiting with husband Manoj. There was no demand of money, but complainant made false allegation against the applicant to embroil them in this false case. According to learned counsel, all the applicants are residing separately from applicant No.1-husband of the complainant. Learned counsel for applicants produced the documents of Adhar Card, etc. to show their separate residence from the husband of complainant. According to learned counsel, applicant No. 4 Priyanka is residing at Hyderabad whereas applicant No.5 is residing at Udgir, District Latur and far away from the house of applicant No. 1. The applicant No.6- Meena Giri was also residing at Malad (East), Mumbai. These applicants have no reason to cause interference in the marital affairs of

the spouses. They are falsely implicated in this case to settle the score. Applicants No. 2 and 3 - in-laws of the complainant are old aged senior citizens. They have no concern at all with the alleged crime. It has been contended that applicant No. 5 is the Headmaster, whereas applicant No. 6 is the Medical Practitioner and they are not the beneficiaries from the maltreatment and harassment to the complainant-wife. The entire allegations are fabricated and made with ulterior motive to rope them in this case for increasing gravity of crime.

5. Learned APP and learned counsel for respondent No. 2 raised objection to the contentions propounded on behalf of applicants and submit that the complainant-wife is the teacher by profession. Her marriage was solemnized with applicant No. 1 in the year 2011. She received good treatment for about a month of the marriage. Thereafter, she was subjected to maltreatment and harassment for demand of money. The other applicants instigated her husband to claim salary of the wife. The husband frequently visited to the place of employment of the wife for demand of salary amount. Under the influence of liquor he used to abuse and assault wife. According to learned counsel for respondent No. 2, recitals of FIR categorically reflect that complainant wife subjected to maltreatment and harassment by the applicants. The investigation has already been completed, therefore, there is no propriety to cause any interference in it by exercising powers under section 482 of the Cr.P.C.

6. Having given anxious consideration to the rival submissions on behalf of both sides as well as perusal of Investigation papers of RCC No. 121 of 2017, this Court was reluctant to nod in favour of applicants No. 1 to 3 to exonerate from the charges pitted against them. Eventually, learned counsel for applicants seek leave to withdraw the application to the extent of applicants No. 1 to 3. Accordingly, leave was granted and application to the extent of applicants No. 1 to 3 stands disposed of as withdrawn.

7. In regard to allegations nurtured against applicants No. 4 to 6, we find that the allegations cast on behalf of complainant - Swati against these distant relatives are vague and general in nature. There are no specific allegations attributing overt-act of all these applicants to maltreat and harass the complainant - Swati. There were no detail particulars given in the FIR about the participation of these applicants No. 4 to 6 for their act of humiliation or insult to the complainant on account of demand of money. The allegations about cruelty by these applicants are also found stray and sweeping in nature.

8. At this juncture, the question that arises, whether the FIR registered against applicants can be quashed and set aside by exercise of powers under Section 482 of Cr.P.C. It is worth to mention that the Honourable Apex Court in the case of - *Kansraj Vs. State of Punjab* and others reported in (2000) 5 Supreme Court Cases, 207 observed that, "a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged is likely to affect the case of the prosecution even

against the real culprits. In the cases, where accusations are made, the overt-acts attributed to persons other than husband, are required to be proved beyond reasonable doubt. Their Lordships of Apex Court further observed that, "in their over-enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused."

9. In the case of - Preeti Gupta and another Vs. State of Jharkhand and another, reported in (2010) 7 Supreme Court Cases 667, it has been delineated that ultimate object of justice is to find out truth and punish the guilty and protect the innocent. A serious relook of the entire provision of Section 498-A of Cr.P.C. is warranted by the legislature. It was observed that the exaggerated versions of the incidents are also reflected in a very large number of complaints.

10. Likewise, in the case of - Arnesh Kumar Vs. State of Bihar and another, reported in (2014) 8 Supreme Court cases, 273, the Honourable Apex Court elucidated the fact that, "Section 498-A of IPC is a cognizable and non bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provisions."

11. It is worth to mention that the Honourable Apex Court in the case of Madhavrao Jiwaji Rao Schindia referred above 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."

12. 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.

13. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicants No. 4 to 6. It would be an futile efforts and would cause injustice to them. It would also dissipate the precious time of Court of law as the possibility of 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 litigations before the Criminal Court. Hence, penal proceeding initiated against these appellants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

O R D E R

1. The Criminal Application is allowed partly.
2. Application in respect of applicants No. 1 to 3, namely, Manoj S/o Ram Puri, Ram S/o Mahadeo Puri and Sunita W/o Ram Puri stands disposed of as withdrawn.
3. Application in respect of applicants No. 4 to 6, namely, Priyanka W/o Amit Goswami, Shanta @ Malan W/o Balgiri Giri and Meena W/o Ramesh Giri, is hereby allowed.
4. The penal proceeding initiated against applicants No. 4 to 6, namely, Priyanka W/o Amit Goswami, Shanta @ Malan W/o Balgiri Giri and Meena W/o Ramesh Giri, bearing FIR No. 319 of 2017, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC registered with Degloor Police Station Tq. Degloor, District Nanded, and criminal proceeding bearing RCC No. 121 of 2017 initiated pursuant to aforesaid FIR, pending before the learned Judicial Magistrate, First Class, Degloor, District Nanded is ordered to be quashed and set aside.
5. Rule is made absolute partly in terms of prayer clause "C".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.