

(2017) 02 BOM CK 0118

In the Bombay High Court

Case No : Criminal Application No. 3494 of 2016

Mrs. Shakuntalabai

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, Section 498A

Citation : (2017) 1 AIRBomRCri 767 : (2017) ALLMRCri 1837 : (2017) 2 BomCR(Cri) 462 : (2017) 2 MhLJCrI 262

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. M.V. Thorat, Advocate, for the Applicants; Mr. M.M. Nerlikar, APP, for the Respondent/State; Mr. G.R. Syed, Advocate, for the Respondent No.2

Final Decision : Disposed Off

Judgement

S.S. Shinde, J. (Oral) - Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. Heard the learned counsel appearing for the applicants, learned APP appearing for respondent?State and the learned counsel appearing for respondent no.2.

4. The learned counsel appearing for the applicants submits that so far as applicant no.1 is concerned, though she is mother-in-law of the informant and at the relevant time staying at Mumbai, nevertheless informant resided at Mumbai for only couple of months after marriage, and therefore, an allegation of harassment and illtreatment made against applicant no.1 are inherently improbable and far from truth. He submits that so far as applicant no.2 is concerned, she is mother-in-law of applicant no.3 Ujwala Gaikwad, who is sister of applicant no.5. He submits that applicant no.2 is residing at Nanded, but at a different place than the place which was taken on rent by applicant no.5 wherein

respondent no.2 resided for couple of months. It is further submitted that, applicant no.3 and applicant no.7 are residing at Pune and they have their own house at Pune. Applicant no.3 is serving in a Private Company and applicant no.8 has his own business at Pune. Therefore, an allegation of illtreatment and harassment against applicant nos.3 and 8 are inherently improbable and no prudent person can believe allegations made against them in the FIR. He further submits that so far as applicant no.4 is concerned, she is wife of applicant no.9 Chandrakant Ghodke, who is uncle of applicant no.5 Rahul Waghmare. However, applicant no.9 Chandrakant Ghodke and applicant no.4 Suryamala Ghodke are residing separately at Nanded and applicant no.9 is doing Private Service. He further submits that so far as applicant no.5 is concerned, he is husband of respondent no.2. So far as applicant no.6 is concerned, he is the father-in-law of respondent no.2 and he is residing at Mumbai, and therefore, an allegations against applicant no.6 are not true and those are general in nature. Applicant no.6 had no opportunity to visit at matrimonial home either at Mumbai or rented premises at Nanded. He further submits that applicant no.7 is husband of applicant no.3 i.e. sister of applicant no.5. Applicant no.8 is father-in-law of applicant no.3 and both of them are residing at Nanded separately and they have nothing to do with the matrimonial affairs between applicant no.5 and respondent no.2. The allegations made against them are general in nature, and therefore, the First Information Report deserves to be quashed.

5. He further submits that so far as applicant no.10 is concerned, he is uncle of applicant no.5 and the allegations made against him are general in nature. He further submits that applicant no.11, who is uncle of applicant no.5 and residing at Mumbai and had no occasion to visit matrimonial home either at Mumbai or at Nanded. He submits that even if the allegations in the FIR are taken at its face value and read in its entirety, the ingredients of the alleged offences have not been disclosed against the applicants, and therefore, the First Information Report deserves to be quashed. He invites our attention to the various documents placed on record and also the affidavit filed on behalf of applicants showing their place of residence and also the job of the applicants. Some of the applicants are in private employment and some of them are doing their business. Therefore, he submits that, the application deserves to be allowed.

6. The learned APP appearing for the respondent?State relying upon the investigation papers submits that the Investigating Officer has collected sufficient material, and trial can proceed on the basis of the material collected by the Investigating Officer, therefore, this Court may not consider the prayer of the applicants for quashing of the First Information Report.

7. The learned counsel appearing for respondent no.2 relying upon the allegations made in the FIR and also other documents placed on record and the investigation carried out so far by the Investigating Officer, submits that this Court may not accede to the prayer of the applicants for quashing of the First Information Report. He submits that the allegations as they appear in the FIR will

have to be taken as it is, and can be tested only during trial. Therefore, he submits that, the application may be rejected.

8. We have given careful consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance, we have carefully perused the allegations in the FIR, averments in the Application, annexures thereto, affidavit filed by the applicants and also reply filed by respondent no.2 and the investigation papers made available for our perusal. Upon careful perusal of the allegations in the FIR, so far as applicant nos.1, 5 and 6 are concerned, there are allegations of demand of money and also other allegations which would disclose the alleged offences against them, and therefore, we are not inclined to consider the prayer for quashing of First Information Report to the extent of applicant nos.1, 5 and 6.

9. So far as applicant nos.2 to 4 and 7 to 11 are concerned, the allegations in the FIR against those applicants, read thus:

"5- Iklw lkljs] uuan o uanokbZ gs i.k R;kapp leFkZu dj;ps o eykp ekjgk.k o f"kohxkG dj;ps0 tso<+s fnol eh ekb;k lkljh jkfgys rso<+s fnol ek>h uuan mToyk vkeP;k ;sFksp jkfgyh0 frpk uojk lrr vkeP;k ;sFks ;sr xsyk ,o<+sp uOgs ekb;k uuanP;k lklw lkljs i.k lrr ;sr xsys o ekb;koj gks.kkjk NG o vkR;kpkjkyk izksRIkgu o ikfBack nsr xsys0

8- R;kuarj dkgh fnolkauh ek>k uojk ekb;kdMs ;sowu eyk ukansM ;sFks vk.kwu oalr jkmr ;kaP;kdMs HkkM;kus ?kj ?ksowu ewyk uothou uxj ukansM ;sFks R;kps dkdk] panzdkar o dkdw ;kaP;k Lok/khu d:u fu?kwu xsyk0 panzdkar ?kksMxs o R;kph iRuh ukansM ;sFks eyk lrr NG o =kl nsow ykxys] f"kohxkG dj.ks] cnukeh dj.ks] vieku d: ykxys] v"kkisdjko o R;kaph iRuh fueZykckbZ] uojkps dkdk fHkojko o ekek dkuck jkmr ;kauk lq)k ek>koj gksr vlYS;k vR;kpkjkckcr dGoY;kus rs i.k myV eykp f"kohxkG d:u rq>k loZuk" k d:u Vkdw v"kh /keD;k nsr xsys0 lklq] lkljs] uan] uanokbZ] uojk o brj yksd v/kqu e/kwu ukansMyk ;sowu eyk "kkfjjhd o ekufl d =kl nsoq ykxys0"

10. Even if the allegations against the said applicants, reproduced herein above, are read in its entirety, it appears that those allegations are general in nature, without attributing any specific role qua aforementioned applicants, and no specific date is mentioned. As rightly submitted by the learned counsel appearing for the applicants that applicant nos.3 and 7 are residing at Pune and applicant no.3 is serving in a Private Company and applicant no.7 is doing his own business, therefore, the allegations in the FIR that they resided at Mumbai and at Nanded and illtreated respondent no.2 appears to be inherently improbable and no prudent person can believe such allegations.

11. So far as applicant no.2 is concerned, she is mother-in-law of applicant no.3, and therefore, she is residing with applicant no.3 and applicant no.7. Applicant no.8 is residing at Nanded separately and the allegations against them are general in nature without attributing any specific role to them or without indicating any specific incident on specific date, therefore, in respect of those

applicants also, the FIR deserves to be quashed. So far as other applicants are concerned, the allegations against them are general in nature, they are residing separately and not in the matrimonial home either at Mumbai or rented premises which were taken on rent by applicant no.5 for stay of respondent no.2 at Nanded. Applicant nos.2, 4 and 8 to 11 are distinct relatives, residing separately and doing their jobs/business and no specific allegations are made against them. The Supreme Court in the case of "State of Haryana v. Bhajan Lal", AIR 1992 SC 604 held that, in following categories the Court would be able to quash the F.I.R.

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or

where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. In our opinion, applicants would be covered by aforementioned category nos.1, 2 and 5.

13. The Supreme Court in the case of Geeta Mehrotra and another v. State of Uttar Pradesh and another, (2012) 10 SCC 741 in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference of the judgment of the Supreme Court in the case of G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 wherein in para 12 it is observed thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts."

14. In view of the discussion in the foregoing paragraphs, we are of the considered opinion that, the application to the extent of applicant nos.2 to 4 and 7 to 11 deserves to be allowed. Accordingly, the Criminal Application is allowed in terms of prayer clause-A to the extent of applicant nos.2 to 4 and 7 to 11 and the First Information Report No.12/2016, dated 20.01.2016, registered with Bhagya Nagar Police Station, Nanded, for the offences punishable under Section 498 (A), 323, 377, 504, 506 r/w.34 of the Indian Penal Code, stands quashed and set aside.

Application to the extent of applicant nos.1, 5 and 6 stands rejected. The trial Court can proceed against them.

15. Rule made absolute partly on above terms. Criminal Application is partly allowed and the same stands disposed of accordingly.