

(2021) 04 BOM CK 0004

In the Bombay High Court

Case No : Criminal Writ Petition No.146 Of 2021

Naval Ashok Agarwal

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 337, 339, 340, 344, 406, 498A, 504, 506
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 5
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2021) 04 BOM CK 0004

Hon'ble Judges : S.S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : I.M. Chagla, Darius Khambata, Jimmy Avasia, Pranav Badheka, J.P. Yagnik, Satish Maneshinde

Final Decision : Allowed

Judgement

Manish Pitale, J

1. The petitioner claims to be caught in the crossfire of matrimonial acrimony between his brother and sister-in-law. By this petition the petitioner seeks quashing of a First Information Report ("FIR") registered at the behest of respondent No.2 (original complainant), his sister-in-law, on the ground that the allegations made in the FIR do not make out ingredients of the offences alleged, at least insofar as the petitioner is concerned.

2. Rule. Rule returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

3. Shorn of unnecessary details, the sequence of events leading to filing of the present petition are that the petitioner's brother got married to respondent No.2 on 19.01.2014. On 14.04.2016, a son was born to them. The petitioner states in the petition that he got married in the year 2013 and that he lives with his wife,

separate from his brother and respondent No.2. He used to meet respondent No.2 occasionally at family get-togethers and functions and that he has met parents of respondent No.2 on few occasions during such family functions.

4. On or about 18.03.2020, respondent No.2, her husband i.e. petitioner's brother and their son went to Mahabaleshwar to stay in the bungalow of father of respondent No.2. The parents of respondent No.2 were also in Mahabaleshwar in the said bungalow and while all of them had gone to stay there for a short while, due to the Covid-19 pandemic and the consequent lockdowns, all of them stayed at Mahabaleshwar for almost 4 months. On 15.07.2020, the mother of the petitioner informed him that the son of respondent No.2 had informed his father i.e. the petitioner's brother about an alleged incident of sexual abuse by his grandfather i.e. the father of respondent No.2. This had led to a quarrel between respondent No.2 and petitioner's brother and on 16.07.2020, they returned with their son to Mumbai. In view of the serious allegation made against the father of respondent No.2, there were attempts made to settle the discord.

5. But, things came to a head when on 27.07.2020, respondent No.2, petitioner's brother and mother went to the Police Station at Worli, Mumbai. The petitioner also reached the said police station. The petitioner's brother proceeded to lodge a complaint in the police station against his father-in-law for having allegedly sexually abused his grandchild, while respondent No.2 in another room in the police station lodged a complaint against the petitioner's brother and mother. But, before the complaints could be fully recorded, a police officer on duty intervened and suggested that since it was a family dispute, the same ought to be amicably settled. Thereafter, the parties returned home. According to the petitioner, this was the first occasion after respondent No.2 had returned from Mahabaleshwar that the petitioner had met her.

6. It appears that there were attempts made to amicably settle the dispute and that on 31.07.2020, the parties had met for finding a solution. According to the petitioner, an agreement was reached and the father of respondent No.2 was supposed to give certain statement in writing, but eventually the same did not work out. Thereafter, attempts were made to take the son of respondent No.2 to a child psychologist and when the acrimony between respondent No.2 and her husband i.e. the petitioner's brother increased further, eventually on 25/26.08.2020, the petitioner's brother sent complaints to various police stations as also the Child Welfare Committee for registration of offences against the father of respondent No.2 under the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). It appears that on 14.08.2020 itself, the father of respondent No.2 had submitted a letter before the police station informing that the petitioner's brother may approach the police for lodging a false complaint under the POCSO Act. As a result, registration of offence was delayed and the petitioner's brother filed a writ petition before this Court, in which on 28.08.2020, notice was issued. It is an admitted position that the petitioner's brother is an advocate.

7. Thereafter, on 29.08.2020, statement of petitioner's brother was recorded and an FIR bearing C.R. No. 115 2020 was registered under Section 377 of the Indian Penal Code ("IPC") and Sections 4 and 5 of the POCSO Act at the Cuff Parade Police Station, Mumbai, against the father of respondent No.2. On 31.08.2020 respondent No.2 caused an FIR to be registered at the Police Station Worli, Mumbai, against her husband i.e. petitioner's brother, the petitioner himself and his mother under sections 498A, 344, 406, 504, 506 read with 34 of the IPC. This FIR is the subject matter of the present writ petition wherein the petitioner has prayed that this court ought to invoke its extraordinary power under Article 226 of the Constitution of India as also inherent power under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") to quash the FIR, at least insofar as the petitioner is concerned.

8. According to the petitioner, a bare reading of the FIR and contents of the complaint lodged by respondent No.2 would show that insofar as the petitioner is concerned the allegations are vague, non-specific and they do not disclose any of the ingredients of the aforesaid offences. By placing reliance upon settled position of law pertaining to the situations in which this court can exercise its power to quash an FIR, the petitioner contends that the present petition deserves to be allowed. It is also brought to the notice of this court that in a separate proceeding, the petitioner has been granted anticipatory bail.

9. When this petition was listed on 22.01.2021, learned counsel appearing for respondent No.2 sought time to file reply. While granting time for filing reply, this Court directed that in case charge-sheet was not filed, the same would not be filed till the next date of hearing without seeking leave of this Court. The petition was finally heard on 12.02.2021 and judgment was reserved. The ad-interim order passed by this Court was directed to be continued till pronouncement of judgment, however, it was clarified that there was no stay to investigation into the matter.

10. Mr. I.M. Chagla, learned senior counsel appearing for the petitioner alongwith Mr. Darius Khambata, senior counsel, submitted that the FIR in question deserved to be quashed, at least insofar as the petitioner was concerned. Learned senior counsel read the contents of the FIR and submitted that none of the ingredients of the alleged offences were made out against the petitioner. It was submitted that respondent No.2 had made vague and non-specific allegations against the petitioner, while the thrust of her anger and grievance was against the brother of the petitioner i.e. her husband. The genesis of the dispute between the petitioner's brother and respondent No.2 was the matrimonial discord between them, precipitated in a large measure due to the alleged incident that took place concerning the father of respondent No.2 and the son of the petitioner's brother and respondent No.2. It was submitted that the petitioner had nothing to do with either the said incident or the cascading effect that it had on the matrimonial relations between respondent No.2 and petitioner's brother.

11. It was reiterated that the petitioner lives separately from his brother and respondent No.2; that he had met respondent No.2 and her parents occasionally on family functions; that the relations between the petitioner and respondent No.2 had been cordial with no reason for any dispute and that the vague and non-specific allegations made in the FIR were for the reason that respondent No.2 sought to include the petitioner along with his brother in the focus of her ire caused by the matrimonial discord. Learned senior counsel also brought to the notice of this Court an earlier alleged written complaint dated 13.08.2020 submitted before the police by respondent No.2. It was submitted that a bare reading of the said detailed written complaint also demonstrated that no specific allegations were levelled against the petitioner and, in fact, there were contradictions between the said written complaint dated 13.08.2020 and the oral complaint leading to registration of the aforesaid FIR dated 31.08.2020. It was submitted that since the vague allegations made against the petitioner did not demonstrate any of the ingredients of the offences alleged, the FIR deserved to be quashed, so as to relieve the petitioner from the harassment and embarrassment of facing an unnecessary trial. Learned senior counsel relied upon judgments of the Hon'ble Supreme Court in the case of Geeta Mehrotra Vs. State of U.P. (2012) 10 SCC 741 and Keki Hormusji Gharda Vs. Mehervan Rustomji Irani (2009) 6 SCC 475 as also judgments of this Court in the case of Shabnam Sheikh Vs. State Judgment and Order dated 15/10/2020 in Cri. Application No.114 of 2014 and Anand L. Kalwani Vs. State Judgment and Order dated 04/05/2005 in Cri. Writ Petition No.604 of 2005.

12. On the other hand, Mr. Satish Maneshinde, learned counsel appearing for respondent No.2 submitted that a reading of the complaint and the FIR demonstrated that the offences were justifiably registered against all the accused, including the petitioner before this Court. It was submitted that the FIR was not supposed to be an encyclopedia of the events and that the contents of the complaint and FIR in the present case were sufficient to trigger an investigation into the matter against the petitioner. It was submitted that such an FIR did warrant a detailed investigation and that therefore, the petition ought not to be entertained by this Court. The FIR did not deserve to be nipped in the bud insofar as the petitioner was concerned, because investigation into the matter would bring out sufficient material for levelling charges against the petitioner along with the other accused persons and that the matter deserved to go to trial. It was emphasized that there were as many as 17 litigations pending between the petitioner's brother and respondent No.2 and that much acrimony had been generated between the parties.

13. The learned counsel submitted that this Court ought to look into the written complaint dated 13.08.2020 along with the complaint and FIR registered on 31.08.2020, to consider the contentions raised on behalf of the petitioner. It was submitted that the husband of respondent No.2 i.e. the petitioner's brother is an advocate and that the entire family of the petitioner is using its knowledge of law and its familiarity with the court system to pressurize respondent No.2 and her

parents into submission, which was a factor this Court needs to consider while deciding the present writ petition. According to learned counsel appearing for respondent No.2, any interference at this stage, at the hands of this Court would not be in the interest of justice and that the investigation ought to be permitted to be completed.

14. Mr. Yagnik, learned A.P.P. appeared on behalf of the respondent-State and submitted copy of the investigation papers to indicate the investigation carried out till date, on the basis of the aforesaid FIR.

15. Before we consider the contentions raised on behalf of the rival parties, it is relevant to note that this Court never granted stay of investigation into the aforesaid FIR registered at the behest of respondent No.2. By order dated 22.01.2021, this Court had only directed that charge-sheet qua the petitioner may not be filed till the next date of hearing. The investigation papers show that the investigation has not progressed significantly. Learned counsel for respondent No.2 did submit before this court that the investigation remained dormant at the behest of respondent No.2 for some time because attempts were being made to bring about an amicable settlement between the parties, considering that as many as 17 litigations are pending, the root cause of which is the matrimonial discord between respondent No.2 and the petitioner's brother, which is embroiled in acrimony following the nature of allegation levelled by the petitioner's brother against the father of respondent No.2. Therefore, we find that the investigation has progressed at a very slow pace, if at all.

16. Be that as it may, we are considering this writ petition on the basis of the material that has been brought to our notice and by applying the settled position of law concerning quashing of the FIR. In order to examine as to whether the said FIR deserves to be quashed, thereby aborting investigation and further steps, insofar as the petitioner before the court is concerned, it becomes necessary to read the FIR in detail, so as to analyze as to whether ingredients of the alleged offences against the accused, who has approached this court, are even prima facie made out. In the present case, by the very nature of statements made in the complaint leading to registration of FIR, the cognizable offences alleged against the petitioner are under Sections 406, 498A and 344 of the IPC. The offence under Section 406 of the IPC, on the face of it, is not relatable to the petitioner as the allegations in respect thereof, are all made against the brother of the petitioner. The offences under Sections 504 and 506 of the IPC are non-cognizable. Section 498A of the IPC pertains to subjecting a woman to cruelty either mental or physical, the term "cruelty" being specifically defined in the said provision. Section 344 of the IPC pertains to wrongful confinement for 10 or more days, with wrongful confinement being defined in Section 340 of the IPC.

17. A perusal of the complaint and the FIR dated 31.08.2020 shows that the petitioner has been specifically named at two places. In one place, it is stated that the petitioner used to come repeatedly to the house of respondent No.2 to

keep an eye on her and he was not allowing respondent No.2 to meet members of her family. At another place the petitioner has been named along with his brother and mother to state generally that from the date of marriage of respondent No.2 on 19.01.2014, the said persons till date, had repeatedly asked respondent No.2 to bring money from her father, that they used to taunt her, abuse and threaten her, thereby causing

18. Insofar as the allegations levelled against the petitioner along with his brother and mother pertaining to harassment meted out to respondent No.2 from the date of her marriage are concerned, the said allegations are generalized, non-specific and, in any case, no specific allegation has been levelled against the petitioner. In fact, the name of the petitioner is mentioned in this context with omnibus statement regarding alleged mental harassment caused to respondent No.2. This has to be appreciated in the backdrop that when there is matrimonial discord and acrimony between husband and wife, there is a tendency to vent out anger against the husband by roping in as many relatives of the husband as possible. The tendency appears to be to get back at the husband by making allegations against all family members so that the consequent criminal proceedings disturb the life of not only the husband but all his family members and relatives.

19. It is for this reason that Courts have to carefully analyze the statement of the informant to verify as to whether plausible allegations have been made out against specific persons sought to be arraigned as accused, so that persons against whom general, vague and non-specific allegations are made, are not forced to face the rigors of investigation, charges and consequent trial. It is incumbent upon the Court to ensure that a person is not casually made to face such rigors, when the genesis of the grievance of the informant is an acrimonious matrimonial discord, which essentially is between the husband and wife. Although an FIR can certainly not be an encyclopedia of facts and events leading up to the FIR, in matters where such allegations are sought to be made against the entire family of the husband, the court needs to adopt an approach that would not only take care of the genuine grievances of the wife, but also of relatives of the husband who are sought to be roped in and swallowed into the vortex of the dispute between the husband and wife.

20. In such situations, factors like the relatives of the husband not living in the matrimonial house, the complainant not stating in the complaint that such relatives stay in the matrimonial house or even about any day-to-day contact and interaction with such relatives, become very relevant. There need to be specific allegations and description of events in such complaints which have their genesis in a matrimonial discord, to indicate that at least insofar as such relatives of the husband are concerned, the investigation needs to proceed. In situations where general, vague and non-specific allegations are made and basic ingredients of the alleged offences are not made out, the FIR can be quashed, insofar as such accused relatives of the husband are concerned. In this context

learned senior counsel appearing for the petitioner is justified in relying on paragraph 20 of the judgment of the Hon'ble Supreme Court in the case of Geeta Mehrotra (supra) and paragraph 14 of the judgment of this Court in the case of Shabnam Sheikh (supra).

21. As noted above, the name of the petitioner in the complaint leading to registration of the FIR is mentioned only in two places. In the first place where the name of the petitioner is mentioned, it is alleged that he used to visit the house of respondent No.2 repeatedly and he used to keep an eye on her and further that he prevented her from meeting members of her family. This is the only allegation that could be relatable to the alleged offence under Section 344 of the IPC, which pertains to wrongful confinement for 10 or more days. Section 340 of the IPC defines wrongful confinement. The said provisions read as follows:

"340. Wrongful confinement - Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

344. Wrongful confinement for ten or more days - Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

22. A perusal of the aforesaid provisions would show that an offence of wrongful confinement would occur when a person is prevented from proceeding beyond certain circumscribing limits. This would require the person being prevented to proceed beyond such limits. Illustrations appended to Section 340 of the IPC make it very clear that the accused must necessarily, by his actions, demonstrate the intent of preventing the person from proceeding beyond certain circumscribing limits. It is only in such circumstances that the ingredients of the offence of wrongful confinement can be said to be made out. Section 344 of the IPC pertains to wrongful confinement for 10 or more days, thereby indicating that there must be material to even prima facie show that such wrongful confinement continued for 10 or more days.

23. In this context, learned senior counsel appearing for the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of Keki Hormusji Gharda (supra). In the context of the offence of wrongful restraint as defined under Section 339 of the IPC, it was held therein that the obstruction must be direct and a physical one. In the case of Mithailal Vs. State of Maharashtra (1994) 2 Bom. C.R. 720, a Division Bench of this Court held in the context of wrongful confinement as defined under Section 340 of the IPC that even if actual physical obstruction was not essential, there must be material to show that an impression was created in the mind of the person confined so as to reasonably believe that she was not free to depart and that she would be forthwith restrained if she attempted to do

24. In the present case, the specific allegation made against the petitioner in the

complaint and the FIR dated 31.08.2020, is that the petitioner allegedly used to repeatedly visit the house of respondent No.2 to keep an eye on her and he allegedly prevented her from meeting her family members. Such a general allegation does not even prima facie show the ingredients of the offence under Section 344 of the IPC, on the touchstone of definition of wrongful confinement as given in Section 340 thereof. We are of the opinion that such an allegation does not even prima facie indicate the alleged wrongful confinement of respondent No.2 for 10 or more days for the matter to proceed further against the petitioner.

25. Insofar as offence under Section 498A of the IPC is concerned, the petitioner has been named towards the end of the complaint leading to registration of the FIR, wherein general, omnibus and non-specific allegations have been made. The petitioner has been named along with his brother and mother for having caused mental harassment to respondent No.2 by claiming that from the date of her marriage with the petitioner's brother, there were demands made for money from her father and that she was subjected to threats and abuses. We are of the opinion that the thrust of the allegations in the complaint leading to registration of the FIR are not against the petitioner and he has been named in the context of general statements and allegations levelled by respondent No.2. As noted above, in such cases, there is a pronounced tendency on the part of the complainant to rope in relatives of the husband due to the anger generated in the complainant against her husband, in the backdrop of acrimony and bitterness in their matrimonial life. We are of the opinion that such generalized allegation made against the petitioner in the aforesaid complaint does not disclose ingredients of offence under Section 498A of the IPC, which pertains to a woman being subjected to cruelty by her husband or relative. There is no doubt about the fact that the explanation to Section 498A of the IPC elaborately defines cruelty to mean and include any willful conduct which is of such a nature as is likely to cause grievous injury whether mental or physical to a woman. But, the aforesaid general allegation levelled against the petitioner in the complaint lodged by respondent No.2 does not disclose the ingredients of the aforesaid offence under Section 498A of the IPC, insofar as the petitioner is concerned.

26. A perusal of even the written complaint dated 13.08.2020 allegedly submitted by respondent No. 2 before the police does not show any specific allegations against the petitioner. We are referring to the said written complaint because learned counsel appearing for respondent No.2 specifically relied upon the same. In fact, the said written complaint runs into a number of pages wherein respondent No.2 has sought to state the situations she faced after marriage with the petitioner's brother, but in such a detailed complaint, there is no specific allegation against the petitioner. In fact, the allegation about the petitioner having allegedly kept an eye on respondent No.2, preventing her from meeting her relatives is conspicuous by its absence. Such an allegation being made against the petitioner in the oral complaint leading to registration of the FIR dated 31.08.2020, comes through as an afterthought. Therefore, the

emphasis placed on the said written complaint dated 13.08.2020, by learned counsel for respondent No.2 does not take the case of the said respondent any further. In this context, learned senior counsel appearing for the petitioner is justified in relying upon the judgment of this Court in the case of Anand Kalwani (supra).

27. The Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal (1992) Supp. 1 SCC 335, has laid down certain categories in which quashing of FIR would be justified so as to avoid the rigors that an alleged accused would have to face. Paragraph 102 of the said judgment reads follows:

"102. 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 extra-ordinary 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 cognizable 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 cognizable offence but constitute only a non-cognizable 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."

28. In the present case, we are of the opinion that the case of the petitioner clearly falls in Categories 1 and 2, as laid down in the above quoted portion of the judgment of the Supreme Court. Therefore, power under Section 482 of the Cr.P.C. and Article 226 of the Constitution of India deserves to be exercised in favour of the petitioner. We are of the opinion that when the allegations made in the complaint leading to registration of the FIR do not even prima facie show the ingredients of the alleged offences against the petitioner, the petition deserves to be allowed.

29. In view of the above, the writ petition is allowed in terms of prayer clause (a), which reads as follows:

"(a) that this Hon'ble Court be pleased to call for the records and proceedings in the said FIR bearing no.C.R.306 / 2020 dated 31/8/2020 (Exhibit "A" hereto), and issue an appropriate Writ, order or direction to quash and set aside the said FIR bearing no. C.R. 306 / 2020 registered with the Worli Police Station, Mumbai under section 498-A, 344, 406, 504, 506 and 34 of the IPC qua the Petitioner and all further proceedings arising therefrom."

30. As is clear from the above quoted prayer clause, in terms of which the present writ petition stands allowed, the said FIR stands quashed only in respect of the petitioner before this court. We make it clear that observations made hereinabove are strictly confined to the present petition and will have no bearing on any proceedings in respect of other accused.

31. Rule is made absolute in above terms. The writ petition is disposed accordingly.