

(2015) 07 BOM CK 0254

In the Bombay High Court

Case No : Criminal Writ Petition No. 532 of 2015

Pallavi

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1)
Penal Code, 1860 (IPC) — Section 307, 323, 34, 498A, 498-A
Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2015) 07 BOM CK 0254

Hon'ble Judges : S.S. Shinde, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.J. Rahate, for the Appellant; B.L. Dhas, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J—The petitioner has filed this petition with the following prayer:

"(B) The chargesheet & proceedings of Sessions Case No. 255/2014 pending before the Court of Sessions, Aurangabad offences U/sec.307, 498-A,323, 506 r/w 34 of the Penal Code crime No. I-13/2013 registered with police station MIDC Aurangabad initiated on the basis of the chargesheet filed against the present petitioner be quashed and set aside;"

Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. It is the case of the petitioner that, a lady namely Supriya w/o Vishal Sudke r/o Shradha colony (MHADA), HIG-13, Opp. Dhoot Hospital Mukundwadi Aurangabad lodged a complaint with P.S. MIDC CIDCO U/sec. 307, 323, 506 of I.P. Code against her husband alleging inter alia that the marriage between them was solemnized in 2008. the couple has been blessed with two children, one boy namely Harshad 5 years and a girl namely Mitali.

3. It is alleged that the complainant was treated well for few days thereafter, she

was ill-treated by her husband. Under influence of liquor her husband used to beat her and her in-laws never used to interfere. The father-in-law of the complainant expired in July, 2013, since then husband of complainant started consuming liquor. It is alleged that the husband of complainant used to beat her on petty reasons and she never disclosed about the ill-treatment to her parents as her husband used to threaten her by saying that he will beat her and the children.

4. It is alleged that on 22.12.2013 at 11.30 pm when the complainant, her husband and their children were in the house, the children were asleep, at that time the husband of complainant asked telephone number of her father and the complainant replied that she don't know the telephone number. On account of this, her husband abused and allegedly drove her out of the house. Thereafter, immediately again he took her inside and locked the door from inside. It is alleged that the husband of complainant then took her to backside of the house and poured kerosene from the plastic can. It is further alleged that the complainant then started running. Her husband then poured kerosene on the person of the complainant from back and threw burning match stick on her sari. She further stated that she herself removed her clothes due to which she sustained burn injuries over her hand, entire front portion, chest, stomach, back, leg. She further stated that thereafter she jumped in the water tank. It is alleged that her husband did not try to rescue her. The complainant herself told her husband to shift her to the hospital otherwise she will shout and gather the neighbours, thereafter, her husband took her along with their children in their own car to Dhoot hospital for treatment. As there was no facility for burnt patients, the complainant was shifted to Bobde Hospital, Beed Bypass road, Aurangabad. The complainant was treated 8 days.

5. It is alleged that during the course of the treatment at Bobde Hospital, police and government officer recorded the statement of the complainant, in which she has stated that the kerosene can was spread over and as there was no electricity in the house, while igniting the candle, suddenly there was a burst. Thus, she sustained burn injuries. She had also stated that, no one tried to burn her and she has no complaint against anyone. It is further alleged that at that time, no close relative of the complainant was there with her and her husband was threatening her to beat her and the children and therefore, the complainant stated the statement under pressure. Thereafter, it is alleged in the FIR that she was feeling better and taking treatment in Dahiphade hospital, Adalat Road, Aurangabad. Therefore, she has lodged the complaint.

6. The learned Counsel for the petitioner submitted that the FIR was registered against the husband by the complainant and there was no mention of petitioner's name, no allegation was made against her by the complainant. The complaint was lodged belatedly, which is afterthought. He submitted that the petitioner is a married sister-in-law of the complainant. He submitted that the petitioner had performed inter-caste marriage and since then, she had not visited

house of her parents, the complainant and her husband. The petitioner is permanently residing with her husband at Pune. The complainant even did not make any allegation against the petitioner in her complaint and also in the statement recorded in the hospital by the Magistrate.

7. The learned Counsel for the petitioner further submitted that, statements of complainant, her mother and father were recorded on 23.12.2013 and none of them alleged anything against the petitioner. Even in the statement /FIR dated 21.01.2014, the complainant made allegations against the petitioner. The learned Counsel for the petitioner further submitted that, in the statement recorded on 30.01.2014 Suresh Vishwanath Shirke father of the complainant made vague, general, omnibus and inconsistent allegations against the petitioner. Mother of the complainant namely, Sangita w/o Suresh Shirke in her statement dated 30.01.2014 made the same allegations against the petitioner. It is submitted that, brother of the complainant namely, Abhilash s/o Suresh Shirke and uncle of complainant namely, Santosh Shamrao Dhanlangde, in their statements dated 30.01.2014 made general, vague and afterthought allegations against the petitioner.

In support of his submissions that, even if the allegations in the FIR are taken at its face value and considered in its entirety, no offence is disclosed against the petitioner, the learned Counsel for the petitioner placed reliance on the authoritative pronouncement of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp ;, and also the judgment dated 17th October, 2012 delivered by the Supreme Court in case of Geeta Mehrotra & Anr vs. State of U.P. & Anr. in Criminal Appeal No. 1674 of 2012 (arising out of SLP (Cri) No. 10547/2010), and the judgment dated 13th August, 2010 of the Supreme Court in case of Preeti Gupta & Anr. Vs. State of Jharkhand & Anr delivered in Criminal Appeal No. 1512 of 2010 (arising out of SLP (Cri) No. 4684/2009). He also placed reliance on the judgment of this Court dated 29th January, 2015 in Criminal Application No. 5501 of 2014 in case of Shalu @ Siya Lavin Keswani and others vs. The State of Maharashtra and Ors. as also the order dated 2nd July, 2015 in Criminal Application No. 6993/2014 in case of Sau. Sharda Ravindra Patil and others vs. The State of Maharashtra and Anr. The learned Counsel for the Shalu @ Siya Lavin Keswani and others petitioner, therefore, submitted that this petition may be allowed.

8. The learned APP appearing for the State and the learned Counsel for the respondent No. 2 submitted that the witnesses namely, father, mother, brother and uncle of the complainant have categorically made allegations against the petitioner and endorsed her role in meeting out ill-treatment, harassment to the complainant and, therefore, the petition may be dismissed.

The learned Counsel for the respondent No. 2 submitted that charge-sheet has already been filed and, hence the petitioner is having alternate remedy of filing

application for discharge. It is submitted that there is specific accusation against the present petitioner in the statements of the witnesses. They have specifically stated that, the petitioner had subjected complainant to cruelty and instigated to kill her. He submitted that the parents, brother and maternal uncle of the complainant have specifically made allegations against the petitioner. He further submitted that there is series of incidents which clearly reveal that present petitioner also subjected the respondent No. 2 to cruelty on various occasion. He submitted that, even if it is assumed that section 307 IPC would not be attracted against the petitioner, but petitioner is liable to be prosecuted u/s 498A of IPC. He submitted that for the purpose of offence u/s 498A of IPC, it is not necessary that accused should be present on the spot, it can be mental state of affairs. The initial statement of the complainant as well as mother and father is totally under the undue influence and coercion as the little children of the respondent No. 2 are in custody of the petitioner's brother and she was threatened. He submits that if the charge-sheet against the petitioner is quashed and set aside, it will badly affect the trial. Therefore, he submits that the petition may be dismissed.

9. We have heard the learned Counsel for the petitioner, learned APP for the State and the learned Counsel appearing for the respondent No. 2 complainant. We have also carefully perused the statement of the witnesses and other accompaniments of the charge-sheet. It is not in dispute that the petitioner is married sister-in-law of the complainant. Her marriage was performed in the year, 2009. The said marriage was an inter-caste marriage. It is case of the petitioner that since she performed inter-caste marriage against the wish of parents, she is not on visiting terms to the parents and therefore, there was no question of her presence at Aurangabad as alleged by the prosecution witnesses. It appears that the petitioner shifted to Pune and since her marriage, she is residing at Pune. Petitioner has also placed on record proof of her residence at Pune. Upon careful perusal of the FIR registered by the complainant on 21st January, 2014, name of the petitioner in respect of alleged offence taken place on 23.12.2013 is not included. The complainant had also given statement about the said incident at the earliest opportunity on 23.12.2013. In that statement also name of the petitioner is not mentioned. It appears that the prosecution witnesses have implicated the petitioner by making general allegations belatedly. It is true that there are general allegations in the statements of the witnesses. However, at the earliest opportunity when the statements of the witnesses were recorded on 23.12.2013, name of the petitioner was not mentioned. It appears that the statement of Suresh Vishwanath Shirke was recorded on 30th January, 2014 wherein general allegation has been made against the petitioner. However, there is no any specific role attributed to her or no any specific date is mentioned on which the petitioner was involved in harassment / ill-treatment of the complainant. Even, the statement of the mother of the complainant also, more or less, makes general allegation against the petitioner along with other members of the family of the complainant. It appears that there is belated attempt by the mother of the complainant namely, Sangita Suresh Shirke to attribute role to the

petitioner for the incident dated 23.12.2013. In fact, the complainant had lodged FIR and also her statement at the earliest opportunity was recorded, in which name of the petitioner is not mentioned.

10. Statement of mother of the complainant was recorded on 30th January, 2014 i.e. belatedly, after 38 days of the alleged incident dated 23.12.2013. Other witness Santosh Dhanlagade uncle of the complainant has also made general allegations. Upon perusal of the entire material placed on record, there appear to be no any specific allegation attributing specific overt-act to the petitioner. It appears that the petitioner is residing at Pune since the year, 2009, she has having a child of three and half years, studying in English School at Pune, as contended by the petitioner in her rejoinder to affidavit-in-reply. It is also relevant to mention that the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 has been initiated by the wife in the year, 2005 and neither name of the petitioner is mentioned nor any specific role is attributed to her in the said proceedings. That proceeding was even before the marriage of the petitioner.

11. In that view of the matter, in our opinion, further proceedings of Sessions Case No. 255/2014 pending before the Court of Sessions, Aurangabad for offences punishable under sections 307, 498-A, 323, 506 r/w 34 of the Penal Code arising out of Crime No. I-13/2013 registered with police station MIDC Aurangabad as against the petitioner, will be an exercise in futility and abuse of process of Court. The petitioner has placed on record sufficient material, which clearly indicates that she is residing at Pune from the year, 2009.

12. The Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp held that, in following categories the Court would be able to quash the F.I.R. :

1. Whether the allegations made in the F.I.R. 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 Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;
4. Where the allegations in the F.I.R. do not constitute a 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 F.I.R. 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 provisions in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide 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.

13. The case in hand is covered under Categories (1) and (5) of the said categories. The view taken by us also lends support from the view taken by the Supreme Court in cases of (1) Preeti Gupta & Anr., (supra), (2) Shalu @ Siya Lavin Keswani and others (supra), and (3) Sau. Sharda Ravindra Patil and others (supra).

14. In the light of the discussion in foregoing paragraphs, the charge-sheet and the proceedings of Sessions Case No. 255/2014 pending before the Court of Sessions, Aurangabad for offences punishable under sections 307, 498-A, 323, 506 r/w 34 of the Penal Code arising out of Crime No. I-13/2013 registered with police station MIDC Aurangabad stand quashed and set aside as against the petitioner.

We make it clear that the observations herein above are for the purpose of deciding the present petition and the trial Court shall not get influenced by the said observations while conducting the trial against other co-accused. Rule made absolute in above terms. Petition stands disposed of, accordingly.