

(2022) 12 BOM CK 0007

In the Bombay High Court

Case No : Criminal Application No. 1460 Of 2021

Pradip And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

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

Citation : (2022) 12 BOM CK 0007

Hon'ble Judges : Mangesh S. Patil, J; Abhay S. Waghware, J

Bench : Division Bench

Advocate : Suniket A. Kulkarni, S. J. Salgare, S. A. Ambilwade, H.P. Randhir

Final Decision : Allowed

Judgement

Abhay S. Waghware, J

1. By way of instant proceedings, applicants herein are seeking exercise of powers u/s 482 of Cr.P.C. for quashing and nullifying crime vide FIR No. 270 of 2021 registered at Amalner Police Station, District Jalgaon for the offences punishable under sections 498-A, 323, 504, 506 of IPC and the consequential charge sheet vide R.C.C. No. 25 of 2022 pending on the file of learned Judicial Magistrate, First Class, Amalner.

Facts in brief

2. Respondent no.2 herein, who is wife of applicant no.1, has set the law in motion alleging that after getting married to applicant no.1, initially she was treated properly by her husband and in-laws i.e. the applicants herein. She has alleged that subsequently, they all indulged in maltreating her on one or other count. On the instigation of applicant nos. 2 to 8, husband as well as all other applicants beat and abused her. Demand of Rs.1,00,000/- was raised by all applicants for purchasing house and as she failed to raise the amount, she was beaten, abused and driven out of the house. Hence the complaint.

3. Learned counsel for the applicants appraised this court about the date of marriage and relations of applicant nos. 2 to 8 with respondent no.2. He would take us through the FIR and would submit that instant complaint is merely out of annoyance and vengeance as complainant herself was not interested in cohabiting and continuing her marital tie with applicant no.1. Therefore she started levelling vague, baseless allegations not only against her husband with whom she had rancor, but also against her entire in-laws even when they had no concern whatsoever with the marital discord between her and applicant no.1. He pointed out that the above complaint being false and baseless is a sheer abuse of process of law and therefore, according to him, applicants cannot be made to face trial with allegations of such nature.

According to him, the complaint is mala fide and with sole intention of roping entire family and harassing them. Hence he prays to grant the relief as prayed by them.

4. In support of the complaint, learned APP would submit that shortly after marriage, husband and his relatives who are named in the FIR started ill-treating the complainant and subjected her to cruelty. They made her life miserable. There was continuous instigation to husband by all co-accused and as a result of it, there was continuous abuse and beating to her. There is allegation in the complaint about demand of Rs.1,00,000/-. He pointed out that for not meeting the illegal demand, she was drive out of the house. Thus, according to him, at this stage as, the veracity of the allegations cannot be tested, applicants are liable to face prosecution and so he prays for dismissal of the application.

5. Learned counsel representing respondent no.2 also argued on the same lines as learned APP, and he pointed out that husband and in-laws have subjected the complainant to cruelty. They are all named in the complaint. There are allegations of abuse and beating in the backdrop of demand of money. Therefore, he too resisted the application and the reliefs sought by the applicants and prayed for dismissal of the application.

6. Here, applicants are seeking exercise of powers bestowed on this Court under section 482 of Cr.P.C. Before adverting to the complaint in the case in hand, it would be apt to discuss briefly the settled legal position on the scope and object of section 482 of Cr.P.C.

7. In catena of judgments the Hon'ble Apex Court has time and again reiterated that inherent powers under section 482 of Cr.P.C. can be exercised by the High Court; firstly, to give effect to an order under Cr.P.C., secondly, to prevent abuse of process of court and thirdly, to secure ends of justice.

In the landmark case of Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors., reported in (2007) 12 SCC 1, it was observed as under:

"23. This Court in a number of cases has laid down the scope and ambit of courts' powers under section 482 of Cr.P.C. Every High Court has inherent powers

to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of the court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under section 482 of Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

The Hon’ble Apex Court in the case of *Priya Vrat Singh Vs. Shyam Singh Sahai*; (2009) SCC Suppl. 709, while dealing with the powers of the High Courts under Section 482 Cr.P.C., has held as under :

“6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified

to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: *Janata Dal v. H. S. Chowdhary* ((1992) 4 SCC 305); *Raghubir Saran (Dr.) v. State of Bihar* (AIR 1964 SC 1) and *Minu Kumari v. State of Bihar* ((2006) 4 SCC 359)."

Similarly, in *Vineet Kumar v. State of U.P.* ; (2017) 13 SCC 369, after referring to several other cases, including *State of Haryana and others v. Ch. Bhajan Lal* ; AIR 1992 SC 604, the Hon'ble Apex Court concluded and made following observations in Paragraph No. 41 :

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* ; 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category (7) as enumerated in *State of Haryana v. Bhajan Lal* (supra), which is to the following effect:

"102. ... (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."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a

fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

8. On the aforesaid touchstone, if we revert to the facts in case and visit the complaint carefully, the gravamen of the indictment against accused is that after marriage dated 18.06.2018 between applicant no.1 and respondent no.2, complainant was treated properly but only for initial days of the marriage. On carefully scrutinizing the complaint, it is emerging that according to her, all accused persons taunted her for bringing less dowry. She has alleged that sister-in-law and mother-in law provided her insufficient food. In spite of she being pregnant, she was not cared for and was rather made to go to her parents’ place for delivery. She has alleged that accused persons visited her there and advised her to undergo abortion. She has alleged that after delivery, accused persons brought her back and she was properly treated only for a period of 15 days or so and thereafter, again she was subjected to cruelty. This time she has alleged demand of Rs.1,00,000/- for purchasing house and only because of her inability to raise the amount, she was abused, beaten and driven out of the house.

9. On giving conscious thought to the nature of complaint by respondent no. 2, it is revealed that there are sweeping, general allegations against all the applicants herein. As to when alleged episodes occurred and who amongst the eight accused-applicants played which role is not specified in the complaint.

Allegations levelled are apparently omnibus and vague in nature as there are no details or particulars of nature of ill treatment except alleging beating and abuse, that too at the sole instance of husband. However, even such allegations against husband are omnibus in nature.

10. Law is squarely settled and time and again, higher courts have held that on account of marital discord, there is growing tendency of levelling allegations by blowing it out of proportion. Persons, even when they are distantly related, are also tried to be roped in. On coming across several cases of such nature, Hon’ble Apex Court in various judgments have cautioned that abuse of process of law should not be allowed to be continued and it should be nipped at the bud. Making innocent persons face criminal prosecution amounts to injustice and therefore, in deserving cases which are patently false and bogus, courts have not hesitated in exercising the powers under section 482 of Cr.P.C. only with intention to meet ends of justice or to secure justice. In this context, it would be useful to refer to few landmark cases as under:

- (1) Geeta Mehrotra Vs. State of U.P. ; (2012) 10 SCC 741
- (2) Preeti Gupta v. State of Jharkhand ; AIR 2010 SC 3362
- (3) K. Subba Rao v. The State of Telangana ; (2018) 14 SCC 452

11. Bearing above exposition of law in mind, if we go to the complaint at the instance of respondent no.2 herein, we are convinced that allegations are apparently either general or petty in nature. Complaint is conspicuously silent

about when the alleged episodes of ill-treatment took place as it seems that marriage is of 18.06.2018, but complaint seems to have been lodged on 24.06.2021 i.e. three years after marriage between applicant no.1 and respondent no.2. Apart from levelling allegations against husband for abuse and beating, allegation against all is that they taunted her for bringing less dowry. Allegation attributed to sister-in-law and mother-in-law is regarding insufficient food. Subsequently, after delivery, for the first time she has alleged regarding demand of Rs.1,00,000/-. Therefore, it is evident that non-specific, general and rather sweeping allegations are levelled against one and all. We are more than convinced that it is a clear attempt to harass the entire in-laws by roping the entire family. Therefore, in our considered opinion, prosecution of applicants with such quality of allegations would amount to sheer abuse of process of law and we deem it a fit case for exercise of powers bestowed under section 482 of Cr.P.C. The case in hand squarely attracts clause (7) of the guidelines enumerated in para 108 of the judgment in State of Haryana and others v. Ch. Bhajan Lal ; AIR 1992 SC 604. Hence, the applicants succeed. Having made out a case on merits for indulgence at the hands of this court, application deserves to be allowed and we accordingly pass the following order:

ORDER

I. The application is allowed.

II. Crime vide FIR No. 270 of 2021 registered at Amalner Police Station, District Jalgaon for the offences punishable under sections 498-A, 323, 504, 506 of IPC and the consequential charge sheet vide R.C.C. No. 25 of 2022 pending on the file of the Judicial Magistrate, First Class, Amalner, are quashed and set aside.