
(2022) 09 BOM CK 0005

In the Bombay High Court

Case No : Criminal Application No. 3252 Of 2021

Pranita And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-09-2022

Acts Referred:

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

Citation : (2022) 09 BOM CK 0005

Hon'ble Judges : Vibha Kankanwadi, J; Rajesh S. Patil, J

Bench : Division Bench

Advocate : M.P. Kale, A.R. Muley, S.D. Ghayal

Final Decision : Allowed

Judgement

Rajesh S. Patil, J

1. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants who are arrayed as accused Nos. 4 and 5, are praying for quashing and setting aside First Information Report vide Crime No. 137/2021, registered with Police Station Shirsala, Tq. Dharur, District Beed, for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code and for quashing of charge-sheet bearing No. 111/2021 which is culminated into RCC No. 04/2022, which is pending before Judicial Magistrate First Class, Dharur, District Beed.

A. FACTS :

2. The respondent No. 2 has lodged FIR which is registered as Crime No. 0137 of 2021. It reports that the respondent No. 2 got married with Santosh Madhukar Sarvade on 08.05.2014, as per hindu rites and customs by following all rituals and respects and by giving articles. Said marriage was performed by her parents at village Didurd. After marriage she went at her matrimonial house for cohabitation, there her husband and in-laws treated well for two years. It is

further alleged that, thereafter her in-laws asked her to bring Rs. 6 Lakhs for the business of sell and purchase of vehicles and for finance purpose of her husband Santosh and started to tease her by giving physical and mental harassment and troubling her. She told the said demand to her parents and brother, whenever she use to visit her parental house on festival occasions or in ordinary visits to her parents.

3. It is further alleged that, her parents gave understanding to the accused persons as their financial position is very poor, they showed their inability to pay. The complainant / informant gave the reply in above manner. However, the in-laws were not ready to listen and were giving continuous trouble and harassment to her. Though there was harassment, she resided with her husband with a hope that there would be change in the nature. However, her husband and in-laws asked her to bring the amount demanded by them, otherwise they will not allow her to cohabit and since last three to three and half years, they have driven her out of house along with her son. Thereafter, she along with her parents, brother and other relatives have tried to convince the in-laws and her husband. However, the accused persons did not concur with the same. As such, she filed a complaint with the Mahila Takrar Nivaran Kendra Beed, however, there also her husband and other members from her matrimonial house did not come. Thereafter her in-laws came at her parental village Mohkhed and abused her and threatened to kill her as to why she has given application against them with the Mahila Takrar Nivaran Kendra, Beed. On 15.07.2021, one letter was given from Mahila Takrar Nivaran Kendra Beed, directing her to take appropriate steps; and as such, she filed complaint with the respondent No. 1 police station, thereby, requesting to take action against the accused persons. On the basis of above said complaint offence bearing Crime No. 137/2021 came to be registered with Police Station Shirsala, Tq. Dharur, Dist. Beed for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

4. After completion of the investigation the police have filed charge sheet No. 111/2021 on 18.12.2021 in the Court of learned Judicial Magistrate First Class, Dharur Dist. Beed. On the basis of the same criminal case bearing R.C.C. No. 04/2022 came to be registered against the applicants under Sections 498-A, 504, 506 read with Section 34 of I.P.C.

5. The applicants being dissatisfied by registration of Crime No. 137/2021 registered on 21.07.2021 with Police Station Shirsala, Tq. Dharur, Dist. Beed for the offence punishable under Sections 498-A, 504, 506 read with Section 34 of the Indian Penal Code, the applicants have filed this criminal application under section 482 of the Criminal Procedure Code, before this Hon'ble Court for quashing of the FIR.

B. SUBMISSION OF PARTIES :

6. Heard learned Advocate Mr. Kale for the applicants and Mr. S.D. Ghayal, learned APP for State and perused the record.

7. Learned Advocate for applicants argued that the entire charge-sheet does not disclose the offence committed by the present applicants for the offence punishable under Sections 498-A, 504, 506 read with Sec. 34 of IPC. The allegations in respect of ill-treatment and harassment at the hands of present applicants are omnibus in nature. No overt act has been attributed to the applicants. The main allegations are against the husband of respondent No. 2. He further submits that, the applicants reside separately and the complainant and her husband reside separately. The applicants have no connection in the matrimonial dispute between respondent No. 2 and her husband. The applicant No. 1 is sister-in-law of the complainant i.e. sister of her husband. The applicant No. 2 is husband of the applicant No. 1. The marriage of the applicant No. 1 with the applicant No. 2 took place on 10.02.2008 (much prior to marriage of respondent No. 2), since then both applicant Nos. 1 and 2 are residing at Gangakhed, Tq. Gangakhed, Dist. Parbhani. Only with a view to harass the entire family members of her husband, respondent No. 2 had filed a baseless complaint without disclosing any overt act committed by the applicants. Therefore, the FIR as well as charge-sheet against the applicants, may be quashed and set aside in the interest of justice.

8. Learned Advocate for the applicants further added that perusal of the complaint shall reveal that, it is only mentioned in the complaint that, present applicants have given threats and driven her out of the house and there is no direct ill-treatment or demand of money at the hands of applicants. This itself shows that, there is no direct nexus between the respondent No. 2 and the present applicants. On this count alone the complaint deserves to be quashed.

9. Per contra, learned APP Mr. Ghayal supported the case of the prosecution and submitted that there are specific allegations against the applicants. Hence, the criminal application may be dismissed.

C. ANALYSIS :

10. It reveals from the record that the applicants' marriage has taken place in the year 2008 and since then they are residing separately from other accused at Gangakhed, District Parbhani. Much latter respondent No. 2 got married to brother of applicant No. 1, on 08.05.2014. All the alleged incidents of ill-treatment and harassment have taken place at village Chinchgavhan, Tq. Majalgaon, District Beed.

11. The statement in the FIR against the accused persons is that, the accused have ill-treated the respondent No. 2 and demanded a sum of Rs. 6 Lakhs for the business of sell and purchase of vehicles and for finance purpose of her husband and on one occasion, all the accused persons went to her parental house and abused her and threatened to kill her as to why she has given application against them with the Mahila Takrar Nivaran Kendra, Beed. The above sentence does not specifically name applicants personally and also does not clarify as to how applicants who are residing in different places, has ill-treated the respondent

No.2 by causing mental and physical cruelty. The applicants are residing separately and they have no concern whatsoever with the complainant and her husband. The allegations are against the husband and there is no role attributed against the present applicants. Therefore, in our considered view, only with a view to harass the applicants, they have been arraigned as an accused in the complaint by respondent No. 2.

12. We have in our recently in similar kind of fact decided Criminal Application No. 2230/2020, Narayan S/o. Eknath Devkar and others Vs. State of Maharashtra and others, on 25.07.2022.

13. The Apex court in Geeta Mehrotra Vs. State of U.P., reported in AIR 2013 SC 181 stated that "It can thus be seen that mere reference to family members without any specific allegations against them would not justify taking cognizance against them. There is a tendency to involve the entire family members in a matrimonial dispute."

14. Our High Court in Shaikh Mushrraf Pasha and Others Versus State of Maharashtra and another, reported in 2021 (2) AVR (Cri.) 343, has observed that continuance of prosecution against relative of husband is nothing but abuse of process of law.

15. Taking into consideration the ratio laid down in the cases of Geeta Mehrotra, Shaikh Mushrraf Pasha (supra) and Narayan Devkar (supra), we are of the considered view that so far as applicants are concerned, there are no specific allegations against them and only with a view to harass them, they have been arrayed as an accused in the FIR. Therefore, in our view, this is a fit case wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure to quash the FIR as against the applicants. Hence, the following order :

ORDER

i. The Criminal Application stands allowed in terms of prayer clauses 'B' and 'C-1' of the application.

ii. The Criminal Application stands disposed of, accordingly.