

(2022) 12 BOM CK 0006

In the Bombay High Court

Case No : Criminal Application No. 1412 Of 2022

Rahul And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

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

Citation : (2022) 12 BOM CK 0006

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

Bench : Division Bench

Advocate : Amol S. Sawant, S. D. Ghayal, Anand Deshmukh

Final Decision : Allowed

Judgement

Abhay S. Waghware, J

1. By way of instant application, husband and in-laws of the complainant - respondent No.2, who set the law in motion by registering Crime No.0082 of 2021, are seeking quashment of the said crime and consequential criminal proceeding arising out of it.

2. Allegations emerging from First Information Report (FIR) are that respondent No.2 - complainant was married to applicant No.1 on 26-06-2019. According to her, after marriage, she went to reside with applicant No.1 husband where all the accused applicants resided jointly. Initially, for 15 days after marriage, she was treated properly, however, she has alleged that thereafter, all the applicants commented that she did not bring sufficient dowry. That her husband commented on her looks and further said that he married her at the instance of his father, otherwise he would not have married her and he used to beat her and further addressed her parents as beggars. He further said that dowry was not given befitting his job and she has alleged ill treatment at his hands. According to her, brother in law Amol used to instigate applicant No.1 husband saying that

she did not serve food to him on time. Her both sisters in law namely Suvarna and Krupali taunted her that she is unable to cook and that her parents did not teach her discipline and they too instigated her husband and her mother in law. As regards to applicant No.6 i.e. husband of sister in law of the complainant, she has alleged that he too complained that he was not served with food and he thereby instigated husband to further abuse her. That she was made to sleep in a common room with all rather than giving her a separate room. She has alleged that applicant No.8 also said that neither he nor his maternal uncle likes her. Lastly she has alleged that husband threatened to upload her video on YouTube and demanded a two wheeler and cash of Rs.3,00,000/- for setting up a Laboratory for his younger brother. With such allegations, she lodged complaint with aforesaid Police Station and crime was registered.

3. Inviting our attention to above FIR, learned counsel for the applicants submitted that apparently allegations are false, baseless, vague, omnibus and general in nature. He emphasized that complaint has been filed merely out of annoyance and to take revenge. It is pointed out that apart from involving husband, all near and dear ones, who have no concerned with the marital discord are tried to be involved with sole intention of harass them. He pointed out that none of the ingredients to attract offence under Section 498-A of the IPC are finding place in the complaint and therefore, according to him entertainment of such complaint and prosecution based on the same would amount to abuse of law. He emphatically submitted that in fact husband has taken steps for restitution of conjugal rights but still complainant did not respond and rather involved entire family of husband in the complaint with ulterior motive. He pointed out that some of the applicants are resident of distinct places and had no concerned with them, however, they too are named in the complaint. Thus according to him, allegations being vague, bald and devoid of any details, the complaint and the proceeding arising out of the same deserve to be quashed by allowing the prayers.

4. While opposing the application, learned APP would submit that complainant was ill treated merely after few days of marriage. There was continuous mental harassment to her by all the applicants. Complainant has clearly narrated and stated who did what. Moreover, there are allegations of demand of two wheeler as well as of Rs.3,00,000/- for setting up a laboratory for one of the applicants. Therefore, such complaint requires to be taken up to a logical end and prosecution deserves fair chance to contest their case and so application be dismissed.

5. Learned counsel for respondent No.2 also opposed the application pointing out that complainant was subjected to ill treatment by all applicants. According to him, merely because some of the applicants are residing at distinct places, that by itself is no ground to allow the application. He points out that there is mental as well as physical harassment to complainant on account of her failure to meet their demands. Offence is clearly made out and therefore, according to him,

prosecution against accused applicants should be allowed to go ahead to unveil the truth.

6. Apparently, present proceeding is for quashing of crime and criminal proceeding arising out of the complaint lodged by present respondent No.2. On minutely going through the FIR, it seems that present respondent No.2 got married to applicant No.1 husband on 26-06-2019. According to the complainant, she was treated properly barely for 15 days or so and thereafter she was maltreated. However, on carefully examining the allegations levelled by her, it is evident that she has imputed allegations against all the applicants about taunting her for bringing less dowry. As to how much dowry was decided has not been clarified by her. Secondly, allegations levelled against husband are that he commented on her looks and further said that he married her only at the instance of his father and that dowry was not given befitting his job. Then she alleges that brothers in law i.e. applicant Nos.4 and 6 complained of not being served food on time. Whereas sisters in law taunted that she could not cook properly. She also seems to be aggrieved for not giving separate room for her. She has attributed instigation to applicant Nos.8 and 10 and lastly, she has alleged about husband putting up demand of money for purchase of two wheeler and Rs.3,00,000/- for setting up laboratory for his younger brother.

7. It is pertinent to note that above allegations are general in nature. What was the nature and manner of ill treatment inflicted on her has not been spelt out in the complaint. When such episodes exactly occurred is not stated in complaint.

8. On going through the papers, it seems that respondent No.2 had approached Women Cell, S.P. Office, Jalgoan and lodged complaint against present applicants. However, it is worth noting that apart from the allegations which are levelled in the FIR, she has alleged that all accused persons at mid night pour petrol on her twice. As to when such events took place is also not stated by her in the complaint before Women Cell and such allegations do not find place in the complaint on the strength of which present crime has been registered. Therefore, on taking audit of the FIR, it seems that allegations are very general in nature as she herself merely stated that on petty grounds she was subjected to mental and physical ill treatment. However, as stated above, nature of ill treatment has not been spelt out in the complaint.

9. Amongst the papers placed before us, we also came across copy of Aadhaar cards of each of the applicants. On scrutiny of the same, it seems that addresses of husband, parents in law and most of the applicants are distinct.

As to when all applicants came together and ill treated her is also not stated in the complaint. Therefore, we are of the opinion that, as pointed out by the learned counsel for applicants, allegations are non-specific, omnibus and general in nature.

10. Very recently, the Hon'ble Apex Court, in the case of Kahkashan Kausar alias Sonam and others v. State of Bihar and others ; (2022) 6 SCC 599, after dealing

with previous land mark cases on this ground in para 18 has held as under :

"18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

11. By slew of judgments the Hon'ble Apex Court time and again held as to when powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) should be exercised by the High Court.

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."

12. Bearing the above discussed settled position in mind and the principles and guidelines laid down by the Hon'ble Apex Court in the case of State of Haryana and others v. Ch. Bhajan Lal ; AIR 1992 SC 604, we are convinced that case in hand also is one of the cases where there is clear attempt to abuse process of law. Making applicants face prosecution with such allegations would definitely amount to harassment and injustice to them. Therefore, in the totality of the facts and circumstances, we are convinced that powers under Section 482 of Cr.P.C. are required to be exercised and hence, we proceed to pass following order :

ORDER

I. The application is allowed.

II. Crime vide FIR No.0082 of 2021 registered at Ramanand Police Station, District Jalgaon for the offences punishable under sections 498-A, 323, 504, 506 read with Section 34 of the IPC and the consequential charge-sheet vide R.C.C. No.522 of 2021, are quashed and set aside.