
(2019) 09 BOM CK 0083

In the Bombay High Court

Case No : Criminal Application No. 3260 Of 2018

Rajesh And Anr

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 19-09-2019

Acts Referred:

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

Citation : (2019) 09 BOM CK 0083

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : Pandurang M. Gaikwad, M.M. Nerlikar, Abhijeet L. Palhal

Final Decision : Allowed

Judgement

K.K. Sonawane, J

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel for parties.

2. The applicants - original accused preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside the First Information Report ("FIR") bearing No. I-151 of 2018 registered at Tofkhana Police Station, Ahmednagar, District Ahmednagar for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC").

3. It has been alleged on behalf of prosecution that the first informant - complainant Swapnali W/o Amish Shinde, approached to the Police of Tofkhana Police Station, Ahmednagar, District Ahmednagar, on 23-03-2018 and ventilated the grievance that her marriage was solemnized on 02-01-2018 with the accused - Amish Anil Shinde. The applicants are the maternal uncles of the husband of complainant-wife. After marriage, complainant - wife joined the company of husband for cohabitation at Bishop Lord Colony, Savedi Ahmednagar. She was

treated in proper manner for about eight days after the marriage at her matrimonial home. Thereafter, the husband and mother-in-law used to scold the complainant that marriage ceremony was not properly performed, as well as her parents did not give proper honour to them and not given household articles as well as gold ornaments in the marriage. The inmates of matrimonial home started maltreating and harassing the complainant. They used to abuse and beat her to satisfy demand of aforesaid articles. According to complainant, she tried to convince the husband and mother-in-law that her parents are not in a position to give such articles. But, the husband and mother-in-law became angry and the husband assaulted her. They used to keep her unfed and harassed her mentally and physically. She disclosed about ill-treatment to her parents. Thereafter, her father also made endeavour to give understanding to the husband, mother-in-law and present applicants for proper treatment to the complainant, but all efforts found unavailing. Thereafter, the complainant - wife filed application with Women Grievance Cell, but did not evoke fruitful result. Eventually, she filed report to the Police of Tofkhana Police Station for penal action against husband, in-laws and present applicants, etc.

4. Pursuant to FIR, Police of Tofkhana Police Station, Ahmednagar, District Ahmednagar registered the crime and set the penal law in motion. Pending the investigation, applicants moved present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR. The applicants, prayed to absolve from the charges pitted against them by quashing and setting aside the first information report bearing Crime No. I-151 of 2018.

5. Learned counsel for applicants vehemently submits that there were no physical and mental cruelty to the complainant on the part of applicants. But, she has filed present false penal proceeding with an malafide intention to harass the applicants. There were no specific allegations about maltreatment and torture meted out to the complainant - wife. According to learned counsel, both the applicants are residing separately at Aurangabad. Applicant No.1 is in construction business whereas applicant No.2 is working as Conductor in Maharashtra State Road Transport Department. The applicants have no any concern with the marital life of complainant-wife and her husband. They have no any reason to cause interference into the domestic affairs of the spouses. The complainant did not mention any specific instances of maltreatment at the hands of applicants. The learned counsel submits that the allegations made in the FIR are vague and general in nature. There was no demand of any kind on the part of applicants. The present complaint is nothing but an abuse of process of law. It would unjust and improper to compel the applicants to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicants.

6. The learned APP as well as learned counsel for respondent No. 2-first informant opposed the contentions put-forth on behalf of applicants and submit that the allegations of ill-treatment nurtured on behalf of complainant in the FIR

discloses commission of crime under Sections 498-A, 323, 504 and 506 etc. of IPC. The complainant categorically described the episode of her maltreatment and torture at the hands of applicants. There was unlawful demand of household articles and gold ornaments from the husband and mother-in-law of complainant. The present applicants are the maternal uncles of the husband and they used to instigate the mother-in-law of complainant.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, we find that the allegations cast on behalf of complainant - wife against the present applicants are totally vague and general in nature. There are no specific allegations attributing overt-act of the applicants to maltreat and harass the complainant - wife. There were no detail particulars given in the FIR about participation of present applicants for their act of cruelty to the complainant or for demand of household articles etc. The allegations about cruelty by applicants are found stray and sweeping in nature. Applicants are the brother of mother-in-law of the complainant-wife. Applicant No. 1 is in construction business whereas applicant No. 2 is working as Conductor in Maharashtra State Road Transport Department. They are residing separately at Aurangabad. Therefore, it can be perceived that the applicants have no reason to cause interference in the marital life of spouses. It is fallacious to appreciate that they are the beneficiaries from the marital discord between the spouses.

8. At this juncture, the question that arises, whether the FIR registered against applicants can be quashed and set aside by exercise of powers under Section 482 of Cr.P.C. It is worth to mention that the Honourable Apex Court in the case of - Kansraj Vs. State of Punja and others reported in (2000) 5 Supreme Court Cases, 207 observed that, "a tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged is likely to affect the case of the prosecution even against the real culprits. In the cases, where accusations are made, the overt-acts attributed to persons other than husband, are required to be proved beyond reasonable doubt. Their Lordships of Apex Court further observed that, "in their over-enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused."

9. In the case of - Preeti Gupta and another Vs. State of Jharkhand and another, reported in (2010) 7 Supreme Court Cases 667, it has been delineated that ultimate object of justice is to find out truth and punish the guilty and protect the innocent. A serious relook of the entire provision of Section 498-A of Cr.P.C. is warranted by the legislature. It was observed that the exaggerated versions of the incidents are also reflected in a very large number of complaints.

10. Likewise, in the case of - Arnesh Kumar Vs. State of Bihar and another, reported in (2014) 8 Supreme Court cases, 273, the Honourable Apex Court elucidated the fact that, "Section 498-A of IPC is a cognizable and non bailable

offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provisions."

11. It is worth to mention that the Honourable Apex Court in the case of Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandrojirao Angre and others, reported in AIR 1988 SC 709, categorically elucidated in paragraph No. 7 as under:

"7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

12. The Honourable Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others reported in MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC) held that "where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR". Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

13. In the light of aforesaid exposition of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants. It would be an futile efforts and would cause injustice to them, if they are compelled to face agony of trial before criminal Court. It would also dissipate the precious time of Court of law as the possibility of their ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicants may not be forced unnecessarily to go on litigation before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :-

ORDER

i. The Criminal Application is allowed.

ii. The penal proceeding initiated against applicants bearing FIR No. I-151 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Tofkhana Police Station, Ahmednagar,

District Ahmednagar, is ordered to be quashed and set aside to their extent only.

iii. Rule is made absolute in terms of prayer clauses "C".

iv. The Criminal Application is disposed of in above terms.

v. No order as to costs.

vi. The fees of appointed counsel to represent respondent No. 2 in present matter is quantified at Rs.3000/- and it is to be paid through High Court Legal Services Authority, Sub-Committee, Aurangabad.