
(2017) 01 BOM CK 0112

In the Bombay High Court

Case No : Criminal Application No. 2622 of 2016

Rupali @ Jyoti W/o Ganesh Kakade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, Section 34, Section 498A, Section 504,
Section 506

Citation : (2017) ALLMRCri 686 : (2017) 2 BomCR(Cri) 351 : (2017) 1 MhLJCrI 665

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. R.B. Temak, Advocate, for the Applicants; Mr. S.G. Karlekar, APP, for the Respondents No.1 to 3; Mr. Vikram S. Undre, Advocate, for the Respondent No. 4

Final Decision : Partly Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties. -

2. At the outset, we make it clear that respondents No. 1 and 2 are the State ? Authorities and no relief is claimed against them, therefore, they are not necessary parties to the present proceedings.

3. On instructions, learned counsel appearing for the applicants does not press the present application on behalf of applicants No. 4 to 6, namely, (4) Shobha W/o Ramesh More, (5) Ramesh S/o Kacharu More and (6) Arun S/o Ramesh More. However, he submits that, in case, they file application for seeking discharge before the concerned court, directions may be given to concerned court for expeditious hearing of the application.

4. The learned counsel appearing for the applicants submits that, so far as applicants No. 1 to 3 are concerned, those are married sisters of applicant No. 6

- Arun Ramesh More. When respondent No. 2 filed complaint on 05-11-2014 with Superintendent of Police (Women Cell) Rural, at Aurangabad, in said complaint no allegations were made against applicants No. 1 to 3. He further submits that even from the complaint dated 28-12-2015 addressed to the Superintendent of Police, it appears that there are no specific allegations against applicants No. 1 to 3. It is submitted that even if allegations in the first information report (for short "FIR") lodged by respondent No. 2 on 13-04-2015 are taken at its face value and read in its entirety, neither specific overt act is alleged against applicants No. 1 to 3 nor any specific incident has been quoted. It is submitted that applicants No. 1 to 3 are residing at different places at their matrimonial houses. It is submitted that allegations in the FIR do not disclose commission of alleged offences by applicants No.1 to 3, hence, present application for quashing FIR deserves to be allowed.

5. The learned APP appearing for respondent - State and learned counsel appearing for respondent No. 2 ? complainant, relying upon the contents of FIR, and also complaint filed by respondent No. 2, and statements of witnesses filed with the charge-sheet submits that an alleged offences are clearly disclosed against all the accused. The prosecution has placed on record sufficient material and on the basis of material trial can be proceeded, therefore, this court may not entertain the application for quashing the charge-sheet bearing RCC No. 321 of 2016 filed pursuant to crime bearing No. 0148 of 2016 dated 13-04-2016 registered with Police Station Gangapur, Tq. Gangapur, District Aurangabad for the offence punishable under section 498A, 323, 504 and 506 read with section 34 of the Indian Penal Code.

6. We have carefully gone through the submissions advanced by the learned counsel appearing for the parties, with their able assistance we have carefully perused the two complaints filed by respondent No. 2 of which reference has already been made in the FIR.

7. So far as allegations in the FIR as against applicants No. 1 to 3 are concerned, no overt acts are attributed and even no specific incident has been quoted. There are general allegations. It is not in dispute that applicants No. 1 to 3 are married sisters of applicant No. 6-Arun, therefore, possibility of falsely implicating them in the commission of alleged offences cannot be ruled out.

8. The Supreme Court in the case of "State of Haryana v. Bhajanlal" (AIR 1992 SC 604) 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 cognisable 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 cognisable 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.

9. Keeping in view the aforesaid category Nos. 1, 4 and 5, we are of the considered view that, so far as applicants No. 1 to 3 are concerned, application deserves to be allowed. Accordingly, application to the extent of applicants No. 1 to 3, namely, (1) Rupali @ Jyoti W/o Ganesh Kakade, (2) Manisha W/o Vijay Hiwale and (3) Sonu Sandip Jadhav is allowed in terms of prayer clause "B-1".

10. So far as applicants No. 4 to 6, namely, (4) Shobha W/o Ramesh More, (5) Ramesh S/o Kachru More and (6) Arun S/o Ramesh More are concerned, application stands rejected since not pressed.

11. The criminal application is partly allowed in above terms. Rule is made absolute accordingly.

12. However, we make it clear that observations made herein before are prima facie in nature and confined to the adjudication of present application. We further make it clear that rejection of present application as against respondents No. 4 to 6 should not be construed as an impediment for them in case they wish to avail appropriate remedy as available in law for discharge.