
(2020) 11 BOM CK 0024

In the Bombay High Court

Case No : Criminal Application (Apl) No. 715 Of 2020

Sahil And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 216, 482
Indian Penal Code, 1860 — Section 383, 386, 420, 504, 506, 509
Information Technology Act, 2000 — Section 67

Citation : (2020) 11 BOM CK 0024

Hon'ble Judges : V. M. Deshpande, J; Anil S. Kilor, J

Bench : Division Bench

Advocate : Anil Mardikar, Sumit Joshi, S.M. Ghodeswar

Final Decision : Dismissed

Judgement

V.M. Deshpande, J

1. Hearing was conducted through Video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. This is an application under Section 482 of Code of Criminal Procedure.

3. By filing the present application, the applicants are praying following reliefs:

"(i) allow this application and further be pleased to quash and set aside the F.I.R. registered by the non-applicant no.1 Police Station Hudkeshwar, Nagpur vide Crime No.305/2020 dated 10.08.2020 (Annexure-P-1), for the offence punishable under Sections 386, 420, 504, 506 and 509 of the Indian Penal Code and section 67 of the Information Technology Act, 2000, being an abuse of process of law and in the interest of justice;

(ii) pending hearing and disposal of the present Criminal Application, by appropriate interim order be pleased to grant stay to the further proceedings in Crime no.305/2020, registered with the non-applicant no.1 Police Station

Hudkeshwar, Nagpur for the offence punishable under Sections 386, 420, 504, 506 and 509 of the Indian Penal Code and section 67 of the Information Technology Act, 2000 (Annexure-P1) and further be pleased to direct the non-applicant no.1 Police Station not to take any coercive steps against the applicants during the pendency of the present application;

(iii) to grant ad-interim exparte relief in terms of prayer clause (ii) and (iii) above;

(iv) to grant any other relief to which the applicants are found entitled in the facts and circumstances of the case".

4. We have heard Shri Anil Mardikar, the learned Senior Counsel for applicants in extenso. Shri S.M. Ghodeswar, the learned Additional Public Prosecutor is representing the State.

5. According to the learned Senior Counsel, there is a considerable delay in lodging the First Information Report in question. Another limb of his submission is that the First Information Report is not having basic ingredients so far as the offence punishable under Sections 386 and 420 of the Indian Penal Code is concerned. He, therefore, submits that this is a fit case wherein this Court should invoke its inherent power to quash the First Information Report. It may be observed here that the learned Senior Counsel did not submit any reported case either of this Court or of the Hon'ble Apex Court, to buttress his submissions.

6. The First Information Report in question is dated 10.08.2020 and it is lodged by non-applicant No.2. There are four applicants in this application. The applicant No.2 is brother of applicant No.1 and applicant No.3 & 4 are, according to the learned Senior Counsel, friends of the applicant No.1.

7. As per the First Information Report, complainant was having her own courier office at locality called Mahal, Nagpur. Her courier business was doing well. In connection with her profession, various persons used to visit her office. Applicant No.1-Sahil Samer Khurshid Sayeed also used to visit the office of the complainant in respect of courier service. Therefore, complainant was knowing the applicant No.1. Thereafter friendship developed in between them. As per the First Information Report, after sometime applicant No.1 disclosed that he loves the complainant. The applicant No.1 used to take the complainant for roaming here and there. At this time, when the complainant asked the applicant No.1 about the marriage, that time he refused for the marriage. Therefore, as per the desire of complainant's parents, she married with another person. However, even after her marriage the applicant No.1 used to make phone calls to her and used to disclose that he is still loving her and consequently the complainant could not stay in her matrimonial house and she obtained divorced.

8. The First Information Report further states that in 2013, she and applicant No.1 purchased one residential apartment in a building known as "Sheela Apartments", situated on Plot No.302, behind Besa Power House, New Narsala, Manewada, Nagpur, for Rs. 21,00,000/- and for that the complainant contributed

Rs. 5,00,000/- and they started residing jointly in the said apartment. During this time applicant No.1 established physical relations with the complainant. While establishing physical relations, the applicant No.1 promised that he will marry with her and he will transfer the flat which stands in his name. This continued for a period of one year, however, the applicant No.1 was not taking steps for marriage.

From the documents filed on record by the applicants in this application, it appears that the complainant has embraced Islam. Ultimately, on 14.04.2015, the applicant No.1 married with non-applicant No.2 in accordance with Muslim rites and customs. Thereafter, the complainant got knowledge that the applicant No.1 was already married. The said fact was suppressed by the applicant No.1. Resultantly, there used to be quarrels in between the complainant and applicant No.1.

9. The First Information Report further states that in July, 2019 one Neelam Jaiswal, who is the applicant No.4 came and she disclosed that she is already married with the applicant No.1 about two years back and she showed photographs of their marriage and other evidence. Therefore, the complainant enquired about the said fact with the applicant No.1 and his family members. On that, they candidly agreed and accepted that applicant No.1 is already married with the applicant No.4.

10. The First Information Report further states that in August, 2019 when the complainant was all alone in the apartment, that time the applicant No.1 and his brother-Taufik Khurshid Sayeed (applicant No.2) came there and asked the complainant that she should transfer the apartment in the name of the applicant No.1. They pressurized the complainant for executing the documents. When she refused to do so, she was assaulted and threats were given to her that if she does not execute the documents, they will not only defame her in the society by parading her naked but they will also kill her. By giving such threats, they obtained signatures on blank documents. In September, the applicant No.1 again came and he took the complainant on the pretext of having meals. However, instead of taking for meals, he took her in a house situated at Surendra Nagar, where the applicant Nos.2 to 4 were present along with others. However, she is not aware about the identity of the other persons who were present there. They all extended threats and obtained signatures on various blank stamp papers. When she made enquiry about such steps, she was assaulted and her passport, Aadhaar card were also snatched from her. Not only that, as per the First Information Report, they pressurized the complainant that she should speak that she is having physical relations with various persons and in order to rescue herself, she bowed to the pressure and spoke accordingly, which was recorded by the applicant No.1 in his cell phone. Thereafter, she was threatened that the said recording will be made known to various persons. Thereafter also, the applicant No.1 and 2 used to make phone calls to sister-in-law of the complainant (i.e. wife of the complainant's brother) and used to extend threats. These are the

allegations against the applicants in the First Information Report.

11. The first submission of the learned Senior Counsel is that there is a considerable delay in lodging the First Information Report in question, therefore, the First Information Report needs to be quashed and set aside.

12. The Hon'ble Apex Court in the case of P. Rajagopal and others vs. State of Tamil Nadu reported in 2019(5) SCC 403, has held thus:

"12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely."

13. The Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Chhaakki Lal and another reported in 2019(12) SCC 326, has held thus:

"26. Delay in setting the law in motion by lodging the complaint or registration of FIR is normally viewed by courts with suspicion because there is possibility of concoction of the case against the accused. But when there is proper explanation for the delay, the prosecution case cannot be doubted on the ground that there was delay in registration of FIR. In this case, the delay in FIR has been properly explained and the same is not fatal to the prosecution case."

14. In the case in hand, if the First Information Report is read as a whole, it is clear that the first informant (i.e. complainant) has given reasons as to why immediately the First Information Report could not be lodged. We would like to reproduce hereinbelow that part of First Information Report, in which explanation is offered for lodging the report, as under:-

"1. मला सहया करण्याकरीता जबरदस्ती करू लागले. त्यावर मी सही करण्यास नकार दिला असता मला दोघांनीही मारहाण केली आणि धमकी दिली की, तु कागदपत्रावर सही केली नाही तर आम्ही तुझी बदनामी करू, तुला इथे नग्न करून पुर्ण फ्लॅटमध्ये फिरवु आणि तुला मारून टाकु असे लज्जास्पद शब्द बोलुन मला धमकावुन कागदपत्रावर माझी सही करून घेतली आणि जातांना परत मला धमकी दिली की, तु पोलीस स्टेशनला आमच्याविरूद्ध रिपोर्ट देण्यास गेली तर आम्ही तुला जिवानीषी ठार मारून टाकु फ्लॅटच्या आजुबाजुला माणसे तुझ्यावर पाळत ठेवुन आहे. असे बोलुन निघुन गेले त्यामुळे मी फार घाबरून गेली होती भितीमुळे मी पोलीस स्टेशनला माहिती दिली नाही.....

2. तेथे मला सर्वांनी धमक्या देवुन अंदाजे दहा ते बारा को-या स्टॅम्प पेपरवर माझ्या जबरदस्ती सहया घेतल्या. मी पेपरबाबत विचारले असता साहील, निलम, जुबैर, तौफिक यांनी मला मारहाण केली आणि माझे पर्समध्ये असलेले पासपोर्ट, आधार कार्ड जबरदस्ती काढुन घेतले. तीथे जबरदस्ती बोलायला लावले की, माझे मीत्रासोबत प्रेमसंबंध आहेत. सगळ्या सोबत माझे शारीरीक संबंध आहे. भीती मुळे आणि सगळ्यांच्या तावडीतुन सुटण्या करीता मला असे बोलावे लागले. याबाबत साहीलने आपले मोबाईल मध्ये रेकॉर्डिंग केली व बोलला की, ही रेकॉर्डिंग मी तुझे परीचीत लोकांना दाखवीन तुझी बदनामी करेल असे बोलुन तेथुन निघुन गेला. साहील आणि त्याचा भाऊ नेहमी माझे वहिनीच्या मोबाईलवर फोन करून शिवीगाळ करून धमकी द्यायचे की मी पोलीस स्टेशनला रिपोर्ट दिली तर मला व माझे कुटुंबाला जिवानीषी

ठार मारून टाकेल."

15. From the reading of the aforesaid, it is clear that the complainant, a helpless lady, was intimidated by the applicants. The intimidation was such that not only there were threats to her that they will defame her in the society but the threats were also that they will kill the complainant. Not only that, the First Information Report states, as it could be seen from the above, that the applicants disclosed the complainant that she is being under watch. In the background of such circumstances and nature of intimidation, if a helpless lady who is residing all alone in the apartment is not immediately rushing to the Police Station, in our view, merely because in such circumstances there is some delay in lodging the First Information Report about the happening to her, cannot be a deciding factor in favour of the applicants. Resultantly, submission of the learned Senior Counsel that the First Information Report must fall on the ground because of the delay, has to be rejected and the same is rejected accordingly. The complainant has explained the delay in First Information Report and further the prosecution must be given an opportunity to explain the delay more elaborately and surely, the said stage will be only during the course of the trial.

16. The another submission of the learned Senior Counsel for the applicant is that there are no ingredients of the offence punishable under Sections 386 and 420 of the Indian Penal Code. Sections 383 and 386 read as under:

"Section 383 - Extortion-Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Section - 386 - Extortion by putting a person in fear of death or grievous hurt.- Whoever commits extortion by putting any person in fear of death or of grievous hurt o that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

17. From the recitals of the First Information Report, it is clear that the signatures of the complainant were obtained on blank stamp papers under the threat that if she is not putting her signature, she will be done to death, therefore, prima facie on the face of the First Information Report itself, there are ingredients to show that the applicants have committed offence punishable under Section 386 of the Indian Penal Code.

18. According to the learned Senior Counsel the following events took place:

a) On 11.03.2014, applicant No.1 obtained a sale-deed which is duly registered before the Sub-Registrar in respect of Apartment No.302, Sheela Apartment, Nagpur.

- b) The name of the applicant was mutated in the revenue records.
- c) In the year 2018, the applicant No.1 executed a Hibinama (Gift deed) in favour of the complainant in her name as Afin Sahil Sayeed.
- d) The name of the complainant was duly recorded in the revenue record.
- f) On 03.08.2019, there was a divorce by notarised documents titled as "Apasi Khulanama".
- g) On 09.09.2019, there is a notarised Hibinama (gift deed) under which Afin Sayeed (complainant), who was professing Islam, executed the gift deed favour of the applicant No.1.
- h) After Hibinama the name of the applicant No.1 is mutated in revenue record.

19. On the collective scrutiny of the documents filed on record by the applicants, we noticed that blank stamp papers were in possession of the applicant No.1 as it could be seen from the documents dated 03.08.2019, which is a Khulanama (divorce deed), which is dated 03.08.2019. The perusal of the documents show that the stamp of said Khulanama is dated 31.07.2019. Thus, even prior to the date of execution of the said Khulanama, the blank stamp paper was in possession of the applicant No.1, though this document was executed on 03.08.2019, it was notarised on 14.08.2019 and at least in this application, no explanation is given for its belated notarisation. Be that as it may, even any explanation which applicants wish to tender, in our view, it will be a defence and that can be tested only during trial when opportunity is given to prosecution to lead the evidence.

20. The Hibinama (gift deed) under which it is stated by the learned Senior Counsel for the applicant that the complainant had gifted away the property in favour of the applicant No.1, is dated 09.09.2019.

21. Perusal of the said documents would also show that the said document is executed on stamp paper dated 31.08.2019. Thus, on the day when the alleged gift deed was executed by the applicant No.2 in favour of the applicant No.1, the applicant No.1 was having blank stamp paper that gives prima facie corroboration to the allegations made in the First Information Report that the signatures of the complainant were obtained by using force and threats.

22. It is pertinent to note here that on perusal of the Hibinama (Gift Deed), executed by non-applicant No.2 in favour of the applicant No.1, on 09.09.2019, no reasons are offered or stated in the said gift deed for transferring her right, title or interest in favour of the applicant No.1. According to us, this aspect has a bearing on the present matter, because of the fact that the applicant No.1 gifted the said apartment to the non-applicant No.2 after performing marriage with her. Thus, in absence of any justifiable and probable reasons, execution of gift deed dated 09.09.2019 in favour of the applicant No.1 by the non-applicant No.2 creates doubt about voluntary transfer of the said apartment by the non-

applicant No.2.

23. This Court noticed that one of the prayers is that no coercive steps be taken against the applicant. That postulates that the applicant has not approached for obtaining anticipatory bail.

24. Be that as it may, when a specific query was made to the learned Senior Counsel as to whether the applicant is having any past criminal record, on that the learned Senior Counsel submits that there are various crimes registered against the applicant. Surprisingly, the entire application is conspicuously silent about the disclosure of any of the offence that is registered against the applicant No.1 and which are pending. The learned Senior Counsel tried to give some feeble explanation about the registration of the crime. In our view, the applicant has not approached to this Court with clean hands, at least the applicant No.1 has suppressed the registration of crimes against him. The litigant who is not approaching with the clean hands before the Court, surely such a litigant is not entitled for any discretionary relief from the Court.

25. The First Information Report is not an encyclopedia. Though, the crime registered against the applicant for the offence punishable under Sections 386, 420, 504, 506, 509 of the Indian Penal Code and Section 67 of the Information Technology Act, 2000, the bare perusal of the First Information Report would show that there are specific allegations against the applicant No.1 that the applicant No.1 mislead the complainant that he is unmarried, gave promise of marriage and even before the Nikah, established sexual relations with the complainant and believing his promise that he is not married, the complainant allowed herself to have sexual relationship. All these can be established during the course of the trial. Insofar as the other applicants are concerned, there are specific allegations against them in respect of role played by them.

26. The Hon'ble Apex Court in the case of P. Kartikalakshmi vs. Sri Ganesh and another reported in 2017(3) SCC 347, has held thus:

"6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right."

27. The trial Court cannot be a mute spectator to the conduct the trial only for the offence which are registered by the police machinery. During the course of the trial, if it is noticed by the learned Judge who will be conducting trial, that the evidence discloses more offences than for which the crime is registered, it will be well within the power and jurisdiction of such a learned Judge to frame the additional charge against the persons who are facing trial.

28. In the totality of the aforesaid, especially in the light of specific allegations in

the First Information Report, we are of the view that this is not a case wherein this Court shall come in way of the prosecution in conducting the detailed investigation. In our view, the First Information Report itself shows that the culpability of the applicants or the innocence can be proved during the trial alone. Therefore, we are not allowing ourselves to terminate entire proceedings at this stage since we are of the view, that the allegations made in the First Information Report require a full dress trial. Consequently the application is meritless and it is rejected.