
(2019) 08 BOM CK 0049

In the Bombay High Court

Case No : Criminal Application No. 3838 Of 2018

Yogesh And Ors

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

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

Citation : (2019) 08 BOM CK 0049

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

Bench : Division Bench

Advocate : B.G. Deshmukh, A.S. Shinde, S.D. Tanbad

Final Decision : Partly 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 Crime No. 133 of 2018 registered at Shivajinagar Police Station, Nanded, District Nanded for the offence punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code ("IPC") as well as the criminal proceeding bearing Regular Criminal Case No. 698 of 2018 (Charge-sheet No. 90 of 2018) filed pursuant to aforesaid Crime.

3. It has been alleged on behalf of prosecution that the first informant - complainant Yogini Yogesh Kumbharkar, on 24-06-2018 approached to the Police of Shivajinagar Police Station, Nanded, District Nanded, and ventilated the grievance that her marriage was solemnized on 15-03-2016 with accused No. 1 - Yogesh Digambar Kumbharkar. The applicants No. 2 and 3 are in-laws of the

complainant-wife. The applicant No. 4 is the maternal Aunt of the husband, whereas, applicant No. 5 is husband of applicant No.4 and applicant No. 6 is their son. Applicants No. 7 is maternal uncle of husband of complainant-wife, whereas, applicant No. 8 is the wife of applicant No.7. After marriage, the complainant - wife joined the company of husband for cohabitation at Nanded. They stayed at Nanded in rented premises for about three months. Thereafter, the spouses shifted residence to Pune. The applicant-husband was indebted due to financial crises. Therefore, once again the spouses shifted residence to Nanded in the month of September, 2017 and started residing separately in rented house in the vicinity of Labour Colony. At that time, in-laws and other applicants used to visit their house and harassed the complainant-wife mentally and physically on account of her marriage with applicant husband. The in-laws and other applicants time and again insisted and forced the applicant-husband to give divorce to the complainant wife for his marriage with the daughter of his Aunt. It has been alleged that due to instigation, the applicant-husband used to keep the complainant-wife unfed, abused and assaulted her frequently. The applicant-husband also harassed the complainant wife mentally and physically for demand of money. According to complainant, mother-in-law had taken out the gold ornaments from her person. The applicant-husband also asked the complainant-wife to bring amount of Rs.2,00,000/- from her parents. The applicant-husband also threatened the complainant-wife, if she failed to bring amount from her parents, she will be killed. Eventually, the complainant-wife filed report to the Police of Shivajinagar Police Station for penal action against husband, in-laws and present applicants, etc.

4. Pursuant to FIR, Police of Shivajinagar Police Station, Nanded, District Nanded registered the crime and set the penal law in motion. The Investigating Officer during the course of investigation collected the documents of marital discord between the spouses as well as other relevant documents. After completion of investigation, he filed the charge-sheet. Pending the proceedings before the learned Magistrate, applicants moved the present application by invoking remedy under Section 482 of the Cr.P.C. for relief to quash and set aside the impugned FIR and simultaneously, prayed to absolve from the charges pitted against them by quashing and setting aside the proceedings bearing RCC No. 698 of 2018, pending before the learned Judicial Magistrate, First Class, Nanded, District Nanded.

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, all the applicants are residing separately. Learned counsel further added that complainant-wife is arrogant and adamant. She is not interested for cohabitation with husband. Learned counsel further added that complainant was already married with one Akash Jaiswal. She had filed the proceedings under the

provisions of Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate First Class, Nanded against her previous husband, namely, Akash Jaiswal. The complainant-wife has suppressed these material facts from this Court. She has also filed similar proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 against the present applicants. The applicants No. 2 to 8 have no any concern with the marital life of applicant No. 1 and complainant-wife. 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 applicants No. 1 and 2 are in-laws residing at Tuljabhavwani Nagar, Taroda Bk at Nanded. The applicants No. 4 to 6 are residing at Phule Market, Shivaji Nagar Nanded. The applicants No. 7 and 8 are also residing at Jaibhawaninagar, Airport Road, Nanded. The applicant No. 6 is 16 years old and student of 11th standard having no any concern with the alleged crime. All these applicants are embroiled in this case only because they are relatives of husband of complainant. 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-complainant 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 money from the applicants. There were allegations of physical and mental torture to the complainant on the part of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicants No. 1 to 3 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants No. 1 to 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3.

8. In regard to allegations nurtured against applicants No. 4 to 8, we find that the allegations cast on behalf of complainant - wife against these applicants are totally vague and general in nature. There are no specific allegations attributing overt-act of these 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 money, etc. The allegations about cruelty by applicants are found stray and sweeping in nature. The applicants No. 4 to 6 are residing separately at Phule Market, Shivaji

Nagar, Nanded. The applicants No. 7 and 8 are also residing at Jaibhawaninagar, Airport Road, Nanded. Applicant No. 6 is the student of XIth standard having no any concern with the alleged crime. The circumstances on record are sufficient to perceive 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.

9. 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."

10. 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.

11. 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."

12. It is worth to mention that the Honourable Apex Court in the case of Madhavrao Jiwaji Rao Scindia and another Versus Sambhajirao Chandojirao 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."

13. 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.

14. In the light of aforesaid expositions of law, in the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicants No. 4 to 8. 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 these 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 partly allowed.
- ii. The Criminal Application in respect of applicants No. 1 to 3 stands disposed of as withdrawn.
- iii. The Criminal Application in respect of applicants No. 4 to 8 is allowed.
- iv. The penal proceeding initiated bearing FIR/Crime No. 133 of 2018, for the offences punishable under Sections 498-A, 323, 504 and 506 read with Section 34 of IPC, registered with Shivajinagar Police Station, Nanded District Nanded, as well as criminal proceeding bearing Regular Criminal Case No. 698 of 2018 (Charge-sheet No. 90 of 2018) pursuant to aforesaid crime, is ordered to be quashed and set aside to the extent of applicants No. 4 to 8 only.
- v. Rule is made absolute partly in terms of prayer clause "B".
- vi. The Criminal Application is disposed of in above terms.
- vii. No order as to costs.