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crapln 115.23 F.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 115 OF 2023

1. Husband of R-2)
2. Father in law of R-2)
3. (mother in law of R-2)
4. Brother in law of R-2)

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through In-charge Officer,
Shevgaon Police Station,
Tal. Shevgaon, Dist. Ahmednagar.
- 2.

..
RESPONDENTS.

Mr. S.R. Andhale, Advocate h/f. Mr. A.G. Ambetkar, Advocate for
appellant
Mr. V.K. Kotecha, App for respondent No.1.
Mr. P.A. Bharat, Advocate for respondent No.2

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 12th SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J.]. :-

1. The applicants have approached this court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the charge sheet in R.C.C. No. 100 of 2021 pending with J.M.F.C. Shevgaon, Dist, Ahmednagar, which is arising out of FIR in crime No. 121 of 2021 registered for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC.

2. On 14.3.2021, respondent No.2 – lodged report with Police Station, Shevgaon, alleging that on 9.7.2012 she got married with – applicant No.1 as per the Hindu rites and customs. After marriage, she resided at her matrimonial home alongwith father in law, mother in law, brother in law and her husband. She has been blessed with two children namely, Pruthviraj and Arnav out of wedlock. The informant alleges that initially for six months, she was treated well. However, thereafter her husband raised a demand of Rs. 2 Lakhs for purchase of truck. Although, she pointed out their poor economic condition, her husband was persistent about demand. Her mother in law was teasing her under the pretext that she is not lucky for their family and she lacks in cooking skills. The brother in law was also asking her to bring the amount of Rs. 2 Lakhs from her parents and used to give threats that he will arrange for second marriage of her

husband. In the month of July, 2019, she left the matrimonial home and on 18.7.2019 informed her parents regarding ill-treatment. However, on 13.10.2020, there was settlement of dispute. Therefore, she returned to the matrimonial home. After 2 months of good treatment, she is again driven out of the house. Therefore since 17.1.2021 she is residing with her parents at her maternal home. On 8.3.2021, her husband, father in law, mother in law, brother in law threatened her parents. Therefore, she lodged the present report.

3. In pursuance of aforesaid report, crime No. 121 of 2021 dated 14.3.2021 came to be registered with Police station, Shevgaon against the applicants. On completion of investigation, charge sheet has been filed in the court of JMFC, at Shevgaon. Consequently, RCC No. 100 of 2021 is pending for trial before the JMFC at Shevgaon.

4. Mr. S.R. Andhale, learned advocate appearing for the applicants submits that the applicants have been falsely implicated in aforesaid crime. Marriage of respondent No.2 has been solemnized with applicant No.1 on 9.7.2012. However, after lapse of 8 years, first time allegations of ill-treatment on account of demand of money has been made. He would submit that the couple is blessed with two children. However, because of some dispute between the applicant No.1 and respondent No.2, respondent No.2 had lodged false FIR implicating all the family members of applicant No.1.

5. Mr. Andhale would point out that the respondent No.2 had filed complaint with similar allegations on 18.7.2019 and same has been withdrawn on 13.10.2020 again, present complaint is filed. He would further submit that even taking the contents of the FIR as it is, the

offence under section 498 of IPC cannot be made out against the applicants. By inviting attention of this court to the statement of witnesses recorded under Section 161 of Cr.PC, he would submit that the statements are stereo-type without particulars of overt acts against the applicants. All the witnesses are family members of respondent No.2. None of them has given particulars of ill-treatment meted out to respondent No.2. He would therefore urge to quash and set aside the FIR, the charge sheet and consequential criminal proceeding in RCC No. 100 of 2021 pending before the JMFC at Shevgaon.

6. Per contra, Mr. V.K. Kotecha, learned APP appearing for the respondent State and Mr. Bharat learned advocate for respondent No.2 vehemently oppose the prayers in the applicants. They would submit that after initial period of six months, respondent No.2 was ill-treated by applicants in pursuance of demand of Rs. 2 Lakhs for purchase of a truck. Finally, she was required to file complaint on 18.7.2019 under the Domestic Violence Act, 2005. thereafter, settlement was arrived and respondent No.2 was again ill-treated for same reason. Therefore, crime NO. 121 of 2021 has been registered.

7. The statements of witnesses are recorded during the course of investigation supports the contents of charge sheet. Hence, there is a triable case against the applicants.

8. We have considered the submissions advanced by learned advocates appearing for respective parties. We have gone through the contents of the FIR and statement of witnesses in charge-sheet. We have also considered undisputed documents as regards to the previous complaint filed by respondent No.2. Apparently, respondent No.1 and

applicant No.1 married in the year 2012. The couple is blessed with two children. Till July, 2019, respondent No.2 resided with the family members i.e. applicants in the matrimonial house. There were no complaints as regards to demand or ill-treatment during this period. First time, respondent no.2 incorporated such allegations in her in D.V. Application No. 5 of 2019, which was later on withdrawn on 13.10.2020 with stipulation that she is residing in matrimonial home since last 9 to 10 months and she has no complaints against her in-laws. Consequently, D.V. Application No. 5 of 2019 was disposed of in terms of the compromise on 13.10.2020.

9. The present FIR has been filed on 4.3.2021 i.e. within a period of 5 months from the date of withdrawal of complaint. The careful scrutiny of FIR depicts that vague, general and omnibus allegations are made against accused persons regarding ill-treatment for trifle reasons. Although, the stipulation regarding demand of Rs. 2 Lakh has been employed, no particulars of such demand have been given. It is not clarified as to when such demand was raised. It is not the case that the demand was in the form of dowry. The omnibus statement is made that all the in-laws were ill-treating the respondent No.2 in pursuance of the demand of Rs. 2 Lakh. Pertinently, such allegations were withdrawn by respondent No.2 in the proceeding under the Domestic Violence Act. However, selfsame allegations are again raised in the present complaint. At this stage, reference can be given to Section 498A of IPC, which reads thus :-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with

imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.— For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

The careful scrutiny of the charge sheet shows that the statements of parents of respondent No.2, her paternal and maternal uncle have been recorded. All the statements are omnibus, stereo-type and sans particulars about the ill-treatment and demand of Rs. 2 Lakhs.

10. At this stage, reference can be given to the observations made by the Supreme Court in the matter of ***Preeti Gupta Vs. State of Jharkhand, reported in (2010)7 SCC 667*** wherein the apex court observed in para. 30, 32 and 34 as under :-

“ It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious

concern.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

11. In yet another case of ***Kahkashan Kausar Vs. State of Bihar reported in (2022)6 SCC 599***, the Supreme Court after taking stock of various decisions, rendered by the supreme Court in the subject matter, observed in para. 17 as under.

“ The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of [section 498A IPC](#) and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

12. Similarly, in the case of ***Sushilkumar Sharma vs. Union of India and others, reported in (2005) 6 SCC 281***, the Supreme Court observed in para. 19 as under :-

“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes

adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

13. Keeping in mind aforesaid observations, we find that this is a fit case to exercise our jurisdiction under Section 482 of Cr.PC. And quash and set aside the proceeding as against applicant Nos. 4 to 7, since the contents of FIR and charge sheet appear to be bereft to make out any

offence against them. Similarly, possibility of their false implication based on such omnibus allegations is discernible from the record. We, therefore, feel it absolutely necessary to quash and set aside the FIR and criminal proceeding against applicant Nos. 4 to 7 in exercise of inherent powers to prevent the abuse of process of law and to secure the ends of justice. Hence, we pass the following order.

14. Keeping in mind the aforesaid observations and the contents of the FIR and charge sheet in the present case, it can be observed that no case can be made out against the applicants for charged offences on the basis of vague and omnibus allegations. If we consider the guidelines espoused by the Supreme Court in the aforesaid matters, there is reason to believe that present FIR and criminal proceeding is an abuse of process of law. We are, therefore, inclined to exercise our jurisdiction under Section 482 of Cr.P.C. and pass the following order :-

ORDER

[I] Criminal application is allowed;

[ii] Charge sheet in R.C.C. No. 100 of 2021 pending with J.M.F.C. Shevgaon, Dist, Ahmednagar, which is arising out of FIR No. 121 of 2021 for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of IPC is hereby quashed and set aside to the extent of applicants herein.

[iii] The application stands disposed of.

[S.G. CHAPALGAONKAR, J]
grt/-

[SMT. VIBHA KANKANWADI, J]