

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 706 OF 2015

DEEPAK S/O SUKHDEO SALUNKHE
AND OTHERS.

..PETITIONERS.

VERSUS

THE STATE OF MAHARASHTRA
AND ANOTHER.

..RESPONDENTS.

...

Advocate for Petitioners : Mr.Nagori Girish
APP for Respondents/State: Mr.S.B. Pulkundwar.

...

CORAM : S.S. SHINDE & A.I.S. CHEEMA,, JJ.

Dated: 24th JUNE, 2015.

PER COURT :-

1. This application has been filed with following prayer:

“B) By appropriate order, the proceedings in Regular Criminal Case 121/2015 pending before the Judicial Magistrate First Class under section 498-A, 313, 354, 504, 506 of Indian Penal Code and Sec 66, 67(A) of Information Technology Act r/w section 34 be quashed and set aside.”

2. The learned Counsel appearing for the petitioners invited our attention to the allegations in the FIR and submitted that even if the entire allegations in the FIR are read carefully, it appears that the complainant has made omnibus statements making general allegations against the applicants including married sisters of the applicant No.1. It is submitted that the applicant has filed proceedings for restitution of conjugal rights in April, 2015 and, therefore, it indicates that the allegations in the FIR are false.

3. It is submitted that on the basis of the material collected by the prosecution agency, it appears that there is no sufficient material collected by the prosecution agency so as to proceed with the trial against the petitioners. It is submitted that so far as petitioners No.4 and 6 are concerned, they are married sisters of the applicant No.1 and by any stretch of imagination, the allegations levelled against them cannot be countenanced and those are without any basis. The learned Counsel for the petitioners invited our attention to the pleadings and grounds taken in the petition and submitted that the petition deserves to be allowed.

4. On the other hand, learned APP appearing for the State submitted that there are serious allegations made by the complainant against the petitioners / accused. There are specific allegations qua each of the accused. Overt-acts are also attributed to each of the accused, there was consistent demand of Rs.5 lakhs by the petitioners from the complainant and therefore, the said allegations need to be tested during trial. Therefore, he submits that petition may be dismissed.

5. We have given careful consideration to the submissions advanced by the learned Counsel for the petitioners and learned APP for the State. With their able assistance, we have perused the pleadings in the petition, annexures thereto including statements of the witnesses recorded by the Investigating Officer. Upon careful perusal of allegations in the complaint / FIR, it is stated that when the complainant went for cohabitation, accused No.1 was serving in HAL Company at Nashik. The complainant resided at Jalgaon for some time and thereafter, accused No.1 took her to Nashik. The applicant No.1 used to bring his friends with him in the house and used to ask the

complainant to consume beer. Petitioner No.1 used to assault complainant. He used to say that he wants to prepare video clip while performing sex with the complainant. As a matter of fact, when accused No.1 switched on mobile camera so as to take video clippings, he assaulted the complainant on refusal to do so. The said fact was told by the complainant to her mother. So far petitioners No.2 and 3 are concerned, there are specific allegations of abusing the complainant and demand of Rs.5 lakhs. Accused No.2 used to bring '*Buwa*' (a Charlatan) in the house and used to play magic and accused No.3 used to encourage the said act of accused No.2. There are also other allegations against accused Nos.1 to 3. There is also allegation that the accused Nos.2 and 3 used to ensure that accused No.1 and complainant should not reside together and if occasionally, they came together, accused No.3 used to bring abortion pills and forcibly ask the complainant to consume it. The accused No.4 in absence of accused No.1 used to say that his brother wanted to marry an educated girl. Accused No.4 also used to say that he likes the complainant very much and he had an evil eye on the complainant. There are also serious allegations against the

accused No.4. As already observed, so far demand of Rs.5 lakhs is concerned, the said allegation is against all the accused persons.

6. It is further stated that on 16th September, 2014 at about 8 to 8.30 p.m., accused persons asked the complainant to leave the matrimonial house. Accused No.4 caught hold hand and pushed the complaint and gave slaps to her. Accused No.5 stated that the complainant should not be allowed to reside in the matrimonial house and she should be driven out.

7. It is not necessary for us to reproduce the entire version in the FIR / complaint. Suffice it to say that there are serious allegations which attract offences as alleged against the accused. The prosecution has collected material including statements of witnesses which also lends support to the version of the complainant. Merely because proceedings are initiated for restitution of conjugal rights either by the complainant or the accused No.1, that by itself cannot lead to the conclusion that the allegations in the complaint are false or exaggerated.

8. In the case of ***Bhaskar Lal Sharma and another vs Monica and others***¹, while explaining scope of Section 482 Cr.P.C. vis-a-vis an offence punishable under section 498A of IPC, the Supreme Court held in paragraphs 10 and 11, thus:

“10. We disagree. “Cruelty” as defined in the Explanation to Section 498-A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression “cruelty”. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.

11. The facts, as alleged, therefore will have to be

1 (2014) 3 SCC 383;

proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

9. Therefore, it is not possible for this Court to quash the proceedings in Regular Criminal Case 121/2015 pending before the Judicial Magistrate First Class, Bhusawal under section 498-A, 313, 354, 504, 506 of Indian Penal Code and Sec 66, 67(A) of Information Technology Act r/w section 34 IPC while exercising writ jurisdiction. The allegations / averments in the complaint will have to be read / taken as they appear and those allegations will have to be tested during the course of trial. At this stage, it is not possible for this Court while exercising writ jurisdiction to segregate role

of each accused and consider prayer of the petitioners for quashing FIR / proceedings in Regular Criminal Case 121/2015 pending before the Judicial Magistrate First Class, Bhusawal.

10. In the light of above, criminal writ petition is dismissed.

The observations made by us in this order are *prima facie* in nature and the trial Court should not get influenced by the same.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)