

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1182 OF 2015

Mr. Dr. Avilash Keshav TiwariPetitioner

V/s.

Mr. Lolarakhnath D. Dixit and othersRespondents

WITH
CRIMINAL WRIT PETITION NO. 1183 OF 2015

Smt. Shweta Avilash TiwariPetitioner

V/s

Mr. Lolarakhnath D. Dixit and othersRespondents

Mr. Manoj J. Bhatt Advocate for Petitioner
Mr. Udayan S. Jain a/w Ms. Grishma Lad
Advocate for respondent nos. 1, 2 & 3.
Mrs. A.A. Mane APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 30, 2015.

PC :

Petitioner in criminal writ petition no. 1182 of 2015 is original complainant in criminal case no. 270 of 2013 pending before Metropolitan Magistrate, 27th Court at Mulund, Mumbai. Petitioner has filed a complaint in the said court on 25/10/2013 alleging therein that he is a

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qualified post graduate doctor practicing in the field of medicine. He is practicing in Homeopathy. That his elder brother Vishal Tiwari was married to Archana on 03/07/2005. They were residing in a joint family. According to him, he hails from orthodox Hindu family. The complainant got married to Shweta on 28/01/2007 and thereafter he started residing freely along with his wife Shweta. He has alleged that his brother's wife Archana had withdrawn herself from the matrimonial house for the reasons best known to her alone.

2) It is further alleged by him in the complaint that after Archana had withdrawn herself from the company of her husband and the members of her matrimonial home, had in connivance and collusion with original accused nos. 2 to 8 had indulged into defaming the complainant and his family members. That she was levelling false and defamatory allegations against them in public.

3) That she had lodged a written report to Mulund police station against her husband and all other members of her matrimonial family on the basis of which crime no. 254 of 2012 is registered at Mulund Police Station on 07/07/2012 for offence punishable under sections

498 (A), 406, 323, 504 r/w 34 of Indian Penal Code.

4) According to complainant, original accused no. 1 i.e. Smt. Archana had levelled allegations against the complainant and his family members alleging therein that they had demanded dowry from her and her parents at the time of marriage. She had also alleged that complainant i.e. present petitioner had taunted, harassed her on the ground of her low level of education and ability and he has instigated his brother to assault her and to throw her out of the matrimonial house. Complainant has further alleged that original accused no. 1 in his complaint i.e. Smt. Archana has also alleged in the F.I.R. that the complainant has insulted her on the ground of her feminity and that she was incapable of progeny, that she was infertile lady. That she had also alleged in the F.I.R. that the complainant had attempted to convince Dr. Satyaprakash Shetty to certify that she was mentally unsound. Complainant has further alleged that in the course of investigation of crime no. 254 of 2012, investigating agency have recorded the statements of accused nos. 2 to 8 who had supported original accused no. 1 and had attempted to fortify her allegations. It is

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also alleged that his brother Vishal has also filed MJ Petition No. A 1062 of 2012 before Family Court at Bandra seeking relief of divorce against original accused no. 1. That original accused no. 1 Archana had filed her written statement in the said proceeding and in the said written statement, she has made false and frivolous allegations against the complainant. That she has made a defamatory statements and further that complainant had instigated her husband to throw her out of the matrimonial house.

5) Complainant has further alleged that besides lodging F.I.R. and making defamatory statements, in written say filed before the Family Court at Bandra, the accused persons in collusion with each other have defamed the complainant in public view by making absurd allegations against him and his wife and daughter as well. That they had informed Dr. Hemant Agarwal that the wife of the complainant was having illicit relations with a Muslim person and has begotten daughter Aanya from him. Complainant was informed about it by Dr. Hemant Agarwal. According to the complainant, Dr. Hemant Agarwal was also informed by the complainant that she would be implicating the complainant and

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his family members in a dowry case. According to the complainant, all accused in the complaint have indulged into character assassination of the complainant and his wife. According to the complainant, accused have committed offence punishable under section 500 of Indian Penal Code.

6) Upon perusing the report filed by the police, learned Magistrate issued process against original accused no. 1 i.e. Smt. Archana Vishal Tiwari, however, complaint as far as other accused are concerned was dismissed.

7) Being aggrieved by the said order of refusal to issue process against original accused nos 2 to 8, complainant i.e. present petitioner had filed criminal revision application no. 1304 of 2014. Wife of the present petitioner namely Shweta Avilash Tiwari had also filed criminal complaint no. 69 of 2013 against the same persons for offence punishable under section 500 of Indian Penal Code on the same grounds. Being aggrieved by the Judgment and Order of learned Magistrate, thereby refusing to issue process against original accused nos. 2 to 8, present petitioner and his wife had approached the court of

sessions by filing criminal revision application no. 1303 of 2014 and 1304 of 2014. Learned Sessions Judge by Judgment and Order dated 21/01/2015 was pleased to dismiss both criminal revision applications. Hence, this writ petition.

8) Learned counsel for the petitioner has vehemently submitted that original accused no. 1 in criminal case no. 270 of 2013 has alleged in the F.I.R. dated 07/07/2012 lodged by her that the present petitioner was insulting her. That despite being a doctor he was insulting her by telling her that she was a barren/infertile lady. That he used to allege that she has a low intelligence quotient. There is allegation that the petitioner had attempted to convince the doctor Satyaprakash Shetty to certify that accused no. 1 was mentally unsound. This Court cannot be oblivious of the fact that process is issued against accused no. 1. As far as accused nos. 2 to 8 are concerned, it is the case of the petitioner that accused nos. 2 to 8 have reiterated the allegations levelled by original accused no. 1 in her F.I.R. That all the accused have made defamatory statements against the petitioner and therefore learned Magistrate ought to have issued process against original accused nos. 2

to 8. It is alleged that in the course of investigation of crime no. 254 of 2012 the witnesses i.e. accused nos. 2 to 8 have reiterated the allegations which find place in the compilation of the charge-sheet. It is also alleged that brother of the petitioner filed a divorce petition against accused no. 1 in the family court at Bandra. In the written statement, accused no. 1 has reiterated her case against present petitioner, in addition she has also made wild allegations against his wife. It is alleged that in the month of June 2012 accused no. 1 accompanied by original accused nos. 2 to 4 had approached Dr. Hemant Agarwal and had alleged that wife of petitioner is having affair with a Muslim person and that she has begotten Aanya from the said Muslim person. According to the petitioner Dr. Hemant Agarwal had informed him about the same. Dr. Hemant Agarwal is shown as a witness. According to learned counsel, all these aspects are sufficient to prima facie hold that accused have committed the said offence. Learned counsel appearing for respondent nos. 1, 2 & 3 has drawn the attention of this court to the verification statement of the petitioner and has urged that all the allegations levelled in the complaint do not find place

in the verification statement. That there is a variance and discrepancy in the complaint and the verification statement and therefore complaint ought to have been dismissed.

9) Learned counsel for the petitioner has placed reliance upon the Judgment of Hon'ble Apex Court in the case of M. A. Ramugam V/s Kittu @ Krishnamoorthy (**2009 A.I.R. Supreme Court 341**) wherein Hon'ble Apex Court has observed that:

“It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellants alone.”

10) In the said case, first informant had filed the complaint against the said petitioner and had levelled certain allegations. In the present case, first informant i.e. accused no. 1 is being prosecuted under section 500 of Indian Penal Code. In the present case, F.I.R. is filed by original accused no. 1. On the basis of allegations levelled in the F.I.R. offence is registered against present petitioner. Statement which is recorded under section 154 of Code of Criminal Procedure, 1973 is signed by the original accused no. 1. As far as original accused nos. 2 to

8 are concerned, their statements recorded under section 162 of Code of Criminal Procedure, 1973 cannot be considered to be the basis to even presume that they had defamed. Section 20 of Prevention of Corruption Act, 1988 reads thus:

“20. Presumption where public servant accepts gratification offered present petitioner. For the simple reason that the said statements are neither signed by the witnesses nor they are admissible evidence. In the course of trial, in the eventuality that there is a evidence which would unfold the act of original accused nos. 2 to 8, the court would be at liberty to prosecute them with the aid of section 319 of Code of Criminal Procedure, 1973. Prima facie at this stage, they cannot be prosecuted.

11) Learned counsel for the petitioner has also placed reliance upon the Judgment of Hon'ble Apex Court in the case of **M. N. Damani V/s S. K. Sinha and others (2001 A.I.R. Supreme Court 2037)**. Hon'ble Apex Court has held that:

“Section 499 W Quashing of Complaint
Private complaint filed against the respondent alleging that they

made imputations against the complainant in an appreciation made under section 436, Cr.P.C. – On perusal of such statement of the complainant and other documents it was found that imputations were made with the intention to (earn) harm the reputation of the complainant and, therefore, prima facie case was made against the respondents and, therefore, the High Court erred in quashing the complaint.”

12) In the present case, original accused no. 1 who had levelled the allegations against the petitioner is being prosecuted. Learned counsel for the petitioner has also placed reliance upon the Judgment in the case of **Angele G. Pereira V/s Dr. Leon Dsouza and another (1998 C.R. (Cri.) 193)**. In that case also complainant was being prosecuted. In the case of **Bikramjit Ahluwalia and Ors. V/s Simran Ahluwalia and another**, Delhi High Court has dismissed the petition filed by the accused seeking relief of quashing of the complaint on the ground that no case was made out. In that case also the person who was being prosecuted was accused in complaint no. 49 of 2012. The Court has held that:

“In essence, the offence of defamation is the harm caused to the

reputation of a person.”

13) Needless to reiterate that complaint against original accused no. 1 would continue to proceed.

14) Section 498 (A) of Indian Penal Code is a benevolent legislation in favour of women. In view of this, petitioner who had suffered the trauma at the hands of the complainant/petitioner, his wife and children has categorically stated that she used to be harassed by them. Since original accused no. 1 who had initiated F.I.R. is being rightly prosecuted, present respondents have been rightly exonerated. Learned Sessions Judge has rightly upheld the order of learned Magistrate thereby issuing process against accused no. 1 and exonerated present respondents. Section 498 (A) of Indian Penal Code is a benevolent legislation. Complainant has to bring it to the notice of the police the nature and degree of harassment and ill-treatment meted out to her in her matrimonial home. In such cases, parents and relatives tend to protect the victim. However, such statements by itself would not be admissible at the trial. Such statements are only for the purpose of corroboration. It is not substantive evidence and therefore, accused

nos. 2 to 8 cannot be prosecuted. In a complaint under section 498 (A) of Indian Penal Code, it is incumbent upon the complainant to make out a case of harassment, cruelty and ill-treatment. Cruelty would include mental cruelty as well as physical cruelty. In such circumstances, rest of the witnesses cannot be prosecuted. Learned revisional court has rightly held that:

“The person who lodged F.I.R. could be termed to be a person who made or publishes to the authority the imputation, if they are untrue or not made in good faith, same cannot be said about the statement of the witnesses recorded by the police in the course of investigation.”

15) Learned revisional court has rightly relief upon the judgment of Delhi High Court delivered in the case of **Imtiaz Ahmad Vs. Durdana Zamir** Wherein Delhi High Court observed that:

“11. Moreover, the defendant had a right to make complaints of her grievances to the authorities. Whenever a person makes a complaint against someone to the lawful authorities and in that complaint he makes imputations against the person complained of, it cannot be considered that the person has publicized or publicly made defamatory averments against a person. If a

prosecution is initiated against the person on the basis of such averments and the person is acquitted holding that the complaint was false, then only a cause of action arises against the complainant for launching a case for false prosecution or for damages on other grounds. Until and unless a competent court holds that complaint was false, no cause of action arises. Approaching a competent authority and praying that the authority should come to the rescue of the complainant and prevent inference of the plaintiff in the family affairs of the defendant cannot amount to a defamatory imputation per se and even if it is published, it does not tend to show that the defendant had intended to lower the reputation of the plaintiff.”

16) Petitioner in writ petition no. 1183 of 2015 is the wife of the petitioner in writ petition no. 1182 of 2015. She feels aggrieved that there are allegations levelled against her by the original accused no. 1 and the same was communicated to her through her husband who was informed by Dr. Hemant Agarwal. The Court cannot be oblivious of the fact that the first informant in crime no. 254 of 2012 is being prosecuted for defamation. The Law would take its own course. There is no reason to prosecute the rest of the accused.

17) In view of this, criminal writ petition nos. 1182 of 2015 & 1183 of 2015 deserves to be dismissed, as being sans merits.

ORDER

(i) Writ petitions stand dismissed.

(SMT. SADHANA S. JADHAV, J.)