

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3597 OF 2013

Hanuman Shivnath Chaurasia

.....Petitioner

V/s.

State of Maharashtra and another

....Respondents

Mr. Osman Chisty i/b Ashoka Law Firm for Petitioner
Mr. Arfan Sait APP for the State

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 15, 2015.

PC :

None appears for the respondent, although served. Matter was adjourned from time to time only to give an opportunity to the respondent to put up her case.

- 2) Heard learned counsel for the petitioner and learned APP.
- 3) Rule.
- 4) Petitioner herein is challenging the order dated 14/08/2013 passed by Additional Sessions Judge Greater Bombay thereby rejecting the revision application which was filed by the petitioner against the order of refusal to discharge in C. C. No. 119/PW/2009 pending before Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai.

5) Petitioner herein happens to be father-in-law of the original complainant i.e. added respondent no. 2 in the present petition. It is the case of prosecution that on 13/10/2008, daughter-in-law of the present petitioner lodged a report at Girgaon Police Station alleging therein that she is harassed and ill-treated in her matrimonial family at the hands of her husband and all other members of her matrimonial family including her brother-in-law and sister-in-law. It is alleged that she is married to the son of the petitioner on 27/04/2008. At the time of marriage, her parents had gifted her valuables, golden ornaments. That her husband had told her not to speak to him and that he has married her against his wish. On 29/04/2008, her mother-in-law had checked her bag. She had questioned her about Rs. 1,50,000/-. That her mother-in-law and sister-in-law had demanded Rs. 1,50,000/- to be fetched from her parents. On 30/04/2008, her husband had attempted to throttle her, he had abused her and had questioned her as to why she has not brought Rs. 1,50,000/- from her parents. As far as present petitioner is concerned, complainant has alleged that on 24/05/2008, her parents had called upon the petitioner and had requested him to

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visit their house. They had requested the petitioner to take complainant to her matrimonial house. Petitioner had reacted by saying that he would ask the willingness of his son and then reply. That the complainant had called upon the petitioner telephonically and at that time, he had instructed her to tell the Panchayat that she does not wish to stay with her husband and thereafter, he would get her married in a respectable family. On the basis of her statement, crime no. 231 of 2008 is registered at Girgaon Police Station against petitioner for offence punishable under section 498 (A), 323, 504, 506 r/w 34 of Indian Penal Code. Petitioner was arrested and subsequently released on bail.

6) After completion of investigation, charge-sheet was filed. Case was registered as C.C. No. 119/PW/2009. Present petitioner had filed an application seeking discharge. Learned Magistrate had rejected the said application seeking discharge by an order dated 30/01/2013.

7) Being aggrieved by the said order, petitioner had filed revision application no. 188 of 2013. Revisional Court has also rejected the application. Learned Revisional Court has observed that F.I.R. discloses

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that petitioner had demanded Rs. 1,50,000/- from the complainant. Learned Revisional Court has also relied upon the statements of some of the witnesses.

8) Learned counsel for the petitioner submits that observations made by the Revisional Court are not in consonance with the compilation of the charge-sheet or the allegations made in the F.I.R. That learned Revisional Court has misconstrued the allegations levelled against the petitioner in the F.I.R.

9) Upon perusal of F.I.R. it is clear that there is no allegation in the F.I.R. that present petitioner had demanded Rs. 1,50,000/- or has ill-treated the complainant on any occasion. All that is stated in the F.I.R. against present petitioner is that he had instructed his daughter-in-law to tell the Panchayat that she does not desire to reside with her husband.

10) At this stage, learned counsel for the petitioner has placed on record the Judgment of Hon'ble Division Bench of this Court dated 16/01/2014 in Family Court Appeal No. 153 of 2013. Family Court by an order dated 07/02/2012 had passed decree of divorce under section

13 (1) (ia) of Hindu Marriage Act in a petition filed by son of the petitioner seeking divorce. The Hon'ble Division Bench (Coram: Smt. V. K. Tahilramani & Shri. P. N. Deshmukh, JJ) has considered the minutes of the meeting of Sarvajanik Samajik Panchayat which was held between son of the petitioner and original complainant. The Hon'ble Division Bench has further held that on 13/10/2008 appellant therein i.e. present respondent had filed F.I.R. against respondent and his family members. That the petitioner was arrested and was in police custody till 16/10/2008. The Hon'ble Division Bench had relied upon the document below Exh. 27 i.e. report of the Panchayat which would clearly indicate that there was no demand for dowry made by the respondent or his family members. The Hon'ble Division Bench has concluded with

“This shows that respondent and his parents were arrested and kept in police custody on the false complaint filed by the appellant. In such case, learned Judge of the Family Court has rightly held that it has caused cruelty to the respondent and his parents.”

11) Records would further indicate that son of present petitioner has also lodged a report against complainant before Social Service Branch.

12) Taking into consideration the compilation of the charge-sheet, statements of the witnesses, minutes of meeting of Sarvajanik Samajik Panchayat, Judgment delivered by the Hon'ble Division Bench of this Court in Family Court Appeal No. 153 of 2013 and the submissions advanced across the bar, this Court is of the opinion that there is no material in the charge-sheet which would make out a case for framing charge against petitioner for offence punishable under section 498 (A) or the provisions of Dowry Prohibition Act. Learned counsel for the petitioner has also drawn the attention of this Court to the order passed in Criminal Application No. 815 of 2012 passed by this Court (Coram : K. U. Chandiwal, J.) on 05/12/2012. Sister-in-law of the complainant i.e. daughter of the petitioner was discharged by the Additional Sessions Judge under section 498 (A) of Indian Penal Code and under the provisions of Dowry Prohibition Act, however, learned Court had not discharged her of the offence i.e. 323, 504, 506 (II) r/w 34 of Indian Penal Code. Discharge application was partly allowed by the

Magistrate. Sister-in-law i.e. Arti Devi had filed revision application no. 815 of 2012. This Hon'ble Court has not interfered with the order discharging the said applicant under section 498 (A), 504, 506 (II) of Indian Penal Code, however, at that stage, matter was sent for mediation and settlement. As on today, decree of divorce passed by the Family Court has been confirmed in Family Court Appeal No. 153 of 2013. There is no question of mediation.

13) It is clear from the compilation of the charge-sheet that there is no sufficient material, much less, any incriminating material against the accused/petitioner for framing of charge under section 498 (A) of Indian Penal Code or section 3 & 4 of Dowry Prohibition Act. Hence, the continuance of proceeding would be an abuse of process of Law. In the absence of any incriminating material the accused would have to go through the ordeal of a criminal trial. Hence, the petitioner deserves to be discharged.

14) It is made clear that co-accused shall not claim parity with present petitioner and in the eventuality that they file application seeking discharge, their application be decided on its own merits.

Hence, following order

ORDER

- (i) Writ petition is allowed.
- (ii) Petitioner herein is discharged for offence punishable under section 498 (A) of Indian Penal Code and section 3 & 4 of Dowry Prohibition Act.
- (iii) Rule is made absolute in above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.