

hvn

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4029 OF 2014**

Radheshyam B. Sontakke and Ors ... Petitioners

Versus

State of Maharashtra and another ... Respondents

Mr. Sidharth Munghate for the petitioners.

Ms. Kripali Rajani for respondent no. 2.

Mr. A.R. Patil, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 26, 2015**

P.C.

Admit. By consent, Rule is made returnable forthwith and heard finally at admission stage.

2. Heard Mr. Munghate for the petitioners, Smt. Rajani for respondent no. 2 and Mr. A.R. Patil, A.P.P. for State/respondent no. 1.

3. The petitioners were charge-sheeted for the offence

punishable under section 498A and 406 read with 34 of Indian Penal Code. Petitioners were accused nos. 2 to 5 in the said charge-sheet. Accused no. 1 is son of petitioner nos.1 and 2. As such in all five persons were charge-sheeted for the abovesaid offences. The petitioners moved the trial Magistrate for discharge under section 239 of the Code of Criminal Procedure. After having heard the petitioners and learned A.P.P. the learned trial Magistrate came to the conclusion that there was no material against the petitioners for the offence punishable under section 498A and 406 read with 34 of Indian Penal Code. The learned Magistrate has taken into consideration the contents of the F.I.R. and has particularly stated that except the passing remarks in the last paragraph of the FIR, there was nothing against the petitioners and therefore, the learned Magistrate discharged the petitioners.

4. The State filed Revision Application before the Sessions Court being Criminal Revision Application No. 72 of 2014. Learned Sessions Judge quashed and set aside the order of the learned Magistrate and directed the petitioners to face the trial in accordance with charge-

sheet. The main observations made by the learned Sessions Judge can be reproduced as under :

“The said allegation is correct or otherwise is a matter for investigation and if there is material to support the said allegation, that aspect will have to be decided at the trial. Suffice it to observe that no case for quashing of FIR is made out and hence, Writ Petition filed by Accused Nos. 2 to 5 for quashing of FIR came to be dismissed by the Hon'ble Bombay High Court.”

5. These observations have been made by the learned Sessions Judge on the basis of the observations made by this court in Writ Petition No. 1618 of 2011 filed by the petitioners. Learned Additional Sessions Judge has further stated in the impugned order that even for obtaining anticipatory bail, these petitioners did not cooperate with the Investigation.

6. I have gone through the F.I.R. The allegations against the petitioners can be seen in the last four lines of the F.I.R. in which respondent no. 2/complainant Ms. Rohini Sontakke has alleged that petitioner no.1 and 2 were also frequently abusing her and that her ornaments weighting about 40 grams are in the custody of the

petitioners. Before I proceed further, it may be stated here that accused no. 1 was married to respondent no. 2 on 10.11.2010 at Amaravati. After few days of the marriage, she came to stay at Thakur Complex, Kandivali (East), Mumbai 400 101 within jurisdiction of Samata Nagar Police station. Respondent no.2 and accused no. 1 mainly stayed at Samata Nagar in the official quarter provided to accused no.1 who was working in NABARD. It does not appear from the FIR that the petitioners had ever stayed with accused nos. 1 (husband) and respondent no. 2 (wife) at Samata Nagar residence provided to accused no. 1.

7. Most of the allegations of cruelty against accused no. 1 disclose that the alleged incidents in question had taken place at Samata Nagar.

8. In my view, the learned Magistrate has taken a right view of the matter that the passing remarks in 2 to 3 lines at the end of FIR will not make the petitioners responsible for the alleged offences committed by accused no. 1. Section 34 cannot be pressed into service

on the bass of such passing remarks. In this regard, it may be noted that petitioner nos. 1 and 2 were mainly staying at Nagpur. Petitioner nos. 3 and 4 are married daughters of petitioner nos. 1 and 2 and sisters of accused no. 1.

9. During the course of hearing, learned counsel for the petitioner, Mr. Munghate has invited my attention to the FIR and the order passed by the Magistrate and has submitted that there was nothing wrong in the order of the Magistrate. It was also brought to my notice that the learned Additional Sessions Judge has set aside the order of the learned Magistrate without there being any cogent reason for the same. Learned Additional Sessions Judge has mainly relied upon the observations made by this court in the order passed in Writ Petition No. 1618 of 2011 filed by the petitioners for quashing of the F.I.R. In this regard it may be noted that the situation at the time of recording of FIR is much different than the situation which emerges out after completion of investigation, at the time of filing of charge-sheet. Therefore, any observations made by this Court in the said writ petition are limited for the purpose of deciding as to whether the FIR

could be quashed or not. It was not necessary for the learned Sessions Judge to follow these observations. Learned Additional Sessions Judge was under obligation to examine the order of the Magistrate in the light of the allegations made in the FIR and other statements recorded by the police under section 161 of the Code of Criminal Procedure. As indicated earlier, I do not find any case against the petitioners which makes out offences punishable under sections 498A or 406 read with 34 of Indian Penal Code. The passing remarks made against the petitioners and other family members shall not constitute the prima facie case.

10. Ms. Rajani, learned counsel appearing for respondent no. 2 invited my attention to the detailed statement given by respondent no.2 before Senior Inspector of Police, Social Service Branch, Mumbai on 3rd March, 2011. The FIR was recorded on 1st April, 2011. It is submitted that the said statement dated 3rd March, 2011 is part of the charge-sheet and therefore, was necessary to be taken into consideration by the learned Magistrate. Learned Advocate Mr. Munghate, on the other hand submits that even though it was part of the charge-sheet, the same was

tendered in the Court by the learned A.P.P. at later stage. It also makes no difference whether it was filed along with charge-sheet or was filed later on in the Court. It is absolutely clear that the statement was prepared by respondent no. 2 and it was submitted to the Social Services Branch. It is signed by respondent no. 2. Therefore, the same cannot be said to be statement under section 161 of the Code of Criminal Procedure. The statements under section 161 of the Code of Criminal Procedure are always recorded only after the registration of the offence under section 154 of the Code of Criminal Procedure. Therefore this complaint given in writing before filing of FIR could not form part of the investigation and the learned Magistrate at the time of framing of charge cannot take into account the allegations made in the said complaint. What the learned Magistrate is under an obligation to examine is the FIR and further investigation conducted by the police. The Court has also taken a note of the fact that the Investigating Officer has not recorded further statement of respondent no. 2 after registration of the offence. As such the allegations made in the complaint dated 3rd March, 2011 do not form part of the charge-sheet. In view thereof, I am not inclined to take into account the allegations

made in the said complaint. It is possible that it may be open to the complainant to file separate complaint or give evidence at the time of trial and apply for addition of accused under section 319 of Code of Criminal Procedure. However, at this stage, I do not find any substance in the charge-sheet which may attract offence punishable under section 406 and 498A read with 34 of Indian Penal Code against the petitioners. The order of the learned Magistrate was absolutely right and the learned Additional Sessions Judge has committed error in setting aside the said order.

11. In view of the above discussions, I pass the following order :

O R D E R

(a) Writ Petition is allowed.

(b) The order passed by the learned Additional Sessions Judge dated 7th October, 2014 in Criminal Revision Application No. 72 of 2014 is hereby set aside. The order passed by the learned Magistrate dated 9th June, 2014 in Criminal Case No.2162/PW/2011 is restored. Rule is made absolute in aforesaid terms.

(JUDGE)