

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1194 OF 2013

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| 1] | Prashant Maruti Margage, |] |
| | Age 36 years, Occu : Service. |] |
| | |] |
| 2] | Smt. Suman Maruti Margage, |] |
| | Age : Major, Occ : Household, |] |
| | |] |
| | Both residing at Room No. 16, |] |
| | 3 rd floor, Bldg. No. 11A, Sharad CHS] | |
| | Kamgar Ngar, Kurla, Mumbai |] ..Applicants. |

VERSUS

- | | | |
|----|---------------------------------------|------------------|
| 1] | State of Maharashtra |] |
| | Through Sr. P.I. Nehru Nagar Police] | |
| | Station, Mumbai. |] |
| | |] |
| 2] | Bajirao Raghunath Tagade, |] |
| | Age 65 years, Business Nil. |] |
| | Ro : 890/K/C, Waghjai Road, |] |
| | Vidhya Nagar, |] |
| | Tal : Bhoir, Dist Pune 411 206. |] ..Respondents. |

Mr.Hrishikesh Mundargi & Mr. A. J. Bardeshkar for the Applicants.
Mr.K. V. Saste, learned APP for the State.
Mr.A. N. Pathan and Mr. Rahul Ameen for Respondent No.2.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
Date : **March 5, 2015.**

P. C. :

1. The Applicants have approached this Court invoking the inherent powers of this Court under section 482 of the Code of Criminal Procedure, 1973, seeking to quash the proceedings of FIR bearing No. 165 of 2013 registered against them with Nehrunagar Police Station, Chembur, Mumbai. Said FIR is registered at the instance of Respondent No.2 for the offence punishable under sections 498A, 406, 304B read with 34 of the Indian Penal Code, 1860.

2. The case of the prosecution is that Applicant No.1 and Sonali - daughter of Respondent No.2-complainant got married on 13th February 2013. On 10th July 2013, Applicant No.2 informed Respondent No.2 that Sonali had set herself ablaze by pouring kerosene on herself and she had been admitted to Rajawadi Hospital, Ghatkopar for treatment. Respondent No.2 along with his wife and other relatives went to the said hospital to see Sonali, however, she was not conscious. Doctor informed them that Sonali had consumed some poison and had 35% burn injuries on her body. The wife of Respondent No.2 was staying

with Sonali in hospital and taking her care. Sonali succumbed to the burn injuries and expired on 20th July 2013 in Masina hospital while taking medical treatment. Respondent No.2 thereafter gave FIR on the basis of which above mentioned FIR / C.R.came to be registered against the Applicants.

3. Respondent No. 2 alleged in his complaint that at the time of marriage he had given gold necklace of 15 gms. to deceased Sonali and a ring of 10 gms to Applicant No.1 as well Rs.20,000/- towards purchasing of clothes and traveling expenses. After marriage Sonali was staying with the Applicants. After one and half month of marriage, the sister of Respondent No.2 expired, therefore, Respondent No.2 requested the Applicants to send Sonali to their village to attend the funeral of his sister. Sonali came alone and attended the funeral. Since shortly thereafter village festival was there, Respondent No.2 kept Sonali at village for 15 days. Respondent No.2 brought Sonali back to the Applicants' house. At that time, Applicant No.1 asked Respondent No.2 as to why Sonali was not sent back in 4 days, as promised. It is alleged that Applicant No.1 insulted Respondent

No.2 as Sonali was not sent back in time, as promised. Sonali was feeling depressed and sad as her father was insulted by Applicant No.1. It is further alleged that deceased informed Respondent No.2 that in her in-laws were abusing and insulting her time and again. It is further alleged that Applicant No.2 was not allowing Applicant No.1 and deceased Sonali to sleep together. On these allegations, FIR is registered against the Applicants for the offence punishable under sections 498A, 406 and 304B read with 34 of the Indian Penal Code, 1860.

4. Mr. Mundargi, learned Counsel appearing for the Applicants submitted that FIR *ex-facie* does not disclose the commission of either of the offences alleged. He submitted that there is no material to show that Sonali was subjected to cruelty. He relied upon the suicidal note as well as the statement of deceased Sonali recorded in the hospital. So far as the offence punishable under section 406 of IPC is concerned, he submitted that ornaments referred to in the FIR are already deposited with the investigating agency. Even otherwise there are no allegation so as to register an offence under this section. He lastly

submitted that in these facts and circumstances, continuation of the proceeding against the Applicants would be the abuse of the process of law and therefore FIR deserves to be quashed.

5. The learned Counsel appearing for Respondent No.2 and learned APP for the State opposed the petition very vehemently. They disputed that FIR does not disclose the commission of offences by the Applicants, as alleged. They submitted that investigation is in progress and at this stage, the FIR cannot be quashed.

6. We have gone through the compilation of petition along with the copy of FIR. Learned APP for the State also tendered original investigation papers for our perusal. Having gone through the same and having considered the rival submissions, we find merit in the petition. Statements of Respondent No.2 and his wife as well as statement of deceased Sonali reveal that on 10th July 2013 Sonali had consumed poison and thereafter poured kerosene on her person and had set her ablaze. Medical report discloses that Sonali had suffered 35%

burn injuries. The spot panchnama was recorded on 10th July 2013. It shows that Sonali had left a suicidal note on the reverse of Pan Card's photocopy. The note discloses that deceased Sonali was depressed as her father was insulted by Applicant No.1 as he had promised to send Sonali back within four days, however brought her back only after 15 days. On the date of incident, Sonali recollected the sad incident and felt depressed and in depression, in order to scare her in-laws, consumed poison meant for keeling bugs. Thereafter she felt more depressed and in that condition she poured kerosene on her person and set herself ablaze. Statement of deceased Sonali was recorded on 12th July 2013 in hospital wherein she has given the same story. As far as the suicidal note and statement of deceased is concerned, there is no allegation that she was subjected to cruelty by the Applicants. The FIR is registered on 20th July 2013 after the death of Sonali, at the instance of Respondent No.2. The FIR also discloses that deceased got herself burn as she could not tolerate insult of her father. In the FIR, there are some allegations that Applicant No.2 was not allowing Applicant No.1 and deceased Sonali to sleep together. However, the statement

of the mother and brother of Sonali, which were recorded respectively on 12th July 2013 and 19th July 2013, do not disclose any sort of cruelty to which Sonali was allegedly subjected by the Applicants. In the supplementary statements of the mother and the brother of deceased Sonali, there are some allegations regarding cruelty, However, it is pertinent to note that these supplementary statements were recorded on 6th November 2013, much after the incident in question.

7. In order to attract the provisions of section 498A of the Indian Penal Code, 1860, what is required to be shown is that deceased was subjected to cruelty. None of the statements including that of deceased Sonali, discloses any allegation regarding the dowry demand or unlawful demand. The suicidal note and statement of the deceased also do not indicate any ill treatment at the hands of Applicants, much less the same led her to commit suicide. It appears that Sonali was very sensitive person and deeply hurt by the insult of her father at the hands of Applicant No.1 and in a state of depression, consumed poison. At this stage, it is required to be noted that Sonali in her statement

recorded in the hospital has stated that the poison was consumed in order to scare in-laws and thereafter in depression she poured kerosene on herself and set herself ablaze. Thus, it is clear that the alleged insult of Respondent No.2, on the ground that deceased was sent back to the matrimonial home late, led to the incident in question. This stray incident cannot be considered as cruelty within the meaning of section 498A of the Indian Penal Code, 1860. As stated above, in the absence of any unlawful demand or dowry demand, the provisions of section 304-B of the Indian Penal Code, 1860 and section 113B of the Indian Evidence Act, 1872 also cannot get attracted. So far as allegation regarding section 405 of the Indian Penal Code, 1860 is concerned, there are no allegations about the misappropriation of the jewelery and amount by the Applicants muchless dishonestly and fraudulently. The Applicants on the contrary have deposited with the police the articles mentioned in the FIR. Therefore, no case is made out for the offence punishable under section 405 of the Indian Penal Code, 1860. Taking overall facts and circumstances of the case into consideration, we are of the considered opinion that continuation of the criminal proceedings against the Applicants

arising from FIR No.165 of 2013 would be the abuse of process of law. Having perused the entire investigation papers, we also find that no case is made out for the commission of any of the offences alleged against the Applicants. The FIR, therefore, deserves to be quashed and set aside. Accordingly, FIR bearing No.165 of 2013 registered against them with Nehrunagar Police Station, Chembur, Mumbai is quashed.

8. Respondent No.2 is at liberty to apply for refund of an amount of Rs.20,000/-, necklace weighing 15 gms and ring weighing 10 gms. Which were recovered under the panchanama dated 24th July 2013 from the Applicants. Investigating Agency shall hand over the same upon applicatin by Respondent No. 2.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]