

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPLN] No.84 of 2014

(Pritee w/o Sandeep Khirale vs. Sandeep Nimbakar Khirale and others)

=====

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

=====

Court's or Judge's Orders

Mr. N.S. Khandewale, Advocate for the Applicant.
Mr. P.V. Bhoyar, A.P.P. for Non-Applicant No.6.

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 18, 2015.

Heard Mr. Khandewale, the learned Counsel for the applicant.

The applicant is before this Court challenging the order passed by the learned Additional Sessions Judge-9, Nagpur, dated 08/08/2014 in Misc. Criminal Application No. 1769/2014.

The starter point is the report of the applicant to Pratapnagar Police Station, Nagpur. The submission of the learned Counsel for the applicant is on the backdrop of this report. He submits that a serious act is reflected in the report. His submission was, the learned Sessions Judge failed to visualize the seriousness of the incident reflected in the report. It was the attempt of the learned Counsel to submit that the learned Sessions Judge, with a passing reference to the controversy as a matrimonial dispute, granted the protection in

the nature of pre-arrest bail. Thus, on the backdrop of the submission of the learned Counsel for the applicant, the perusal of the report reveals the facts, namely the applicant had approached the police station on 25/12/2013, on a grievance made of the ill-treatment caused to her, the police personnel of Ambazari Police Station made an attempt to refer the dispute to the Women Redressal Forum, the dispute was settled on 01/02/2014 and the non-applicant no.1 along with the applicant went to Hyderabad. It is the allegation of the applicant that the non-applicants were making demand of Rs.5,00,000/- and transfer of the house of the applicant in the name of non-applicant no.1 and threats were given to the applicant of dire consequences, if she approaches the Police Station. It is further alleged in the report that the non-applicant no.1, behind back of the applicant, committed theft of 12 tolas of gold ornaments kept in a bag, which was kept in an Almirah with cash amount Rs.10,000/- and some important official documents. The non-applicants apprehending their arrest in Crime No.298/2014 had approached the learned Additional Sessions Judge by filing Misc. Criminal Application No.1769/2014. The learned Sessions Judge, on appreciation of the material namely the report and the submissions of the learned Counsel, arrived at a conclusion that the complaint does not reveal the role played by accused nos.2 to 5, who were already released on *ad interim* bail and the

bail, and the allegations are against the accused no.1. He further, on arriving at a conclusion that the custodial interrogation being not necessary, allowed the application thereby confirmed the *ad interim* bail granted to the applicants with a condition that they should remain present before the Police Station Pratapnagar, Nagpur, whenever they are called by the investigating agency and to co-operate with the investigation. The other conditions are, the applicants shall not leave India without prior permission of the Court and shall not directly or indirectly make any inducement, threat or promise to any witness and tamper the prosecution evidence.

Though initially the learned Counsel for the applicant made an attempt to submit that the non-applicants have not cooperated the investigating agency and committed breach of the conditions, subsequently he fairly submitted that the grievance of the applicant is not in the nature of breach of conditions, but grant of protection in the nature of pre-arrest bail itself. On perusal of the report, it clearly reveals that the allegations against non-applicant nos.2 to 5 are by telephonic conversation, they made demand of money to the tune of Rs. 5,00,000/- and transfer of house property, and given threats of dire consequences in case the applicant approaches the Police Station. It is interesting to note that in the report itself, the

applicant states that in pursuant to the settlement arrived at between the spouses in Women Redressal Forum, the non-applicant no.1 and the applicant left Nagpur. The non-applicant no.1 himself carried the applicant to Hyderabad. Thus, the allegations against the non-applicant nos.2 to 6 are of extending the threats and the demand on telephone.

Considering the fact that non-applicant no.2, the mother-in-law and non-applicant no.3, the father-in-law are aged about 52 and 67 years respectively, it is difficult to say that these non-applicants would be in a position to escalate a physical pressure that too on the backdrop of the report, wherein the allegation is, non-applicant no.1 committed theft of gold ornaments of the applicant and cash amount, in my opinion, the non-applicant nos.2 and 3 were certainly entitled for the protection granted to them. Similar is the case of non-applicant nos.4 to 5. These non-applicant nos.4 and 5 are the brother-in-law and sister-in-law respectively and they are residing at Nagpur. There was a settlement arrived at between the couple. The couple left Nagpur and reached Hyderabad. It is not even the case of the applicant that after reaching Hyderabad, these non-applicant nos.4 and 5 even on a single occasion visited Hyderabad. The allegations are of demand and threats on telephone. Thus, the protection granted to the non-applicant nos.4 and 5 also needs no interference.

Coming to the case of non-applicant no.1, this is one of those cases of a matrimonial discord between the highly educated couple. Though the applicant has not stated anything about her academic qualification, the learned Counsel for the applicant, on a query made to him, was fair enough to submit that the applicant possesses a degree of engineering. From the perusal of the material, it reveals that non-applicant no.1 is also an engineer and works in a private company on the post of Senior Software Engineer.

Coming back to the other factual aspect, the learned Counsel for the applicant made a serious attack on the observations of the learned Sessions Judge, as the learned Sessions Judge observed that it is the matter of matrimonial dispute between the parties. The learned Counsel for the applicant, in support of his submissions that the applicant was constantly and consistently subjected to ill-treatment, made a reference to Annexure-3. It seems that it was a prequel. Perusal of this report shows that the marriage between the spouses was solemnized on 13/02/2013. The applicant in this report alleges that the applicant, referring that the non-applicant no.1 is occupying the position in a private company as Senior Software Engineer at Hyderabad, submits that in the initial period of the matrimonial life, things were going on smoothly. After three months of the matrimonial life, there was a sudden

change in the behaviour of the non-applicant no.1. She alleges that mother-in-law, father-in-law and brother-in-law, who were residing at Pune, were insisting the non-applicant no.1 and non-applicant no.1 was ill-treating the applicant mentally and physically. It will be interesting to note the further allegation of the applicant that the non-applicants were receiving feedback from non-applicant no.1. The non-applicant nos.2 and 3 i.e. the mother-in-law and father-in-law, were apprehending that if the couple carries on a healthy relationship, the non-applicant no.1 may ignore them. Thus, the non-applicant nos.2 to 4 were insisting upon the non-applicant no.1 to ill-treat the applicant. The document placed on record is the settlement arrived at between the couple. The terms of settlement include the assurances of the spouses towards each others of not picking up quarrels on petty reasons, giving a respectful treatment to the relatives, sharing household activities and also sharing the expenses. Now this fact is referred to in the report of the applicant, dated 18/05/2014. The applicant then states that on 18/05/2014, the non-applicant no.1 made an attempt of physical assault and also made demand of gold ornaments and the cash amount. She states that as an act of the non-applicant no.1 was unbearable to her, she proceeded to her friend's house. It is stated in the report that, behind her back, the non-applicant no.1 committed theft of 12 tolas of gold ornaments, which was

kept in a bag and the bag was kept in Almirah with cash amount of Rs.10,000/- and official documents. It further states that the non-applicant no.1 also carried his own belongings and without informing the applicant left the place. Thus, if the report of the applicant at Annexure-3 and the compromise terms between the parties are read together, in my opinion, no error is committed by the learned Sessions Judge in observing that it was a matrimonial dispute, which was the trigger point. The learned Sessions Judge was also not in error on the backdrop of these allegations and arrived at a conclusion that the custodial interrogation in the present case is not necessary. Though the learned Counsel for the applicant made an attempt to submit that a serious act of theft is committed by the non-applicant no.1 and it was something, which was unexpected by the applicant and shook her conscious, if one peruses the sequence of act, I am unable to accept the submission of the learned Counsel for the applicant. The applicant is not an illiterate lady and she is a well qualified lady having a degree of engineering at her credit. She is vocal on saying that the non-applicant no.1 assaulted her on 18/05/2014 and made demand of gold ornaments and cash, and as the act of the non-applicant no.1 was unbearable, she left her house and proceeded to her friend's house. One fails to understand, if the applicant was so vocal to give this version, what prohibited her to give other details of the incident. The

sequence as submitted by the applicant if accepted as it is, the non-applicant no.1, who was in overpowering situation, could not have waited for an opportune time to return back to home and commit theft in his own house. Though it is not necessary for this Court to critically analysis the report, but for the ground raised by the applicant that the learned Sessions Judge only on mechanical reference, that there was a matrimonial dispute, allowed the application, the exercise of this analysis was undertaken. The learned Sessions Judge while allowing the application has taken care of while imposing conditions on the non-applicants, thereby the interest of the investigating agency is also taken care of. The learned Sessions Judge directed the non-applicants to remain present before the Police Station Pratapnagar as and when directed by the investigating agency. It is not the case of the State in the reply that the non-applicants committed any breach of the conditions or flouted the orders of the learned Sessions Judge. The reply filed by the State shows that the investigation is going on and there is no hindrance caused by the non-applicants in the investigation.

Considering all these facts, in my opinion, no error is committed by the learned Sessions Judge in allowing the application with certain conditions. The order passed by the learned Sessions Judge needs no interference. The application, being meritless, deserves to be rejected and the same is rejected.

Needless to state that the observations of this Court are with a broader perspective as the learned Counsel for the applicant made the submission on account of the misappreciation of the learned Sessions Judge. The trial Court may not be influenced by those observations in the further progress and process of the matter and to deal with the matter on its own merits and the material presented before it.

JUDGE

**sdw*