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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION No. 3798 OF 2016

Parag Shamsundar Agrawal & Ors. ... Petitioners
Vs.
State of Maharashtra & Anr. ... Respondents

Ms. Trupti Ashok Bharadi, for the Petitioners.

Mr. K. V. Saste, APP for Respondent No. 1.

CORAM : V. M. KANADE, &
Ms. NUTAN D. SARDESSAI, JJ.

DATE : NOVEMBER 28, 2016

PC.

1. Heard the learned counsel appearing on behalf of the Petitioners, learned APP appearing for Respondent No. 1 – State. Petitioner No. 1 husband and his family members have filed this petition for quashing the complaint filed by the complainant-wife (Respondent No. 2) for the offences punishable under Section 498-A, 406, 504, 323 read with 34 of I.P. Code. The learned counsel appearing for the Petitioners submits that no allegations have been

made against Petitioner Nos. 2 to 5. She submits that though they were not residing with Petitioner No. 1 and his wife, false allegations have been made against them by the complainant. It is further submitted that the complainant initially had filed NC complaint, and thereafter present complaint has been filed. It is submitted that the allegations regarding demand of dowry are false. She invited our attention to the documents, which are annexed to the petition mainly statement of ICICI bank in support of her submissions and also other documents.

2. It is submitted that these documents will reveal that the allegations made by the complainant in her complaint are false. Secondly, it is submitted that she has filed a complaint against Petitioner Nos. 2 to 5 even under the Protection of Women from Domestic Violence Act, 2005 (for short the “said Act). It is further submitted that the said complaint was dismissed by the Judicial Magistrate, F.C. Thane. She submitted that the learned Magistrate was pleased to hold that Petitioner No. 1 and the complainant were residing separately with Petitioner Nos. 2 to 5, and therefore, it did not give rise to domestic relationship between Petitioner Nos. 2 to 5 and

the complainant, as defined under the said Act. She submitted that on the same analogy the complaint filed by Respondent-wife against Petitioner Nos. 2 to 5 under Section 498-A and other provisions of IPC are liable to be quashed and set aside.

3. So far as first submission regarding there being no allegations against Petitioner Nos. 2 to 5 is concerned, perusal of the complaint clearly reveals that specific averment made by the complainant in her complaint shows prima-facie involvement of Petitioner Nos. 1 to 5. She has stated that Petitioner Nos. 1 to 5 had assaulted her whenever she used to go and stay with them on week end. She made further allegation that when she had gone to stay with inlaws in the week end, they had demanded some amount to be brought from her family members for the purpose of celebration of events, which is normally held during the pregnancy of a daughter in law. The said contention of the Petitioners that there are no allegations in the complaint against Petitioner Nos. 2 to 5, therefore, cannot be accepted. Whether these allegations are true or not will have to be decided at the stage of trial only after evidence is led by both parties. At this stage, this Court cannot go through the correctness or falsity of

the averments made in the FIR.

4. The contention of the learned counsel for the Petitioners that NC complaints were filed earlier and only thereafter this FIR was filed for the purpose of extracting money from the Petitioners is also without substance. It is a common knowledge that the women in India are reluctant to go to the police station to file complaint because once the complaint is filed, the chances of reconciliation are destroyed. Therefore, this contention of the petitioners cannot be accepted.

5. So far as the documents on which reliance is placed by the Petitioners are concerned, it is quite well settled in catena of judgments of the Apex Court that at the stage of quashing of FIR only unimpeachable documents produced by the accused can be relied upon by the Court. At this stage, we therefore, cannot on the basis of documents, which are not proved in evidence, test veracity of the averments made in the complaint. The learned counsel then submitted that there are several judgments of the Apex Court in which it is observed that there is a tendency on the part of the wife / daughter in law to unnecessary involve the inlaws and the husband. The directions have also been given by the Apex Court to the police to

make proper inquiry before registration of the FIR. She further submitted that the Government has passed a resolution, directing the police to look into such complaints with great care. There cannot be any manner of doubt regarding the observations made in the said judgments. It is true that the Government had issued directions to the police to investigate such offences carefully and only thereafter register the FIR. In the present case, perusal of the complaint discloses that even an attempt was made to harass the complainant by beating with belt.

6. So far as validity of Section 498-A of IPC is concerned, it has been upheld by the Apex Court that it cannot be said that there is a general rule that allegations made against the inlaws are presumed to be false and the complaint against them is false.

7. So far as judgment of the learned Magistrate, which has been passed on 31.8.2016 in the application filed under the Protection of Women from Domestic Violence Act, 2005, is concerned, the learned Magistrate has dismissed the complaint against the inlaws because he came to a conclusion that there was no domestic relationship, as defined under the said Act between the complainant

and her inlaws. On that ground only, he has rejected the application against the inlaws. It is pertinent to note that the learned Judge has also observed that if the complainant has suffered from their acts, she can file suitable proceedings against them.

8. The Petitioners, therefore, cannot take the benefit of the said order passed by the Magistrate, since that order was passed taking into consideration the provision of the said Act. It is also submitted that the complaint was filed in 2015, the first NC was filed on 14th August, 2015, and the said NC was filed only against Petitioner No. 1-husband. This submission is also without any substance since we have mentioned hereinabove that normally in India women are reluctant to file complaint under Section 498-A IPC and only when things become intolerable, they are constrained to approach the police to file complaint under S. 498-A IPC.

9. The fact that NC complaint is only against the husband, therefore cannot be a ground for coming to a conclusion that Petitioner Nos. 2 to 5 were not involved in the said offences. All these questions can be argued at the time of the trial.

10. It has been settled by the catena of the judgments of the Apex Court and this Court that at the time of quashing an FIR, this Court should be slow in quashing the complaint and permit the investigating officer to carry out investigation and submit a report. It is an admitted position that charge-sheet has not been filed. We are, therefore, not inclined to entertain the prayer of quashing the FIR at this stage while exercising our writ jurisdiction under Article 226 of the Constitution of India and also exercising the inherent power under Section 482 Cr. P.C. There is no substance in the submissions made by the learned counsel appearing on behalf of the Petitioners. Writ petition is, therefore, dismissed.

Sd/-

[Ms. NUTAN D. SARDESSAI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath