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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.653 OF 2017

1. Rajendra s/o Vishwanath Hande APPLICANTS
Age - 58 years, Occ - Service
R/o Umardari, Taluka - Mukhed,
District - Nanded

2. Sanjay s/o Rajendra Hande,
Age - 30 years, Occ - Service
R/o Umardari, Taluka - MUKhed
District - Nanded

At present Borkhedi, Taluka - Vyara,
District - Tapi, (Gujrat State)

VERSUS

1. The State of Maharashtra RESPONDENTS
Through Investigating Officer,
Police Station, Purna,
Taluka - Purna, District - Parbhani

2. Mayuri w/o Gajanan Ghogare,
Age - 18 years, Occ - Household
C/o Maroti s/o Santaram Ghotkar
R/o Nandgaon, Taluka - Purna
District - Parbhani

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Mr. M. B. Sadanshiv, Advocate for the applicants
Mr. M. M. Nerlikar, APP for respondent - State
Ms. Shital Mahajan, Advocate for respondent No.2

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[CORAM : SUNIL P. DESHMUKH, AND
ARUN M. DHAVAL, J.J.]

DATE : 29th JUNE, 2017

ORAL JUDGMENT (Per Sunil P. Deshmukh, J.):

1. Rule. Rule made returnable forthwith and heard finally with
consent of learned advocates for the parties.

2. This criminal application has been moved by applicants, who are distant relatives (मावस सासरा and मावस दिर) of husband of respondent No. 2, seeking quashing of First Information Report lodged by respondent No. 2. Said first information report has been lodged against in all seven accused persons, including the applicants, on the basis of which Crime No. 3 of 2017 has been registered with Purna police station for the offences punishable under section 498A, 323, 504, 504 read with 34 of the Indian Penal Code.

3. Learned advocate for the applicants, at the outset, on instructions, states that the application, so far as applicant No. 2 is concerned, is not being pressed, and, as such, seeks leave to withdraw the application in respect of applicant No. 2. Leave to withdraw stands granted so far as it relates to applicant No. 2 - Sanjay Rajendra Hande. The application is now confined to applicant No. 1 - Rajendra Vishwanath Hande.

4. Respondent No. 2 has alleged in the First Information Report that her marriage was performed on 27th May, 2016 at Nandgaon (Khurd) with one Gajanan Sayaji Ghogare. Her father had promised to give Rs. 2,00,000/- in the marriage. It is alleged that out of agreed Rs.2,00,000/- about Rs.1,60,000/-

were paid by her father and a gold ring weighing five grams and a gold locket weighing ten grams along with some household utilities were given to her husband at the time of her marriage. Rest of Rs.40,000/- were agreed to be given around 14th January (*Makar Sankranti*). For about a month, respondent No.2 was treated well. About a month prior to lodging of the first information report, her father in law Sayaji died of heart attack and thereafter, her harassment for bringing remaining amount of Rs.40,000/- had been pursued by her husband, mother in law and others, including the applicants. She was even beaten and threatened that she would be set on fire. She used to tell said harassment to her sister Chandrabhagabai telephonically as also while she had been to her paternal house for examination. On 1st January, 2017 she was woken up around 3.00 am by her husband and mother in law on the pretext that some of her relative was to be taken to hospital at Nanded. However, she was taken in a jeep by her husband, mother in law, brother in law, applicant No. 2 – (cousin brother in law) and other relatives of her husband to Nandgaon (khurd) at her paternal house in the morning around 7.00 am. There all the accused named in the first information report told her father that they would not take respondent No. 2 back unless balance amount of Rs. 40,000/-

was paid to them. Thereupon, her parents, sister and brother tried to persuade and pacify the accused persons, however, the accused abused and battered them. As such, she lodged first information report at 14.15 hours on 1st January, 2017.

5. Before aforesaid first information report came to be lodged by respondent No. 2, one first information report had already been lodged around 14.00 hours by Sainath Sayaji Ghogare - brother in law of respondent No. 2 registered as Crime No. 2 of 2017. It is alleged in said first information report that since respondent No. 2 had threatened that if she was not taken to her paternal house, she would commit suicide, she was taken to her paternal house by relatives of her husband. However, while they reached the house of father of respondent No. 2, relatives from paternal side of respondent No. 2, in front of the house, started questioning them as to why respondent No. 2 has been brought there and started abusing them in filthy language and also started beating them. While other relatives started pacifying them, paternal relatives of respondent No. 2 started beating them using sticks and all the persons from the side of husband of respondent No. 2 were battered.

6. Learned advocate for the applicants contends that

applicant Rajendra is serving in a nationalized bank as head cashier and is suffering from high blood pressure. He submits that the first information report as has been lodged by respondent No. 2 against him is not tenable inasmuch as the same does not depict any role, much less active role of the applicant in the alleged incident which took place leading to filing of first information report. He submits that the other allegations trying to arraign applicant No. 1 about demand of money, are not only vague but also are non specific and no particular role has been attributed to the applicant. No particulars about his involvement in the case in any way have been given. So far as applicant No. 1 is concerned, no ingredients of section 498A of the Indian Penal Code can be said to be available to arraign him in the offence. Learned advocate goes on to submit that while the first information report refers to that from Rs.2,00,000/-, which allegedly were agreed to be paid, Rs.1,60,000/- had already been paid and for remaining Rs.40,000/-, it is being alleged that, respondent No. 2 was being harassed, however, except vague reference that she was being harassed for Rs.40,000/- no specific role has either been attributed to applicant No. 1 or for that matter any incident has been referred to about demand of money at his instance, rendering the first

information report untenable against him for the offence referable to section 498A of the Indian Penal Code. So far as other offences are concerned, according to him, the first information report depicts that no allegation is imputed to applicant No. 1.

7. Learned advocate submits that applicant No. 1 is serving in a nationalized bank and his prosecution on such vague and evasive allegations is likely to affect his service career and would also cause prejudice to him in several other ways. He, therefore, urges to quash the first information report to the extent of applicant No. 1.

8. In support of his submissions, learned advocate for the applicants places reliance on two judgments of the Supreme Court. One in the case of *“Preeti Gupta and Another V/s State of Jharkhand and Another”* reported in (2010) 7 SCC 667, putting emphasis on paragraph No. 32 therein, reading, thus -

“ 32. *It is a matter of common experience that most of these complaints under Section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern. ”*

9. We may as well refer to that the Supreme Court while rendering aforesaid decision has also observed in paragraph No. 35 of aforesaid judgment thus -

“ 35. *The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At time, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and caution in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection. ”*

10. Other judgment of Supreme Court is in the case of "*Geeta Malhotra and Another V/s State of Uttar Pradesh and Another*" reported in (2012) 10 SCC 741 and observations in paragraphs No. 17 and 18, read, thus-

“ 17. *Aggrieved by the order of the Madras High Court dismissing the petition under Section 482 CrPC, the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz: (Ramesh case, SCC p.509, para 4)*

(iii) *taking cognizance of the alleged offences at (that) stage (was) barred under Section 468 (1) CrPC as it was beyond the period*

of limitation prescribed under Section 468 (2) CrPC.

Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

18. *Their Lordships of the Supreme Court in 'Ramesh V. State of T.N. (2005) 3 SCC 507 : 2005 SCC (Cri) 735' had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband, who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed."*

11. Learned advocate Ms. Mahajan, appearing for respondent No. 2, countering aforesaid submissions advanced on behalf of the applicant, submits that the first information report refers to that applicant No. 1 had been holding influence over family of husband of respondent No. 2 and the same had grown after death of father in law of respondent No. 2. She contends, the first information report does refer to that harassment from

various persons including applicant No. 1 over remaining amount of dowry of Rs.40,000/- has been increased after death of father in law of respondent No. 2. She thus, purports to submit that allegations, so far as applicant No. 1 are concerned, would be covered by provisions of section 498A of the Indian Penal Code that there was demand of dowry and respondent No. 2 was subjected to cruelty for the same. She submits that applicant No. 1 had been instigating other persons and subjecting respondent No. 2 to cruelty. She further goes on to submit that may be the first information report ostensibly does not disclose any overt act by applicant No. 1 in respect of incident which took place on 1st January, 2017, however the incident was culmination of harassment being caused over dowry amount by accused, including the applicants. She, therefore, submits that it is not a clear case wherein it can be said that applicant No. 1 had not played any role in the incident in question at all. In order to buttress her submissions, she purports to rely on a decision of the Supreme Court in the case of *“Taramani Parakh V/s State of M.P. And Others”* reported in 2015 AIR SCW 1817. In said case, it has been held that from reading of the complaint it cannot be held that even if allegations are taken as proved, no case is made out. There are allegations against the applicants about harassing

respondent No. 2, which forced her to leave her matrimonial home. Even now she continues to be separated from the matrimonial home and she apprehends lack of security and safety. Learned advocate, while citing said judgment has referred to observations in paragraph No. 27 therein and contends that as observed in said case, high court should not unduly interfere and that no meticulous examination of the evidence is needed for considering whether case would end in conviction or not at the stage of framing of charge. The court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender. She further refers to that the Supreme Court has also considered that while case may give an indication of civil wrong with no element of criminality, yet the Supreme Court has said that court would not embark upon the critical analysis of the evidence. No facts, evidence and material on record are to be resorted to and relied on. The court has to be primarily concerned with the allegations taken as a whole. Quashing of a charge is exception to the rule of continuous prosecution, where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at the initial stage.

12. After hearing learned advocates for the parties, it appears that house of applicant No.1 and the matrimonial house of respondent No. 2 are distinct and are separated by long distance while relations between applicant No. 1 and respondent No. 2 as can be gathered from the first information report appear to be distant. Besides, no particular active role in demanding dowry amount or instigation for the same has been attributed to applicant No. 1. No particular incident has also been referred to. In the circumstances, observations of the Supreme Court in paragraph No. 12 in the case cited on behalf of respondent No. 2 may well have to be taken into account, reading, thus -

“ 12. *In Kailash Chandra Agrawal & Anr. Vs. State of U.P. & Ors. (Criminal Appeal No.2055 of 2014 decided on 6.9.2014), it was observed: “9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In Kans Raj Vs State of Punjab & Ors. [(2000) 5SCC207], it was observed:*

'5. A tendency has, however, developed for roping in all relations of the in laws of the deceased wives in the matter of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately

weaken the case of the prosecution even against the real accused as appears to have happened in the instant case'

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.

10. *The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Courts process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. Vs. State of Bihar and Anr. [(2000) 8 SCC 547], Pepsi Foods Ltd., and Anr. Vs Special Judicial Magistrate and Ors. [(1998) 5 SCC 749], State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. [(1992) Suppl 1 SCC 335], and Asmathunnisa Vs. State of A.P. Represented by the Public Prosecutor, High Court of A.P. Hyderabad and Anr. [(2011) 11 SCC 259]”*

13. Apart from aforesaid, the first information report does not disclose any role of applicant No. 1 in the incident which had occurred on 1st January, 2017 at Nandgaon (Kh). No act is even alleged against applicant No. 1 in respect of the incident in the first information report. Reading of the first information report in Crime No. 3 of 2017, as a whole would show that imputations against applicant No. 1 appear to be far too vague and infirm to

bring about case under section 498A of the Indian Penal Code against him.

14. Learned APP although has submitted that matter is under investigation, yet, thus far, he is not in a position to lay hands to show that the first information report can be said to make out any case for arraigning applicant No.1 in the crime registered for offences punishable under section 498A of the Indian Penal Code or for that matter any other offence.

15. In the circumstances, criminal application succeeds partly. Application stands allowed to the extent of applicant No. 1 – Rajendra s/o Vishwanath Hande and stands rejected to the extent of applicant No. 2 – Sanjay s/o Rajendra Hande as withdrawn. First Information Report dated 1st January, 2017 lodged by respondent No. 2 and further proceedings in pursuance of Crime No. 3 of 2017 registered with Purna Police Station, District – Parbhani for the offence punishable under section 498A, 323, 504, 506 read with 34 of the Indian Penal Code stands set aside qua applicant No. 1. Rule is made absolute in aforesaid terms.

[ARUN M. DHAVAL, J.]

[SUNIL P. DESHMUKH, J.]