

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.819 OF 2017

MANISH BAPURAO GANVIR AND ORS.)...PETITIONERS

V/s.

SANGITA MANISH GANVIR AND ANR.)...RESPONDENTS

Mr.C.S.Joshi, Advocate for the Petitioners.

Mr.R.V.Sankpal, Advocate for Respondent No.1.

Mr.S.R.Shinde, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th SEPTEMBER 2017

P.C. :

1 Rule. Rule is made returnable forthwith. Heard by consent finally.

2 This is petition by accused nos.1 to 4 who are facing trial of offences punishable under Sections 498A and 406 read with Section 34 of the Indian Penal Code (IPC) which is pending before the learned Metropolitan Magistrate, 27th Court, Mulund,

Mumbai. Petitioners / accused by this petition are praying for quashing and setting aside the order dated 17th February 2016 passed by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai, thereby rejecting their application for discharge and further order dated 30th January 2017 passed by the revisional court confirming the order rejecting the application for discharge passed by the learned Metropolitan Magistrate.

3 I have heard the learned advocate appearing for the petitioners / accused at great length of time. He argued that material on record shows that accused no.4 Ashlesha Gedam was out of India from 2007 to 2nd April 2009. In the wake of this fact, averment in the First Information Report (FIR) to the effect that she had prohibited the First Informant / respondent no.1 from entering in her matrimonial house on 27th July 2008 is per se false and continuation of such proceedings would result in abuse of process of law. The learned advocate further argued that there are numerous representations made by respondent no.1 / First Informant / wife to various authorities including the Chief

Secretary and other authorities from the year 2009. All those representations are conspicuously silent about streedhan as well as demand of money. He further argued that respondent no.1 / original complainant has candidly admitted before the learned family court in divorce proceedings that in the year 2009, Ashlesha was in London, whereas the petitioner no.1 / husband was taking education at Lucknow, but still she filed FIR against them. It is further argued that examination in chief of the First Informant commenced on 21st March 2012 and then further chief examination started after one year and thirteen days. This is obviously done for delaying the trial because as per judgment of the Hon'ble Apex Court in K.Srinivas vs. K.Sunita¹ if applicant / accused persons are acquitted of offences alleged against them, then that will be a ground for divorce proceedings. It is further averred that false prosecution of Ashlesha by respondent no.1 is going on which amounts to abuse of process of law.

4 The learned advocate further argued that as per judgment of this court in the matter of Sharadchandra Marathe

1 Civil Appeal No.1213 of 2006 decided on 19th November 2014

vs. Gurushant Kamble and Others² even after framing of charge, accused persons can claim discharge. The learned advocate placed reliance on paragraph 20 of the said judgment and by reading out that paragraph, the learned advocate argued that there can be cases where patently false statements are made and where true facts are intentionally suppressed in the complaint causing grave consequences. He further read the observations in the said judgment regarding scope of inherent powers of this court under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for preventing abuse of process of the court.

5 The learned advocate for petitioners further placed reliance on judgment in the matter of **Onkar Nath Mishra and Ors. vs. State**³. By reading out paragraph 11 of that judgment, he contended that what needs to be considered is whether there is ground for presuming that the offence has been committed and not a ground for convicting the accused. The court has to apply its mind to this question and to ascertain whether there is sufficient ground for proceeding against the accused.

2 1986 Mh.LJ 738

3 2008 CRI.L.J. 1391

6 On behalf of petitioners, further reliance is placed on the judgment in the matter of **Preeti Gupta vs. State of Jharkhand**⁴ as well as the judgment of this court in **Smt.Ishrat Ikhlas Patel & Ors. vs. Sub-Inspector of Police**⁵ wherein judgment in the matter of **Preeti Gupta (supra)** is relied. The learned advocate read out paragraph 21 in the matter of **Preeti Gupta (supra)** wherein observations of the Hon'ble Apex Court in the matter of **Madhavrao Jiwajirao Schindia & Others vs. Sambhajirao Angre and Others**⁶ are reproduced. Taking aid of these observations, the learned advocate observed that powers of the court cannot be utilized for any oblique purpose and if in the opinion of the court chances of an ultimate conviction are bleak, then proceeding deserves to be quashed. With the aid of judgment in the matter of **Smt.Ishrat Patel (supra)** the learned advocate argued that case in hand requires quashing of proceedings. With the aid of this judgment, the learned advocate for the petitioners argued that it is the duty of the court to consider the material on record at its face value in order to

4 [2010] 8 JT 410

5 Criminal Writ Petition No.2919 of 2013 decided on 7th July 2014

6 (1988) 1 SCC 692

ascertain whether all ingredients constituting alleged offence are made out. The court is not expected to go deep into the probative value of the material on record and what needs to be considered is whether there is ground for presuming that the offence has been committed.

7 Reliance is further placed on judgment in the matter of State of Karnataka vs. Muniswamy and Others⁷ and particularly paragraph 10 thereof in order to demonstrate that the court is not enjoined to accept blindly the decision of the prosecution to prosecute an accused and to direct them to face trial. The learned advocate further relied on judgment of Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja and Ors.⁸ and contended that as held in this judgment, provision is made by amending the Cr.P.C. in order to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure. What is required to be considered is whether there is sufficient ground to

7 (1977) 2 Supreme Court Cases 699

8 2015 ALL SCR (O.C.C.) 127

frame charge and for this limited purpose, the court is duty bound to weigh the material on record.

8 The learned advocate for the petitioners further placed reliance on judgment in **State of Tamil Nadu vs. N. Suresh Rajan and Another**⁹ in order to point out the law regarding legal position concerning the issue of discharge. By placing reliance on paragraphs 29, 30 and 31.3 of the said judgment, the learned advocate submitted that at the stage of framing of charge, it is required to be seen as to whether there is prima facie case for proceeding against the accused, and that, at that stage, the law does not permit mini trial.

9 I have also heard the learned advocate appearing for respondent no.1 and the learned advocate appearing for respondent no.2.

10 It is not in dispute that the case before the learned trial court is a warrant triable case by the Magistrate. Chapter XIX of

9 (2014) 11 Supreme Court Cases 709

the Cr.P.C. deals with trial of warrant cases. Section 239 thereof deals with contingencies when accused in such cases are entitled for discharge. For the sake of convenience, Section 239 needs reproduction and it reads thus :

“239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

11 Bare perusal of this provision makes it clear that when the court comes to the conclusion that charge against the accused is groundless, then the accused is entitled for discharge. Catena of judgments relied by the learned advocate appearing for petitioners which are minutely perused by me requires that scrutiny of material on record needs to be limited only for the purpose of ascertaining whether the charge is groundless or whether there

are sufficient grounds to proceed against accused persons. At this juncture, it is apposite to quote judgment of the Hon'ble Apex Court in the matter of **Ratilal Bhanji Mithani vs. State of Maharashtra and Others**¹⁰. This is particularly so, because, in the case in hand, charge is already framed and explained to petitioners and even evidence of the First Informant is recorded partly. Thus, the stage of discharge has already passed. What is challenged in the instant application is order rejecting the discharge, and subsequently, the order of the Sessions Judge confirming the order of discharge passed by the learned JMFC. The relevant observations in the matter of **Ratilal Bhanji Mithani (supra)** need to be quoted and it reads thus :

“In a warrant case instituted otherwise on a police report, 'discharge' or 'acquittal' of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of 'discharge' and 'acquittal' are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule

¹⁰ (1979) 2 Supreme Court Cases 179

there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and he considers for reasons to be recorded, in the light of the evidence that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. (paragraph 27)

Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973). (paragraph 28)

If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, 'discharges' the accused, such an acquittal, without trial, even if clothed as 'discharge', will be illegal. This is precisely what has happened in the instant case. (paragraph 30)

12 It is, thus, clear that after framing of the charge, the Magistrate can either acquit or convict the accused but he cannot go back to discharge the accused. In the case in hand, charge has already been framed and evidence of the prosecution is being recorded. Therefore, the prayer made in this petition for quashing and setting aside the impugned order for discharge of petitioners cannot be granted, in the wake of the observations of the Hon'ble Apex Court in the matter of **Ratilal Bhanji Mithani (supra)**.

13 Now let us consider the material collected by the Investigator in order to ascertain whether the charge leveled against petitioners and which is actually framed and explained to accused persons is groundless or whether there are sufficient grounds for presuming that petitioners have committed offences alleged against them. These are requirement of Sections 239 and 240 of the Cr.P.C. which are relevant for the instant case. The FIR lodged by respondent no.1 Sangita Ganvir categorically mentions that her husband, in-laws as well as sister-in-law had made illegal demand of money and as those demands were not fulfilled by her

parents, she is subjected to cruelty by them. It is categorically averred in the FIR that amount of Rs.5 lakh came to be demanded from her by her husband, in-laws as well as sister-in-law. The First Informant has alleged that they all have subjected her to mental as well as physical cruelty. Apart from this, she has averred about the incident dated 27th July 2008, which according to the learned advocate appearing for petitioners is totally improbable, petitioner/accused no.4 Ashlesha – sister-in-law being out of India on that date. Even if this allegation is ignored, then also, the report lodged by respondent no.1 / First Informant contains allegations regarding offences under Sections 498A as well as 406 of the IPC. Then, there are statements of Masa Meshram, Madhuleela Masa Meshram, Shashikala Ramteke and other prosecution witnesses which are containing averments regarding subjecting a married woman to cruelty as well as criminal breach of trust by misappropriating streedhan of a married woman. In the wake of this material collected by the Investigator during the course of investigation, it cannot be said that charge against petitioners is groundless. It may or may not

result in conviction, but petitioners cannot claim discharge or it cannot be said that their prosecution is an abuse of process of law. Such short circuitous path cannot be adopted in order to thwart the trial in the wake of material collected by the Investigator and reflected from the charge-sheet.

14 Considering the material collected by the Investigator, which is prima facie demonstrating commission of alleged offences, petitioners who are now facing trial after framing of the charge cannot be granted relief as claimed. The revisional court has properly considered the entire material on record to hold that the same is sufficient for framing the charge.

15 In this view of the matter, the petition is devoid of merit and the same is dismissed.

16 Rule is accordingly discharged.

(A. M. BADAR, J.)