IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.577 OF 2004

Smt.Bina R. Khosla ... Petitioner
versus
The State of Maharashtra ... Respondent

Mr.Rajendra Sorankar for Petitioner.
Mr.Y.M.Nakhwa, APP, for State.
None for Respondent no.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 7th September 2017

PC :

1. The petitioner was impleaded as accused no.2 in CR No.82 of 2001 registered with R.A.Kidwai Marg Police Station for offences punishable under Sections 498-A, 406 read with Section 34 of Indian Penal Code. The first information report (`FIR') was registered at the instance of respondent no.2. The police conducted investigation and filed charge sheet before the competent Court. The proceedings are pending in the Court of the Metropolitan Magistrate, 13th Court, at Dadar, Mumbai vide CC No.215/P/2001.

2. The brief facts of the prosecution case are as follows :

(a) The complainant Smt.Bharti Vivek Khosala had lodged the first information report in which it was stated that she was married to Mr.Vivek Rajpal Khosala (accused no.1) on 4th December 1993 at Santacruz, Mumbai and the expenses of the marriage were incurred by her father. The complainant's father had gifted gold ornaments and cash at the time of marriage. It is also alleged that the complainant's father had also incurred engagement expenses as well as the marriage expenses;

(b) After the marriage, complainant along with her husband (accused no.1) stayed at her matrimonial home along with the petitioner (accused no.2). The petitioner is the mother-in-law of the complainant. All of them resided at Flat No.2, Mehernaz, 14th floor, Cuffe Parade, Mumbai;

(c) About seven to eight months after the marriage, the petitioner and the accused no.1 started demanding car and place for office to be arranged by complainants. It is further alleged that since the complainant was not complying with the demands, the accused were passing comments on her. It is alleged that the petitioner sold off the residential flat at Cuffe Parade and asked the complainant to request her father to give their vacant flat at Bandra for temporary stay till new house is bought. It is further alleged that the complainant's father allowed complainant and her husband to stay in his flat. The husband exerted pressure on the complainant to tell her father for giving the office premises and accordingly the complainant's father also handed over the office along with the office material to the husband of the complainant. The husband also took about Rs.1.5 lakhs from the client of the father of the complainant at Mauritius;

(d) It is alleged that the mother-in-law i.e. petitioner had sold off the flat at Cuffe Parade and out of the sale proceeds, she had given Rs.40 lakhs to complainant's husband and he had deposited said amount in the name of complainant in Global Trust Bank, Bandra some where in September-2000. It is alleged that the complainant's husband had obtained the signature of the complainant on blank cheques and on blank paper for buying flat, but instead of buying a flat, he deposited the said money in the name of his daughter and subsequently withdrawn the said amount;

(e) The husband of the complainant also took her jewellery for conducting business which was given to the complainant by her father and the same was squandered by him. The complainant's husband also took her signatures on various applications for the purpose of credit card. When the complainant was staying with her parents, the complaint came to be lodged by the brother of the complainant initially and subsequently the FIR was registered at the instance of the complainant on 4th December 1993. As stated above, on completing the investigation, the charge sheet was filed before the concerned Court.

3. The petitioner who is the mother-in-law of the complainant had preferred an application for discharge before the Court of Magistrate along with the accused no.1. The said application was rejected vide order dated 4th December 2002. The said order was challenged by the petitioner before the Court of Sessions by preferring the Revision Application. The said revision application was rejected by the Sessions Court vide order dated 19th July 2003. Being aggrieved by the aforesaid orders, the petitioner had preferred the present petition before this Court.

4. The husband of the complainant (accused no.1) and the complainant preferred a joint petition before the Family Court at Bandra which was numbered as Petition No.F-1087 of 2004 seeking divorce by mutual consent. The said petition was filed under Section 13-B of the Hindu Marriage Act, 1955. By order dated 29th September 2005, the Family Court, at Bandra allowed the said joint petition and the marriage between the complainant and the accused no.1 (husband) which was solemnized on 4th December 1993 was dissolved by decree of divorce by mutual consent under Section 13-B of Hindu Marriage Act, 1955. The complainant and the accused no.1 also executed the consent terms which were part of the said decree passed by the Family Court.

5. The learned counsel for the petitioner submitted that petitioner has been falsely implicated in the FIR lodged by the respondent no.2. The marriage was solemnized between the respondent no.2 and the accused no.1 on 4th December 1993 and after a period of about eight years, the FIR was lodged on 3rd April 2001. It is submitted that the belated registration of the FIR itself shows that the allegations made against the petitioner are false and frivolous. It is submitted that in the FIR, the complainant has referred to the incidents from year 1993 which had occurred after the marriage. In the event there was harassment which was caused to the petitioner from 1993, she would not have waited till 2001 for lodging the FIR. It is, therefore, submitted that the allegations made in the FIR are after thought and there is no substance in the said allegations. It is further submitted that taking the FIR as it is, there is no material on record to substantiate the charge u/s 498-A and 406 of IPC. It is submitted that to substantiate the charge under the

aforesaid penal provisions, there has to be material of demand and/or of cruelty and there has to be entrustment of property to the accused. It is submitted that except some bald and vague allegations, there is no material to show that there was any cruelty being caused by the petitioner to the complainant. It is submitted that the allegations were made by the complainant and the other witnesses mainly against the accused no.1. It is submitted that the complainant and the accused no.1 had preferred a joint petition before the Family Court and had obtained divorce by mutual consent and had executed consent terms with regard to the maintenance and custody of the child. It is submitted that the complainant in the FIR has stated that the flat was sold off by the petitioner and the amount of Rs.40 lakh was deposited by the accused no.1 into the account of the complainant. This shows that the after selling the flat premises, the petitioner had handed over the amount of Rs.40 lakh which was deposited into the account of the complainant. The allegation about withdrawal of said amount and misappropriation of said amount is being made against the accused no.1. It is further submitted that there is no allegation of entrustment of any jewellery or any other articles to the petitioner-accused. On the contrary, the first informant in the FIR has stated that the jewellery/ornaments were handed over to the accused no.1 for the purpose of business. The other allegations about the cash being handed over or financial help being given, are attributed to the accused no.1. It is therefore submitted that there was no material before the Trial Court to frame the charge against the petitioner-accused and hence, the Trial Court as well as the Sessions Court ought to have discharged the petitioner from the said case.

6. On perusal of the documents on record more particularly the first information report, it is apparent that the primary allegations are against the accused no.1. The petitioner is being impleaded as accused on the basis of some vague allegations. It is pertinent to note that the marriage between the parties was solemnized on 4th December 1993 and the first information report was lodged after a period of about 8 years on 3rd April 2001. The allegations about the entrustment of ornaments is made against the husband i.e. accused no.1 and therefore, there is nothing on record to fortify the charge under Section 406 of Indian Penal Code against the petitioner, as there was no entrustment of any property to the petitioner (accused no.2). It is also necessary to note that the complainant herself has stated in the FIR that the residential premises was sold off by the petitioner and an amount of Rs.40 lakh was handed over to the accused no.1 which was deposited by him in the account of the petitioner which was allegedly subsequently withdrawn by accused no.1. It is pertinent to note that the petitioner would not have handed over such a huge amount to the complainant and her husband in case she had any intentions to cause any harassment to the complainant. It is also necessary to note that the allegation about the harassment and financial help or demands are mainly attributed to the accused no.1. It is necessary to consider that the complainant and her husband had filed a petition for divorce by mutual consent and the said petition has been allowed by the Family Court and the marriage between the complainant and the accused no.1 has been dissolved. It is true that the said event had occurred subsequently, however, the said fact cannot be brushed aside as the primary allegations were made against the accused no.1 and both the parties had filed consent terms before the Family Court, which

were the part of the decree of divorce. As far as petitioner is concerned, the complainant had made some bald allegations which are not sufficient to attract the charge u/s 498-A or Section 406 of Indian Penal Code.

7. The learned Lower Court ought to have appreciated that the marriage took place in the month of December-1993 and the complainant stayed till the petitioner's flat was sold. The complainant had alleged that the amount received towards sale of flat was squandered by her husband. The present complaint was lodged on 3rd April 2001 i.e. about eight years from the date of marriage. It is pertinent to note that since 1993 from the date of marriage and till 2001 there were no complaints of ill-treatment at the hands of the petitioner by the complainant. Initially complaint dated 22nd March 2001 was lodged by the brother of the complainant. No case is made out that the ornaments and money were mis-appropriated by the petitioner. All the allegations are against her son. The complainant is primarily aggrieved by the conduct of her husband and the petitioner cannot be punished for that and she cannot be made to undergo trial for no fault of her.

8. As the petitioner being aged senior lady her case has not been distinguished by the Courts below. In absence of any allegation to attract the charges merely moulding or recasting of allegation to implicate petitioner as co-accused cannot be met with spirit of law and intention of legislature while drafting the above legislation was not to use the same as pressure tactics for recovery of money but it was for social reform and to punish guilty.

8. In view of the aforesaid circumstances and in the light of the observations made hereinabove, I am of the opinion that no case was made out against the petitioner to proceed with the trial. Hence, I pass following order :

ORDER

(i) Writ Petition No.577 of 2004 is allowed and Rule is made absolute;

(ii) The impugned orders dated 4th December 2002 passed by learned Metropolitan Magistrate, 13th Court, Dadar, Mumbai in Case No.215/P of 2001 and order passed by Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.160 of 2003 dated 19th July 2003 are quashed and set aside, and the petitioner is discharged from the proceedings in CC No.215/P/2001 pending on the file of learned Metropolitan Magistrate, 13th Court, at Dadar, Mumbai;

(iii) Writ Petition stands disposed of.

(PRAKASH D. NAIK, J.)

MST