

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1376 OF 2016

1. Ashok Kishorilal Damani,
2. Anirudh Ashok Damani,
3. Mrs.Sunita Ashok Damani,
4. Mrs.Mridul Arvind Lakhotia,
All R/o.Mumbai.

Petitioners

versus

1. State of Maharashtra,
2. Mrs.Shruti Anirudh Damani

Respondents

Mr.Aditya Gore i/by D.S.Joshi with Harsh Raval and H.M.Rao for
Petitioners.

Ms.Manjula Rao, MrPankaj Kansara, M.Sushmitha Sherigar,
Ms.Neena Shah and Ms.Lavanya Mudaliar for Respondent no.2.
Mr.K.V.Saste, APP, for State.

**CORAM : S.C.DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 26th April 2017

PC :

1. By this petition under Article 226 of the Constitution of India, the Petitioners-original accused, are seeking quashing of a charge sheet in CC.No.2503 of 2015 pending on the file of learned Additional Chief Metropolitan Magistrate, 40th Court, at Girgaum, as also First Information Report No.55 of 2014 ('FIR') registered by Gamdevi Police Station, Mumbai.

2. A brief reference to the allegations in the FIR would be necessary in order to appreciate the contentions of the learned counsel appearing for Petitioners. We also have before us the complainant-Respondent no.2. Both the Respondents are duly served. The second Respondent, in the complaint, alleged that her husband Anirudh Damani, her father-in-law Ashok Damani, her mother-in-law Sunita Damani and her sister-in-law Mridul Lakhatia have been harassing her and subjected her to mental and physical cruelty by persistent demand for dowry. Further, her in-laws have taken away her Stri-Dhan. She is alleging that they have committed offences punishable under Sections 498-A, 406, 323 read with Section 34 of Indian Penal Code, 1860. The petition proceeds on the footing that though said FIR was registered, a charge sheet was filed, but there are subsequent developments. The subsequent developments, according to the Petitioners, are that anticipatory bail applications were filed by Petitioners and by a common order of 21st January 2015 (Exhibit-B to the petition), the said applications were allowed. During pendency of the anticipatory bail applications, the concerned police station carried out a search at the residence of Petitioners and had found nothing incriminating against the Petitioners. Several searches were conducted at the respective residential premises of Petitioners, however, nothing incriminating was found in the same.

3. A petition for divorce bearing No.708 of 2013 was moved by Petitioner no.2 before the Family Court, at Anand, Gujarat State. A petition styled as Civil Transfer Petition No.474 of 2015 was moved

by Respondent no.2 before Hon'ble Supreme Court of India. The Hon'ble Supreme Court was pleased to refer the parties to mediation. As a result of the successful mediation, the Petitioners and second Respondent have arrived at an amicable settlement and have agreed to settle and dispose off all matters pending between them. A copy of the settlement agreement is annexed as Exhibit-C to the present petition. It is dated 29th March 2016 and it is on the file of Hon'ble Supreme Court of India.

4. The present petition is filed on the footing that there is complete settlement of matrimonial disputes and other private civil matters. No useful purpose will be served by allowing the criminal case to continue as that would amount to a gross abuse of the process of the Court. Without prejudice, it is stated that the FIR discloses no offence and it is a pressure tactic adopted now a days to rope in not only the husband but also the in-laws and close relatives in the husband's family. Without attributing any specific acts, the Petitioners and in-laws have been roped in. It is inconceivable that everybody who is not even residing together or routinely visiting the family, will be harassing and demanding the dowry, as alleged. It is in these circumstances that terming the criminal proceedings as pressure tactics, that this Court's inherent powers have been invoked. This petition has been filed in this Court on 31st March 2016.

5. Both sides do not dispute that upon institution of this petition, it was placed repeatedly and before Division Benches assigned criminal matters, particularly of quashing of criminal proceedings. It has been appearing from 5th October 2016 before a Bench presided

over by Hon'ble Mr. Justice A.S. Oka. From 17th October 2016, this Court is informed by second Respondent-complainant that, though a statement made in the writ petition about settlement memo filed on the record of Supreme Court of India is correct, yet, the Petitioners have not abided by any of the terms agreed between the parties. From 17th October 2016, this Court while restraining the Trial Court (Metropolitan Magistrate's Court), where the charge sheet is filed, from proceeding further has been recording the shifting stand of the present Petitioners. At one stage, this Court was constrained to observe that their conduct borders on contempt. The Petitioners time and again were involving and engaging this Court in the dispute about alleged non compliance with the terms and conditions of settlement proposed and on record of the Hon'ble Supreme Court of India. Though this Court refused to enter into that controversy, it was persuaded to peruse the terms of settlement. On 17th January 2017 this Court recorded these facts and disputes and expressly observed that it would not be proper to enter into this controversy during pendency of the proceedings before Supreme Court of India. If there is any issue arising out of this settlement or from mediation proceedings, the parties and particularly Petitioners would have to approach the Supreme Court of India. This Court was informed that the Supreme Court would be indeed approached.

6. Yet, on 2nd February 2017 during the course of arguments on this petition, the Petitioners' advocate relied upon the settlement agreement. This Court was apprised of the fact that the second Respondent-complainant has filed an affidavit in this petition in which she has disclosed her stand. She has pointed out that the

Supreme Court of India initiated mediation in order to settle the matter. Petitioner no.2 and the second Respondent met on several occasions to resolve their differences. It was pointed out to him that Stri-Dhan is with Petitioner no.3 and she is refusing to hand over the same to the second Respondent. Petitioner no.2 assured that he would do the needful. Petitioner no.2's assurance was for a moment accepted, but later on, the affidavit proceeds to narrate the facts and circumstances in which the second Respondent is now constrained to allege, that even the settlement is a ploy to force her to agree and quash the criminal prosecution. She has stated in paragraphs 9 and 10 of this affidavit that Petitioner no.2 had agreed to accept her and their son. They were to be taken back to the matrimonial home. However, it is apparent from the conduct of the Petitioners that they have no such desire. They only want to use this settlement so as to seek a discretionary and equitable relief from this Court.

7. Such an affidavit of 17th October 2016 being on record, this Court found from the contents of the same that the Petitioners cannot continue to engage this Court with the progress of mediation or the issues cropping up therefrom. It is their bounden duty to approach Hon'ble Supreme Court of India. It is the Supreme Court of India which suggested that the parties must resolve their disputes amicably. It is the Supreme Court of India which referred them to the mediation centre at Delhi. It is the Supreme Court of India which proposed this route of settlement and, therefore, any issues cropping up ought to be placed before that Court itself. The judicial discipline demands that this Court should not entertain any dispute or grievance with regard to non-compliance with the settlement. On

2nd February 2017 a detailed order running into 10 pages was passed by this Court.

8. On 10th March 2017 and after this Court had noticed in the earlier order and direction that conduct of the Petitioners borders on contempt, it is found that there is change of advocate. The advocate then engaged informed the Court that he has perused the orders of this Court and passed from time to time. In the light thereof, he would like to talk to his clients and would make a appropriate statement on the next date. That is how the ad-interim order was continued till 27th March 2017. On 27th March 2017 and after we noticed that there is no end to the dispute nor there is any compliance with the earlier order, that the petition was listed for admission.

9. On 13th April 2017 it was listed for admission but stood over till today and placed on the supplementary list. Today, the Petitioners' advocate tenders an affidavit of the second Petitioner, who states that there is an order of transfer passed in Transfer Petition (Civil) No.4741 of 2015. The order passed on 19th September 2016 by Hon'ble Supreme Court of India has not been challenged. The Petitioner no.2 states that he has not received any notice as on the date of signing of this affidavit from the Hon'ble Supreme Court of India or from the mediator appointed by the Supreme Court of India about any review of the order passed on 19th September 2016. Once that order is in force, then, he has concealed nothing from this Court.

10. It is on the above material that we have heard learned counsel for the Petitioners and Mrs.Rao appearing for second Respondent-complainant. With their assistance we have perused the petition and all annexures thereto including the affidavits filed till date.

11. We have no doubt in our mind that there was an attempt made by Hon'ble Supreme Court of India to impress upon the young educated husband and wife to amicably resolve their disputes and they were sent to the mediation centre. There was a petition for divorce filed by Petitioner no.2 in Anand, Gujarat. The Hindu Marriage Petition No.708 of 2013 which was on the file of Family Court, Anand, was sought to be transferred to Family Court, at Mumbai. We must at once clarify that we are not concerned with either the allegations or the pleadings in this matrimonial petition or the transfer thereof. We are only concerned with FIR and the charge sheet and whether that deserves to be quashed and set aside, as sought by the Petitioners. It is they who are seeking this relief as they have been arrayed as accused. It is they who are aware that the FIR registered at the instance of the second Respondent was thoroughly investigated and a charge sheet is filed in the competent Court. It is they who are aware that the proceedings would have to go on further and if the matter is listed for framing charge or to take appropriate steps in accordance with law, then, prior to such a stage or the charge being framed, they could have persuaded the Trial Court to discharge them from the criminal case. However, they have chosen to continue with these proceedings and though we have repeatedly inquired with the advocate for Petitioners as to whether

they insist on arguing this petition or await the outcome of the mediation or would take appropriate steps in the criminal Court so as to seek discharge from the criminal case, on instructions, learned advocate for Petitioners stated that he would like to invite a order from this Court.

12. It is only in the above circumstances that we have carefully perused the charge sheet, a copy of which is annexed and the affidavits placed on record. From a perusal of thereof, we are are satisfied that the same disclose commission of a offence by the accused-Petitioners before us. There is a specific act attributed to each of them. There may be matrimonial discord and dispute but there are serious acts alleged and which amount to cognisable offences. The Petitioners have been accused of misappropriation and snatching mainly the Stri-Dhan, causing harassment and mental torture so as to coerce the second Respondent to comply with their demands and a express act attributed to all of them so as to make it impossible for the second Respondent to continue with the relationship and particularly in the interest of the minor child. There are affidavits placed on record to indicate that the second Respondent has a serious apprehension that the settlement was used as a ploy to delay the obvious. That she was agreeable to the same being taken to its logical end, provided all the commitments and assurances to her and in the interest of minor, are honoured and complied with. She has expressly stated that there is no intention on the part of Petitioners to honour the settlement. She has not been allowed to resume the matrimonial ties. Thus, she accuses them of not only harassing her for dowry and other demands but thereafter

the conduct being as above, we do not feel that it this a fit case for exercising our inherent and writ jurisdiction.

13. We are hardly impressed by the affidavit filed by second Petitioner. We have already clarified that the issues regarding mediation and its alleged failure have to be raised before Hon'ble Supreme Court of India. The judicial discipline demands that we say nothing about proceedings before that Court or the orders passed therein. We also do not conclude anything on the mediation proposed by Hon'ble Supreme Court of India. It is the Hon'ble Supreme Court of India which referred the parties to mediation and, therefore, it was open for them to have approached the Supreme Court of India.

14. In the light of the above and earlier orders of this Court and finding that criminal proceedings cannot be termed as an abuse of the process of the Court but disclosing a prima facie case of offence committed by the Petitioners, we decline to grant any relief in this petition. It is accordingly dismissed. No order as to costs.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)