

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1178 OF 2009

Mahesh S/o Subhanrao Kalge)
Age 30 years, Indian Inhabitant of Pune)
residing at 25/C, Panjat Ban Society)
Sudharshan Nagar, Chinchwad Pune – 33.) .. Petitioner

Vs.

1. The State of Maharashtra)
through Inspector of Incgarge Nigdi)
Police Statin, to be served through Public)
Prosecutor, High Court, Bombay.)

2. Tejashree w/oMahesh Kalge)
residing at House No.1941/E Ward,)
Rajarampuri, 12th lane, Kolhapur 416 008.).. Respondents

Mr.Lokesh Zade i/b. Mr. Rohan Nahar,Advocate for the petitioner.
Mr. Sameer S. Tambekar for respondent No.2.
Mr.S.R.Agarkar,APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 27th April, 2017.

JUDGMENT :

The petitioner herein is seeking discharge in Sessions Case No.939 of 2008 which is pending before the Sessions Judge at Pune.

2. The petitioner herein was charge-sheeted for the offences punishable under Sections 323, 504, 306, 511 read with Section 34 of the Indian Penal Code. The petitioner and his mother have been discharged

under Section 306 of IPC as the complainant is alive and that he was discharged from the hospital on 28.12.2007. However, this Hon'ble Court, by an order dated 4.5.2009, had stayed trial and thereafter even after the petitioner is discharged under section 306 of IPC, the matter has not been placed before any Judicial Magistrate, First Class for conducting the trial under Section 498A of IPC

3. The facts of the case in a nutshell are as follows :-

The petitioner herein is a Software Engineer. On 13.7.2005, he got married to respondent No.2, who also happens to be a Software Engineer. On 10.10.2006, the couple was blessed with a son. That on 20.12.2007, respondent No.2 had consumed poison when she was residing in her matrimonial house. Upon learning about the same, respondent No.3 rushed her to the nearest Hospital i.e. Lokmanya Care Hospital at Chinchwad, Pune. That at the time of admission, the patient was drowsy, and her blood pressure could not be recorded. The patient was put on gastric lavage. The patient was intubated. The medical history shows that on 21.12.2007, when it was revealed that it was a medico-legal case, the police had reached the hospital. However, the doctor had given the opinion that the patient is not in a condition to give any statement and will be able to give her statement in the next 48 hours. It appears from the records that

thereafter, the patient was admitted in ICU. The police had subsequently visited the hospital and Dr. Vikas Patil had again given an opinion that the patient is not in a position to give the statement. The medical case papers reveal that she was suffering from hypo tension and pupils were dilated. It also shows that she was put on mechanical ventilation and the information was given to her husband i.e. the applicant and at the time of ventilation, the consent of her husband was obtained. It appears from the medical case history that her pupils were dilated even on the next day and that she was on medication for considerable period, she continued to be treated in the ICU for a very long time i.e. for almost one week. On 27.12.2007, she was removed from the ventilation and her vision was blurred. The patient was able to give a statement on 28.12.2007.

4. Her statement was recorded in the hospital by PSI of Nigdi Police Station, she had given a written report alleging therein that she was living in a joint family after her marriage with the applicant. she was being harassed and ill-treated by her mother-in-law on various counts. It is alleged that at the time of marriage, the mother-in-law i.e. respondent No.3 had demanded a Honda City car, whereas the father of respondent No.2 had gifted an Alto car at the time of marriage. It is further alleged that,

according to respondent No.3, the said car did not befit their status and therefore she was being harassed. She was being continuously abused by her mother-in-law i.e. respondent No.3. That her husband i.e. the present applicant No.2 was also instigated by his mother and therefore he also indulged into abusing and extended ill-treatment to his wife. That when the first informant had left the matrimonial house for the purpose of her first maternity, the mother-in-law had warned her that she shall return to the matrimonial house only if her father is able to gift Honda City car. It is specifically alleged that the present petitioner along with his mother used to cause mental harassment and ill-treatment to his wife to such an extent that she had no further desire to live and therefore she had consumed the poison. It is pertinent to note that she has specifically stated that she has no grievance against father-in-law and sister-in law. She also stated that her father-in-law used to request her in-law.

5. On the basis of her statement, Crime No.554 of 2007 was registered at Nigidi Police Station against the petitioner and his mother i.e. the respondent No.3 for the offence punishable under Sections 323,504, 498A of IPC. There is no doubt that the investigating officer has committed a grave error in charge sheeting the applicant and his mother for the offence punishable under Section 306 of IPC and at present the applicant and his

mother are being prosecuted for the offence punishable under section 498A of the IPC.

6. The learned counsel for the petitioner submits that in fact, the complainant and her father had not gifted any vehicle much less the Alto Car at the time of marriage and that the petitioner and his mother are being falsely implicated for the same. The learned counsel has placed on record an application addressed by the father of the petitioner to Public Information Officer i.e. the Commissioner of Police, Pune, under the provisions of the Right to Information Act, 2005. A question was put as to whether Alto car was registered etc. The Addl. Police Commissioner has informed the petitioner that the police had enquired with the first informant about relevant documents to show that Alto Car was gifted and there was no reply. It is on the basis of this information, that the learned counsel submits that the allegations in the first information report are false and that they are foisted upon the present petitioner and his mother.

6. In the application dated 21.3.2009, the father of the petitioner has questioned the Public Information Officer in the following words :-

“6. As per law, person who attempts to commit suicide is guilty of the offence under section 309 IPC, so what is the reason for not filing a case against Tejashree Kalge under section 309 IPC though she and her relatives

are accepting offence ? Which special provision or law caused hindrance to N.G.Babar ? Please provide justification.

7. *According to IO N.,G.Babar, Shakuntala Kalge and other alleged provoked Tejashree Kalge to commit suicide. So what was the intention of Shakuntala Kalge to hospitalize Tejashree Kalge and initiate the speedy treatment ?*

8. *An authorization and treatment papers are duly signed by Mahesh for tejashree Kalge treatment in “Lokmanya Care Hospital” and even all medical bills and hospital cost are incurred by him so what was his intention in helping Tejashree Kalge ini hospital treatment ? Does Lokmanya Care Hospital too assist in abetting suicide according to theory of IO N,.G. Babar ? Please provide justification with legal reference.”*

The father of the petitioner had sought for information in respect of the said documents showing purchase of car and the same being gifted to the petitioner.

7. The learned counsel for the petitioner submits that the allegations against the present petitioner and the respondent No.3 are foisted upon them and that they are falsely implicated. It is also

submitted that there are various applications in matrimonial disputes pending between the parties. That according to the learned counsel, the petitioner herein deserves to be discharged under Section 498A of IPC

8. The learned counsel has placed implicit reliance upon a Judgment of the Hon'ble Apex Court in the case of **Preeti Gupta and Anr. vs. State of Jharkhand and Anr. AIR 2010 SC 3363**. The Hon'ble Supreme Court had observed :-

“At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases.”

In the above case, the appellant before the Hon'ble Apex Court was a married sister-in-law, who was a permanent resident of Navsari, Surat, Gujarat. Gaurav who was a permanent resident of Goregaon, Maharashtra is an unmarried brother-in-law of the complainant. The alleged incidents of physical assault, ill-treatment and demand for car had taken place at Kanpur or Mumbai. While appreciating the facts of the case, the Hon'ble Apex

Court had taken into consideration the factual aspect to determine as to whether the prosecution of the appellants therein was an abuse of process of law. The Hon'ble Apex Court observed - "According to the averment of the complaint, except for the demand of the luxury car no incident of harassment took place at Ranchi." The Hon'ble Apex Court had also observed that both the appellants before the Hon'ble Apex Court had never spent any time with the respondent No.2 i.e. the complainant. There was no allegation against the said appellants in the complaint.

9. The learned counsel has also placed reliance upon an order passed by this Court in the case of **Vinod Rajkrishan Kaushik & Ors. vs. State of Maharashtra (Cri. W.P. No.312 of 2014)** seeking discharge under Section 498A of IPC. Upon perusal of both the judgments, it is clear that the accused had not been discharged in the similar circumstances.

10. As far as the present case is concerned, it is apparent on the face of record that in fact, the harassment meted out to the first informant was of such degree that an educated girl had chosen to commit suicide rather than fight against it. That the first informant was being harassed and ill-treated by her mother-in-law. However, her husband also joined his mother in harassing the first informant.

11. Section 498A has been taken on the statute only to save girls

from physical and mental harassment at the hands of the in-laws. There is no doubt that the said provisions are being abused only to ventilate their grievances and see that husbands and in-laws are taken into custody since Section 498A is a non-bailable offence. However, the Court cannot apply the same yardstick to all complaints filed by the victims. That in a given case, the Court will be doing injustice in the eventuality that the yardstick is generally applied in all cases.

12. In the present case, it is a matter of record that harassment was of such a nature that she had chosen to commit suicide. In fact, on humanitarian grounds, the petitioner and his mother had taken her to the hospital and had treated her. It cannot be said that they were doing some favour to her by not allowing her to die. The mental trauma that the victim had to undergo after she had given birth to a child is writ large. The incident has occurred within seven years of marriage. There was a demand for dowry and the complainant had attempted to commit suicide. There is no scope to presume that there could be false implication. The inconsistencies in the charge-sheet can be considered at the time of trial.

13. The learned counsel for the petitioner submits that they had serious grievance against the Investigating Officer who had joined hands with the complainant to falsely implicate the applicant and his mother. In

fact, this Court only on the basis of the documents and the compilation of the charge-sheet, cannot arrive at a conclusion that there is false implication. The statements of the doctor, the investigating officer and the complainant need to be proved by recording substantive evidence and the same can be appreciated at the time of trial. Perusing the language of the application seeking that the victim should be first prosecuted under Section 309 of IPC, it is clear that the first informant had been victimised in her matrimonial home. After recording of evidence, the petitioner and his mother would be liable to give an explanation under Section 106 of the Indian Evidence Act. The said incident had taken place within 7 years of marriage and, therefore, by virtue of the mandatory provisions under the Evidence Act, this Court is bound to presume that the offence was committed and that there was a demand of dowry.

13. As far as the present case is concerned, there is specific allegation against the petitioner and his mother and the complainant had exonerated the father-in-law and sister-in-law.

14. For the abovementioned reasons, the Petition fails. It is pertinent to note that the petitioner has arraigned his mother as a respondent in this case. In fact, she is a co-accused. No case for discharge is made out. Needless to say that the interim relief granted by the order dated 4.5.2009

stands vacated. The Petition is dismissed.

15. The learned counsel for the petitioner fairly submits that in the given circumstances, trial needs to be expedited as the alleged offence has taken place in the year 2007. The learned Magistrate, while framing charge or while appreciating the evidence, shall not be influenced by the observations made hereinabove as they pertain to a discharge application. The trial shall be expedited. The learned Magistrate shall make every endeavour to conclude the recording of evidence in the present case within four months from the date of framing of charge.

(SMT. SADHANA S.JADHAV, J.)