

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2636 OF 2016

Ganesh Vasudeo Sinkar & Ors. ... **Petitioners**

V/s.

The State of Maharashtra & Anr. ... **Respondents**

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Mr.Rajiv Patil, Senior Counsel with Mr.Sachin Punde, Advocate for the Petitioners.

Mr.S.V.Gavand, APP for the Respondent No.1/State.

Mr.Niranjan Mundargi with Mr.Chandansingh Shekhawat and Ms.Shradha Achliya i/b. ALMT Legal, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 19th September 2017.

P.C. :

1 By this application, petitioners/accused in Regular Criminal Case No.1005 of 2013 pending on the file of the learned Judicial Magistrate First Class (A.C.) Court, Pune are challenging the Order dated 21st June 2016 passed by the learned Additional Sessions Judge, Pune thereby rejecting their Revision Petition bearing No.329 of 2015. By this Revision Petition, the Order dated 2nd September 2014 passed by the learned JMFC (A.C.)

Court, Pune rejecting the application for discharge in R.C.C.No.1005 of 2013 was challenged.

2 Facts in nutshell are thus :

Petitioners are husband, father-in-law, mother-in-law and sister-in-law of the respondent No.2 Suvarna Sinkar. She married with petitioner No.1 Ganesh Sinkar on 01/05/2002. Because of this wedlock, two children are born. According to the prosecution case, on 30/10/2012, respondent No.2 Suvarna was driven out of her matrimonial house. Then parties indulged in various matrimonial proceedings. Ultimately, on 11/12/2012, respondent No.2 Suvarna lodged a FIR which resulted in registration of crime No.580 of 2012 against petitioners with Police Station, Kothrud for offences punishable under Sections 498-A, 406 323, 504, 506 read with Section 34 of the Indian Penal Code. (hereinafter referred to as "IPC" for the sake of brevity). Routine investigation followed which ultimately culminated in filing of the charge-sheet against petitioners. That is how Regular Criminal Case bearing No.1005 of 2013 is registered and is pending on the file of the learned J.M.F.C. (A.C.) Court, Pune for trial. Petitioners preferred an application Exhibit-25 before the trial Court seeking their discharge and the same came to be rejected on 02/09/2014. The said Order was carried out in revision. Ultimately, the revision is also dismissed. That is how petitioners are before this Court.

3 Heard the learned senior counsel appearing for petitioners. The learned senior counsel took me through the developments in the married life of petitioner No.1 and respondent No.2 and pointed out that on 04/03/2011, petitioner No.1/husband had applied for restitution of conjugal rights and on 29/06/2011, he was constrained to apply for custody of his children. Ultimately, on 10/04/2012, respondent No.2 Suvarna has filed a petition for divorce and on 04/06/2012, the learned Family Court attempted to reconcile the matrimonial dispute whereby it was agreed that from 11/06/2012, both parties will start cohabiting in the rented house. On this factual backdrop, learned senior counsel drew my attention to the FIR lodged on 11/12/2012 to point out that despite having “n” number of problems in the married life of about ten years, no complaint whatsoever was filed by the wife against petitioner No.1/husband or in-laws except the complaint dated 30/10/2012. The FIR is after thought and filed with ulterior motive. It is further argued that perusal of the entire FIR which was construed as a base for rejection of application for discharge by the learned J.M.F.C., as well as the revisional Court, would go to show that averments mentioned therein are as vague as it can be and no offence as alleged can be made out from the recital thereof. The learned senior counsel argued that the entire FIR is totally imaginary. Even averments in respect of offence punishable under Section 323 of the IPC are as vague as they can be. No medical certificate

is annexed to the charge-sheet nor any complaint in that regard was lodged on earlier occasion. So far as the offence punishable under Section 406 of the IPC is concerned, in submission of the learned senior counsel, the matter is already subjudiced by the learned Family Court. The learned senior counsel further argued that all relatives of husband are unnecessarily robed in the matrimonial dispute by making bald statement against them. Therefore, proceedings initiated and sought to be continued against petitioners are liable to be quashed as they are not making out ingredients of offences alleged against petitioners.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order of the revisional Court by drawing my attention to the complaint dated 30/10/2012 as well as material collected by the Investigator.

5 I have heard the learned Advocate appearing for respondent No.2/First Informant/wife. He argued that a married lady would not approach Police Station at the first possible opportunity, but she will try to save her marriage by resorting to reconciliation and, therefore, even if it is assumed that there is a delay in approaching Police Station, the same is not a relevant ground for quashing the criminal proceedings initiated against the petitioners.

6 I have carefully considered the rival submissions and also perused the entire charge-sheet.

7 Petitioners are sought to be prosecuted for offences punishable under Section 498-A, 406 323, 504, 506 read with Section 34 of the IPC vide R.C.C.No.1005 of 2013, which is a warrant triable case. Section 239 of the Code of Criminal Procedure reads thus :

Section 239 of Cr.P.C..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.

Bare perusal of this provision makes it clear that if on considering entire material collected by the Investigator, if the Magistrate considers that the charge against the accused is groundless then only he can discharge the accused by recording the reason.

8 The law on this aspect is succinctly enunciated by the Apex Court in the matter of *State of Tamil Nadu through Inspector of Police Vigilance and Anti corruption v. N.Suresh Rajan & Ors.*, reported in (2014) 11 SCC 709. The relevant portion of which reads thus :

“We have bestowed our consideration to the rival submissions and the submissions made by Mr.Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouth piece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption hat the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent

decision of this Court in the case of Sheoraj Singh Ahlawat and Ors. v. State of Uttar Pradesh and Anr., AIR 2013 SC 52 : (2012 AIR SCW 6171), in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96):

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.” ” .

It is thus clear that after considering the material collected by the Investigator, if it is found that there is no ground for presumption that the offence has been committed, the Court can discharge the accused. The test is whether the material

collected constitute ground for presuming that the offence is committed and not whether the material so collected is sufficient for convicting the accused.

9 The term 'cruelty' defined in explanation under Section 498-A of the IPC, which reads thus :

“Explanation- For the purpose of this section, “cruelty” means-

(a) Any willful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with view to coercing her or any person related to her meet any unlawful demand for any person related to her to meet such demand.”

It is thus clear that the term 'cruelty' implies harsh and harmful conduct of certain intensity and persistence. The provision under 498-A of the IPC envisages intention to drive or force the married woman to commit suicide unabated persistent and grave cruelty. The prosecution is required to establish willful conduct of such a nature as is likely to propel or compel the married woman to cause grave injury or danger to life, limb or health.

10 The first complaint to police at the instance of respondent No.2 wife came to be lodged on 30/10/2012 and in pursuant to that complaint, her statement is also recorded. The same forms the part of the charge-sheet. Then came the FIR dated 11/12/2012. As wheels of investigation were set in motion by registration of FIR. During investigation statements of Pritesh and Pranesh – brothers of respondent No.2/wife, so also that of her father named Gopal came to be recorded. Those statements are also part of the charge-sheet. Statement of near relatives of respondent No.2/wife, so also her FIR and statement contains allegations leveled against petitioners/accused. To set out those in brief, according to the prosecution case, petitioner No.1/husband used to suspect character of respondent No.2/wife. He used to extent threat to kill her. He used to abuse and beat her. Respondent No.2/wife averred that she was subjected to physical as well as mental cruelty. Prosecution case reflected from the FIR, as well as statement of witnesses also reflects that petitioners/accused used to harass respondent No.2/wife in order to coerce her and compel her parent to transfer ownership of two floors in the IT Park constructed by her father Gopal and her brother – Pritesh Lad. It is further averred by the prosecution that gold ornaments constituting *stridhan* of respondent No.2/wife is misappropriated by petitioners/accused persons.

11 Delay in lodging the FIR cannot be construed as ritualistic formula to disbelieve case of the prosecution. Effect of delay in lodging a FIR will have to be considered at the time of the trial. Moreover, it is well settled that in Indian setting a married woman approaches police by filing a complaint against her husband as a last resort on failure of all efforts to reconcile.

12 Perusal of statements of witnesses including that of the First Informant clearly demonstrates ingredients of offences alleged against petitioners. No doubt veracity of those statements will be decided at the trial of the alleged offences. However, in the wake of material collected by the Investigator, it cannot be said that charge sought to be leveled against accused persons i.e. petitioners is groundless.

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

(A.M.BADAR J.)