

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO. 1098 OF 2016

Bimal Ramavatar Sharma and Another. .. Applicants  
Vs  
The State of Maharashtra and Another. .. Respondents  
—  
Shri S.V. Marwadi i/b Mrs. Prabha U. Badadare for the Applicants.  
Dr.F.R.Shaikh, APP for the Respondent No.1.  
Shri B.S. Shukla for the Respondent No.2.  
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CORAM : A.S. OKA &  
SMT.ANUJA PRABHUDESSAI, JJ  
DATED : 24TH JANUARY 2017

ORAL JUDGMENT : (PER A.S.OKA, J)

1. On 27<sup>th</sup> September 2016, this Court issued Rule and Rule on interim relief was made returnable whilst granting ad-interim relief. Subsequently, the parties were put to notice that an endeavour will be made to decide the Application at the time of hearing of the interim relief.

2. The prayer made in this Application under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the First Information Report (FIR) lodged by the second Respondent. The FIR was registered at Bhayandar Police Station. With a view to appreciate the submissions made across the bar, it will be necessary to make a reference to the material facts.

3. The impugned FIR was registered for the offence punishable under Sections 498A and 306 read with 34 of the Indian Penal Code. The second Respondent in this Application is father of the victim. The first Applicant is the husband of the victim and the second Applicant is the sister of the first Applicant. The name of the victim is Sonia Sharma who was elder daughter of the second Respondent. The marriage between the first Applicant and the victim was solemnized on 11<sup>th</sup> July 2006. It is alleged that the first Applicant was always employed at Dubai. It is alleged that the first Applicant used to regularly visit India once in two or three months. On 26<sup>th</sup> March 2010, the son Hridhaan was born with congenital heart defect. The daughter was born on 1<sup>st</sup> August 2014. It is stated that the victim was residing along with her father (the second Respondent). It is alleged that the victim had informed the second Respondent in the year 2013 that she was under mental tension as the first Applicant was not taking her to Dubai. It is alleged that all the decisions in the house of the in-laws of the victim were being taken by the second Applicant. Various instances of the amounts allegedly given to the family of the Applicants is set out in the statement of the second Respondent on the basis of which the FIR was registered. It is alleged that in December 2015, when the first Applicant had acquired a premises in Mumbai, a religious ceremony was performed not by the victim but by the second Applicant. It is

further stated that thereafter the victim along with her children proceeded to Dubai. In January 2015, the second Applicant along with the son Hridhaan came back to Bhayander from Dubai and the victim continued to stay in Dubai till March 2016 along with her daughter.

4. It is alleged that on 29<sup>th</sup> January 2016, when Hridhaan was taken for examination in Hiranandani Hospital, it was diagnosed that there was a hole in his heart. It is alleged that on 1<sup>st</sup> April 2016, the victim along with the first Applicant and the children went to Dubai. In fact, Hridhaan was admitted in a School at Dubai. The allegation is that the first Applicant used to blame the victim for the alleged congenital heart defect suffered by the son. It is stated that the first Applicant used to allege that as the son was not properly looked after by the victim, he developed a heart ailment. It is alleged that as a result of this allegation, the victim went into depression. It is stated that on 28<sup>th</sup> June 2016, the victim along with the children came from Dubai and stayed with the second Respondent in his house at Jaipur. It is alleged that on 21<sup>st</sup> July 2016, the victim along with her children came to the matrimonial home in Bhayander in Thane District. It is alleged that the victim informed the second Respondent in July 2016 that she was under mental tension. It is alleged that on 30<sup>th</sup> July 2016, the first Applicant came to Bhayander from Dubai. It is alleged that on 4<sup>th</sup> August 2015, the second Respondent received a phone call from the father-in-law of

the victim calling upon them to immediately rush to Bhayander. Accordingly, the second Respondent came to Bhayander from Jaipur by Air. When the second Respondent along with his other relatives reached home of the in-laws of the victim, they were informed that the victim had committed a suicide by hanging herself in the bedroom as the first Applicant was blaming her for the defect in the heart of their son and this criticism compelled her to commit suicide.

5. Apart from the merits, the Applicants relied upon the settlement between the first Applicant and the second Respondent under the Agreement dated 12<sup>th</sup> August 2016. As per the Agreement, several steps were agreed to be taken by the first Applicant for securing the future of both the minor children. Briefly, the arrangement made can be summarized as under:

- (i) The first Applicant agreed to transfer his flat at Bhayander (West), District – Thane in favour of the two children by executing a Gift Deed;
- (ii) The first Applicant agreed that the farm land in Rajasthan more particularly described in Paragraph 3 of the said Agreement which is in the name of the victim shall devolve as per the Hindu Law relating to

Succession and the children will get 1/3<sup>rd</sup> share each in the said property;

(iii) The first Applicant agreed to transfer his share in the said land in favour of the children;

(iv) The first Applicant agreed to deposit a sum of Rs.50 lakhs each in the Bank Account of the son and daughter, respectively;

(v) It was agreed that the jewellery lying in the lockers in two Banks shall be monitored by the first Applicant and the second Respondent;

(vi) It was agreed that the Bank Account should be opened in the name of the children in Kotak Mahindra Bank, Bhayander Branch which will be operated by the first Applicant and the second Respondent in which an amount of Rs.10 lakh each shall be deposited by the first Applicant;

6. An affidavit was filed by the second Respondent reporting compliance with the terms and conditions of the said Agreement. Along with the affidavit, he tendered compilation of the relevant documents to show compliance;

7. We had directed the Investigating Officer to verify the correctness of the documents executed on the basis of the settlement. Accordingly, a report is submitted on 17<sup>th</sup> January 2017 by the Assistant Inspector of Police of Bhayander Police Station. He has noted that necessary verification has been made and the documents are found to be genuine.

8. Coming back to the First Information Report, by no stretch of imagination, Section 498A of the Indian Penal Code is attracted. Taking the version of the second Respondent as correct, there is no allegation of any demand. Even taking this statement as correct, the allegations of abatement of suicide against the Applicants are totally unfounded. Reliance has been placed on the messages exchanged between the parties, the copies of which have been annexed on Pages 20 and 21 of the Application. This text messages show that the relationship between the first Applicant and the victim appears to be more or less normal. The first Applicant had been to India on 30<sup>th</sup> July 2016. Merely because suicide is committed on 4<sup>th</sup> August 2016, it is not possible to accept that the allegations of abatement to commit suicide can be established against the first Applicant as there is absolutely no material to that effect. Even assuming that the first Applicant was blaming the victim for the defect in the heart of their son, there is no

proximate relationship between the said act of the first Applicant and the act of suicide. Going by the statement of the second Respondent, there is absolutely no allegation against the second Applicant as far as the offence punishable under Section 306 of the Indian Penal Code is concerned.

9. Therefore, in our view, on merits a case is made out to exercise extra-ordinary jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 for quashing the offence. As the victim is no more, the power of quashing cannot be exercised on the ground of settlement.

10. We may also note here that an additional affidavit has been filed by the first Applicant. After the additional affidavit was filed, the learned counsel appearing for the Applicants made a statement that as stated in the affidavit, an Application for appointment of a Guardian (Civil Miscellaneous Application No.295 of 2017) has already been filed by him in the Court of District Judge, Thane. We accept the said statement. In the affidavit dated 19<sup>th</sup> January 2016, he has assured that as and when his son attains the age of 12 years, as per the advise of the Doctor, he will make all arrangements for his surgery. The undertaking in terms of Paragraph 4 of the said affidavit is hereby accepted.

11. Apart from the fact that a case is made out on merits for quashing the offences, as all the terms and conditions of the Memorandum of Understanding relied upon by the parties have been specifically complied with, no purpose would be served by continuing the criminal proceedings as the chances of conviction are very bleak. Moreover, the Applicants have fully protected and secured the interest of the minor children by acting in terms of the Memorandum of Understanding.

12. Therefore, the Application must succeed and we pass the following order:

ORDER :

(a) The undertakings and assurances of the first Applicant are hereby accepted;

(b) In view of the undertakings and the assurances given by the first Applicant, the Rule is made absolute in terms of prayer Clause (b), which reads thus:

“(b) that by exercise of its power under Section 482 CrPC, the proceedings against the Applicants in FIR I-226 of 2016, Bhayandar Police Station, may be quashed and set aside.”

- (c) The Application is allowed on above terms;
- (d) All concerned to act upon an authenticated copy of this order.

(SMT.ANUJA PRABHUDESSAI, J)

( A.S. OKA, J )