

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4273 OF 2016

PRIYANKA PARAG AGRAWAL AND ANR.)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.P.P.Runwal, Advocate for the Petitioners.

Ms.Shruti More i/b. Ms.Trupiti B., Advocate for Respondent No.2.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th SEPTEMBER 2017

P.C. :

1 By this petition, petitioners who are accused nos.1 and
3 before the trial court are praying for quashing and setting aside
proceedings in S.C.C.No.748 of 2016 pending on the file of
learned JMFC, Thane.

2 Facts leading to the institution of the present petition
are thus :

Respondent no.2 / husband has filed a complaint alleging offences punishable under Sections 323 and 504 read with Section 34 of the Indian Penal Code (IPC) against the present petitioner as well as two other accused persons. The learned JMFC, after considering verification statement of respondent no.2 / original complainant, by an order dated 1st February 2016 was pleased to issue process against original accused nos.1 to 3 for offences punishable under Sections 323 and 504 read with Section 34 of the IPC. That order was carried in revision by original accused nos.1 to 3. The learned Additional Sessions Judge, after hearing the parties was pleased to allow that Revision Petition bearing No.79 of 2016 partly by the judgment and order dated 6th October 2016. The order directing issuance of process against respondent no.3 Shri S.C.Dutta came to be quashed and set aside by maintaining rest of the order. Similarly, the process for the offence punishable under Section 504 read with 34 of the IPC i.e. intentional intimidation or insult in causing breach of peace also came to be quashed and set aside. Rest of the order that is the order directing issuance of process for the offence punishable

under Section 323 read with Section 34 of the IPC was not interfered with by the revisional court.

3 Heard the learned advocate appearing for the petitioner / original accused nos.1 and 2 against whom process for the offence punishable under Section 323 read with Section 34 of the IPC is now in existence. He drew my attention to the verification statement as well as averments made in the complaint, so also in the proceedings under the Protection of Women from Domestic Violence Act (hereinafter referred to as D.V.Act for the sake of brevity) and contended that petitioners are falsely implicated in the proceedings in question.

4 Legality of the order issuing process is decided by the revisional court which has considered the entire aspect of the matter. Ultimately, the order directing issuance of process under Section 323 read with Section 34 of the IPC came to be maintained.

5 Following are the averments in the complaint lodged by respondent no.2 which are material in this regard.

“8 The complainant submits that complainant started washing his clothes in the washing machine, in the mean while when complainant was going to finished washing his clothes, accused no.1 entered in the house and seeing complainant washing clothes started shouting and abusing complainant saying that “why complainant have used her washing machine”, but complainant did not replied to accused no.1 and complainant started wearing his clothes to go out of the house in the mean time accused no.1 tried to snatch complainant's trouser and mobile phone and at the same time accused no.2 caught hold complainant's both hands from the back side and accused nos.1, 2 assaulted complainant on his stomach and on face and accused no.1 also threatened complainant with dire consequences to involve complainant in false case.”

6 Verification statement of respondent no.2 /original complainant categorically mentions that he was beaten by accused nos.1 and 2 i.e. present petitioners. It is stated in the complaint that petitioner no.2 caught hold of both hands of the complainant and petitioner nos.1 and 2 assaulted him on his stomach and face. Erasing the name of accused no.3 from the body of complaint has ultimately resulted in granting benefit to him by the revisional court. However, that by itself, is not sufficient to construe that continuity of proceedings against present petitioners would result in abuse of process of the court. Whether those averments are correct or not is an aspect which is required to be dealt with at the trial. Hence, the writ petition is devoid of merits and therefore the order :

ORDER

The writ petition is dismissed.

(A. M. BADAR, J.)