

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.211 of 2017
(Bhushan Rajendra Mundhe and ors. vs. State and another)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Ujwal Deshpande, Advocate for the applicants.
 Ms Tajwar Khan, A.P.P. for the Respondent No.1/State.\
 Mr.R.S.Suryawanshi, Advocate for the Respondent No.2.

CORAM : SMT VASANTI A NAIK &
 M. G. GIRATKAR, JJ.

DATE : 11.9.2017.

The Criminal Application is admitted and heard finally at the stage of admission with the consent of the learned Counsel for the parties.

By this Criminal Application, the applicants seek the quashing and setting aside of the F.I.R., the Charge sheet dt.21.2.2015 as also the proceedings in R.C.C. No.457 of 2015 pending in the Court of 6th Judicial Magistrate, First Class, Akola against the applicants for the offences punishable under Section 498-A r/w. Section 34 of the Penal Code.

The applicant no.1 and the non-applicant no.2 were married as per the provisions of the Special Marriage Act on 9.2.2012. The marriage was registered in the Office of the Sub-Registrar, Akola. Due to the dispute between the applicant and the non-applicant no.2, the applicant no.1 and the non-applicant no.2 started residing separately from

1.8.2014. A report was lodged by the non-applicant no.2 against the applicant no.1-her husband and the other applicants i.e. her mother-in-law, father-in-law, brother-in-law and his wife, alleging therein that since she had married with the applicant no.1 without their consent, she was harassed by the applicants in one way or the other. It is alleged in the report that the applicant no.1 and the non-applicant no.2 had married by eloping and after the marriage, she was harassed by the applicant nos. 2 to 6 on the ground that she had come to their home without a proper marriage and after elopement. It is alleged that on petty issues, the applicants used to quarrel with the non-applicant no.2. Certain other allegations are also made in the report against the applicants. On the basis of the said allegations, an offence punishable under Sections 498-A r/w. Section 34 of the Penal Code was registered against the applicants. In the matters pending between the applicant no.1 and the non-applicant no.2 before the Family Court, they had entered into a compromise and had decided to dissolve the marriage by consent. As per the Consent terms, the applicant no.1 paid a sum of Rs.1,00,000/- to the non-applicant no.2 towards full and final settlement and the non-applicant no.2 had decided to withdraw all the matters that she had filed against the applicants. A decree of divorce was passed by the Family Court on 22.8.2016, by consent, under the provisions of Section 28 of the Special Marriage Act, 1954. Despite the undertaking given by the non-applicant no.2 that she would withdraw the proceedings filed against the applicants, she appeared in the trial Court on 23.2.2017 to tender evidence in the proceedings under

Section 498A of the Code. An application for discharge u/s.239 of the Code of Criminal Procedure was filed by the applicants, but the said application was rejected after holding that it is the will of the non-applicant no.2 whether to proceed against the applicants or not.

In the meanwhile, on 16.5.2016, the non-applicant no.2 had lodged a report against one Amol Agrawal for the offence punishable under Section 376 of the Penal Code. According to the non-applicant no.2, who had signed the report as 'Anita A. Agrawal' depicting herself to be the wife of Amol Agrawal, Amol had committed sexual intercourse with the non-applicant on the promise of marriage and had refused to marry her. On the basis of the complaint lodged by the non-applicant no.2, who was at the relevant time the wife of the applicant no.1, the F.I.R. is registered against Amol Agrawal also. In the aforesaid background, the applicants have moved this Court for quashing and setting aside the F.I.R., the charge sheet as also the proceedings arising therefrom.

Mr.Ujwal Deshpande, the learned Counsel for the applicants submitted that on a reading of the F.I.R., it is clear that even if the allegations made in the same are accepted at their face value in the entirety, an offence punishable under Section 498-A of the Penal Code cannot be prima facie made out against the applicants. It is submitted that the marriage between the applicant no.1 and the non-applicant no.2 was a love marriage and the same was performed after eloping from their respective houses. It is submitted that though the non-applicant no.2 agreed to withdraw all the proceedings that she had filed against the

applicants including the matter arising out of the F.I.R. registered against the applicants for the offence punishable under Section 498-A of the Penal Code, the non-applicant no.2 did not keep her promise and attended the trial Court to tender evidence against the applicants. It is submitted that the conduct of the non-applicant no.2 is such that even during the subsistence of her marriage with the applicant no.1 she had lodged a report against one Amol Agrawal on 16.5.2016 by naming herself as 'Ankita A. Agrawal' and had alleged therein that Amol Agrawal had committed sexual intercourse with the non-applicant no.2 by falsely promising that he would marry her. It is stated that, on the complaint lodged by the non-applicant no.2, the F.I.R. is registered against Amol Agrawal also. It is stated that, in the circumstances of the case, the F.I.R. registered against the applicants needs to be quashed and set aside.

Ms Tajwar Khan, the learned Additional Public Prosecutor appearing for the non-applicant no.1 has submitted that the Compromise decree in the proceedings between the non-applicant no.2 and the applicant no.1 is a civil matter and the F.I.R. is registered against the applicants on the basis of the complaint lodged by the non-applicant no.2 on 21.2.2015. It is stated that in the circumstances of the case, an appropriate order may be passed.

Mr.R.S.Suryawanshi, the learned Counsel for the non-applicant no.2 has admitted that when the matter was compromised between the applicant no.1 and the non-applicant no.2 before the Family Court, the non-applicant no.2 had agreed that she would withdraw the proceedings pending against the applicants for the offence punishable

under Section 498-A of the Penal Code. It is, however, stated that since the applicant no.1 used to unnecessarily call the non-applicant no.2 even after the marriage was dissolved, she appeared before the trial Court to tender evidence in the proceedings pending against the applicants in R.C.C. No.457 of 2015. The learned Counsel had however nothing to say about the lodging of the report by the non-applicant no.2 against Amol Agrawal for the offence punishable under Section 376 of the Penal Code.

In the circumstances of the case, we find that it would be an abuse of process of Court if the proceedings pending against the applicants for the offence punishable under Section 498-A of the Penal Code are continued. In the circumstances of the case, with a view to secure the ends of justice, it would be necessary to quash the F.I.R. and R.C.C. No.457 of 2015 pending against the applicants. This is a case where the applicant no.1 and the non-applicant no.2 had married without the consent of their respective family members. However, nothing went right between the applicant no.1 and the non-applicant no.2 till 2014 and the parties separated on 1.8.2014. A report was then lodged by the non-applicant no.2 against the applicants on 21.2.2015 for the offence punishable under Section 498-A of the Penal Code. We however find from the report that the non-applicant no.2 was desirous of staying with the applicants and the said report was lodged by her only because the applicant no.1 had earlier lodged a report in the police Station that the non-applicant no.2 may lodge a report against the applicants. We find that the allegations in the F.I.R. could be referable as the acts of cruelty which

would entitle a party to the decree of divorce but they are not such which would fall within the meaning of term “cruelty” as defined under Section 498 of the Penal Code. Even if the allegations in the F.I.R. are accepted at their face value in the entirety, the offence punishable under Section 498-A of the Penal Code cannot be prima facie made out against the applicants. We find that the only allegation levelled by the non-applicant no.2 against the applicants is that after marrying with the applicant no.1, his family members were ill-treating her as she had married him after elopement. We find on a reading of the report lodged by the non-applicant no.2 that the report was lodged merely with a view to pressurize the applicants so that the applicant no.1 would be ready to reside with the non-applicant no.2 in the matrimonial house. In fact, in the report, the non-applicant no.2 has stated that she is ready to live in the matrimonial house and the applicant no.1 had wrongly lodged a report against her. Apart from the fact that prima facie an offence cannot be made out against the applicants even if the allegations in the F.I.R. are accepted at their face value, we further find that the non-applicant no.2 has no regard for truth. Before the Family Court, the non-applicant no.2 had agreed that she would withdraw all the proceedings launched by her against the applicants but after receiving a sum of Rs.1,00,000/- from the applicant no.1 and after the decree of divorce was passed, she resiled from her promise and approached the trial Court for tendering evidence against the applicants in R.C.C. No.457 of 2015. Not only that, the non-applicant no.2 also lodged a report against one Amol Agrawal for an offence punishable

under Section 376 of the Penal Code. On 16.5.2016 i.e. even before her divorce she alleged in the report that Amol Agrawal had committed sexual intercourse with her by falsely promising that he would marry her. At the relevant time, the non-applicant no.2 was the legally wedded wife of the applicant no.1 but still she had named herself as 'Ankita A. Agrawal' in the report lodged against Amol Agrawal in the Police Station on 16.5.2016. Considering the circumstances of the case, it would be necessary to quash and set aside the F.I.R. as also the proceedings in R.C.C. No.457 of 2015 that are pending against the applicants in the Court of 6th Judicial Magistrate, First Class, Akola.

Hence, for the reasons aforesaid, the Criminal Application is allowed. The First Information Report bearing No.19 of 2015 and the proceedings in R.C.C. No.457 of 2015 are hereby quashed and set aside. Order accordingly.

JUDGE

JUDGE

**jaiswal*