

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4801 OF 2016

Madhav s/o Dharmaji Khodke,
Age 52 years, Occupation Service,
R/o At Post Paradh Tq. Bhokardan
Dist. Jalna.

...Applicant

Versus

1) The State of Maharashtra,
Through the Paradh Police Station,
Tq. Bhokardan Dist. Jalna.

2) Bebinanda d/o Maroti Ambhore,
Age 44 years, Occupation Social
Work, R/o Yewati Tq. Lonar Dist.
Buldhana.

...Respondents

Mr. M. S. Shaikh, Advocate for applicant.

Mr. S. J. Salgare, Addl. Public Prosecutor, for respondent No.1/
State.

Mr. R. P. Raut, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 16-10-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Rule. Rule made returnable forthwith. By consent, heard both
the sides for final disposal.

2. Present application has been filed invoking the powers of this

Court under Section 482 of Code of Criminal Procedure for quashing and setting aside the First Information Report No. 33 of 2016, dated 18-07-2016, registered with Paradh Police Station Tq. Bhokardan Dist. Jalna for the offences punishable under Section 376 (b), 323 of Indian Penal Code.

3. The present applicant is a teacher serving with Janata Secondary and Higher Secondary High School Paradh. Respondent No.2 is his ex-wife. Applicant got married to the informant on 04-06-1994. They have a daughter presently aged 22 who is taking education at Lonar Dist. Buldhana. The applicant contends that, after the marriage, respondent No.2 cohabited with him till 1996 at Mahagaon Tq.Risod Dist. Washim. Dispute arose between them within two years. As a result of which she had filed complaint under Section 498(A) of Indian Penal Code against the applicant and also for maintenance. She had filed divorce petition also in the year 1999 bearing Hindu Marriage Petition No.34 of 1999 before Civil Judge Senior Division, Washim. Applicant appeared in the matter and compromise took place, they decided to part and a compromise pursis was filed giving consent for the divorce. He had paid amount towards full and final settlement in respect of maintenance. The informant had agreed that, she will not claim any kind of right as a wife in a husband's property. The custody of the daughter was given to the mother. The applicant had taken the responsibility of

incurring expenses for the marriage of the daughter. As per the compromise, the decree for divorce was passed on 30-10-1999 and since then they are residing separately. Informant has availed various facilities under the scheme for divorcee. She is also getting monthly payment under 'Sanjay Gandhi Divorce Women Scheme'. She has her own house at Yewati Tq. Lonar Dist. Buldhana. She is also member of Grampanchayat since 2012. Unless she is a permanent resident of the said village, she cannot become a member of the Grampanchayat. Certificate in respect of her residence has been filed. With this background the applicant contends that, FIR came to be lodged by the respondent No.2 against him i.e. vide Crime No. 33 of 2016 for the offences punishable under Section 376 (b), 323 of Indian Penal Code. The applicant has contended that, contents of the said FIR are false and fabricated. There is absolutely no relation between him and the respondent No.2 after the divorce decree. It has been falsely contended in the FIR that, since 2008 to 2016 the applicant has kept sexual relations with her by giving promises. With this background the FIR is belated by about eight years. It is contended that, as per the compromise the applicant is ready to incur the expenses for the marriage of daughter but respondent No.2 is demanding lump sum amount of Rs.15 lakhs for marriage which is very much higher. The FIR has been filed with malafied intention and therefore he prays for

quashing of the same.

4. Heard learned advocate Mr. M. S. Shaikh for the applicant, learned Addl. Public Prosecutor Mr. S. J. Salgare for State – respondent No.1 and learned advocate Mr. R. P. Raut for respondent No.2. Perused the police papers and the documents produced by the applicant. All the concerned advocates submitted their arguments in support of their respective contentions.

5. It is to be noted that, informant has stated in the FIR that, after marriage she was treated properly for about two years by the applicant, and thereafter, he started harassing her on the ground that, she should bring amount to be given for his service. She did not bring that amount and thereafter she was evicted. She gave complaint under Section 498-A of Indian Penal Code in 1996, applicant was convicted and was sentenced to suffer imprisonment for three months and fine of Rs.500/-. The said conviction was challenged by the applicant before Sessions Court. Thereafter, he got service in 1998 and he was apprehending that, if the said conviction is confirmed, he will lose the service, and therefore insisted the informant that she should compromise. Informant had no intention to cohabit and therefore she filed proceedings for divorce on 30-10-1999. Applicant was frequently meeting her at Yewati and contending that, she should come along with him to

Paradh. Even after divorce he would keep her as wife and also perform legal marriage with her, he will not harass her and he would incur the expenses for the marriage of their daughter. She continued to give refusal from 1999 to 2008. Since the responsibility of the daughter was increasing and as per the promise, the applicant would take responsibility of the daughter, informant went to Paradh in 2008 to reside with the applicant. He treated her properly for about two years and thereafter he started abusing and harassing her. In the meantime applicant had kept sexual relation with her without her consent. She sustained the harassment due to the daughter. Daughter is now aged 22 but applicant was not taking any effort for the settlement of her marriage. When she insisted that, he should perform marriage of her daughter, applicant filed case in Bhokardan Court against her. She was then driven out of the house on 15-05-2016. Daughter was also assaulted at that time. She therefore lodged a complaint on 02-06-2016 with Paradh Police Station and also with the office of Superintendent of Police. She therefore lodged the report stating that, the husband has kept sexual relations with her even after divorce by giving promises and also assaulted her.

6. The important point here to be noted is that, though applicant appears to have been convicted for the offence punishable under Section 498-A of Indian Penal Code, the divorce between the

applicant and the respondent No.2 was by mutual consent. The terms of compromise have been produced on record. The compromise has taken place on 27-10-1999 and the decree for divorce has been passed on 30-10-1999, therefore there was no reason for the informant to reside with divorced husband. As per her say, till 2008 though the applicant was insisting her to stay with him, she was refusing and then all of a sudden in 2008 she says that she went to reside with her ex-husband. With the treatment she had received in the past it is hard to believe that, only on the count of daughter's future she would have gone to reside with the husband. She could have definitely filed a proceeding before a Court of law in respect of either maintenance to the daughter as well as for the expenses of her marriage. It is totally unbelievable that, she would have gone to reside with ex-husband even after the divorce decree. Further since 2008 to 2016 she has not taken any steps against the applicant in respect of their marriage because as per her own story applicant had given promise to perform legal marriage with her. Waiting for the action of legal marriage between her and applicant for eight years is unbelievable and will not justify her own action though presumed for a second. Further as per the FIR she says that, since 2008 the applicant was performing sexual intercourse with her without her consent in spite of knowledge that there was no relation between them. If she would have been forced

to have sexual intercourse then she ought to have raise hue and cry immediately. There is clear delay of about eight years which is casting doubt even at this *prima facie* stage over the contents of the FIR.

7. The applicant has produced on record the information which he has obtained under Right to Information Act. Respondent No.2 is getting monthly payment under 'Sanjay Gandhi Niradhar Yojana' which is a scheme for widow and also for divorcees. For the month of January 2016 she got amount of Rs.600/-. She has her own house at Yewati. 8-A extract has been produced. Further it appears that, she had contested the election for the Grmapanchayat for the year 2012 and after winning she was the member of the Grmapanchayat. Unless she is permanent resident of the Grmapanchayat, she would not have been allowed to contest the election. She had not produced any documentary evidence to show that in 2008 she permanently shifted to Paradh and for about eight years she was residing with the applicant. Except the statement of her daughter and father, there is no evidence collected up till now which would show that she was residing with the applicant. On the contrary statements of neighbours of applicant, four in number, would show that, they never saw informant and her daughter in the house of applicant. Thus it appears that, with some ulterior motive the FIR has been lodged. It would be a futile exercise to ask the

applicant to face the trial with such kind of material and story. Case has been made out to exercise the inherent powers of this Court as per the parameters laid down in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in *AIR 1992 Supreme Court 604*, and therefore the application deserves to be allowed. Hence following order.

ORDER

- 1) Application is hereby allowed.
- 2) Relief is granted to the applicant in terms of prayer Clause "C".
- 3) Rule made absolute on above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vj gawade/-.