

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 330 OF 2017**

1.	Bipin Kamoolkar,	
2.	Charuta Kamoolkar	...Applicants
	Versus	
	State of Maharashtra & Ors.	...Respondents

Mr. R. Sathyanarayanan for the Applicants

Ms. A. S. Pai, A.P.P for the Respondent Nos.1 & 2-State

Mr. A. P. Kulkarni for the Respondent No. 3

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 11th JUNE, 2018***

ORDER (Per Revati Mohite Dere, J.):

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable with the consent of the parties and is taken up for final disposal. Respondents waive notice through their respective counsel.

3 By this Application, preferred under Section 482 of the Code of Criminal Procedure, the Applicants seek quashing of Criminal Case, being R.C.C. No. 4281 of 2016 pending on the file of the learned Judicial

Magistrate First Class, Pune, (arising out of C.R. No.4281 of 2016 registered with the Deccan Gymkhana Police Station, Pune) for the alleged offences punishable under Sections 498A, 406, 352, 504, 506 of the Indian Penal Code.

4 A few facts as are necessary to decide the Application are as under:

The Applicant No. 1 is the father-in-law and the Applicant No. 2 is the mother-in-law of Rakhi i.e. the Complainant's (Respondent No. 3) sister. According to the Complainant i.e. Respondent No. 3, his sister-Rakhi and Akash i.e. accused No. 3 (Applicant's son) were known to each other and that their friendship developed into a love affair, pursuant to which, they got married on 29th January 2001; and that in February 2001, his sister-Rakhi and Akash went to U.S.A, where Akash was working as a Software Engineer. He has stated that his sister-Rakhi also started working in U.S.A as a Software Engineer. According to the Complainant, Akash started demanding money from Rakhi; forced her to work, though she was unwell; and did not take care of her health and provide her medical assistance. The complainant has further alleged that when his younger brother, mother and

sister visited U.S.A to look after his sister; Akash demanded money from his sister pursuant to which, he paid Rs. 15 lakhs to the Applicant No. 1, which was deposited by the Applicant No. 1 in Akash's account, through bank transfer. According to the Complainant, Akash withdrew the said money on the pretext of depositing it in the joint account, which was never opened and as such the money was used by Akash for his personal purpose. The Complainant has further alleged that his sister-Rakhi returned to India in July 2013 and started residing in her maternal house; and that due to domestic violence, Rakhi suffered post-traumatic stress disorder and border line personality disorder. According to the complainant, his sister-Rakhi filed divorce proceedings through her brother in U.S.A, as it had become impossible for Rakhi to live with Akash. He has further stated that the Applicant No. 1, as the Power of Attorney holder of Akash, also filed divorce proceedings before the Family Court, Pune, on 23rd April 2014, wherein Rakhi was a Respondent, only with the intent of troubling them. On 8th January 2016, the Respondent No. 3 filed a complaint/FIR with the Deccan Gymkhana Police Station which was registered vide C.R. No. 4281/2016 as against the Applicants and Akash, alleging offences punishable under Sections 498A, 406, 352, 504 of the Indian Penal Code.

5 Learned counsel for the Applicants submits that taking the prosecution case, as it stands, no offences as alleged are disclosed as against the Applicants. He submitted that a perusal of the charge-sheet would show that Rakhi had hardly resided with the Applicants and that soon after marriage, Rakhi had left for U.S.A. He further submitted that the charge-sheet also reveals that whenever Rakhi visited India, she would reside with her mother and brother and never resided with the Applicants and as such the question of ill-treatment/harassment at the hands of the Applicants did not arise. Learned counsel for the Applicants further submitted that the Complainant i.e. Respondent No. 3 lodged an FIR in 2016, as a counter blast to the divorce proceedings filed by Akash through his Power of Attorney holder i.e. the Applicant No. 1 in 2014. Learned counsel for the Applicants tendered a compilation of documents i.e. the divorce papers of Rakhi and Akash and the payment made by Akash to Rakhi, pursuant thereto. The said papers are taken on record and marked 'X' for identification.

6 Learned counsel for the respondent states that he has not received any instructions from the respondent No. 2. On merits, he submitted that no ground is made out for quashing the proceedings qua the Applicants.

7 Perused the papers. Admittedly, the complainant's sister-Rakhi and the Applicant's son-Akash (accused No.3) got married at Pune, on 29th January 2001; that it was a love marriage; that Akash, a Software Engineer working in the U.S.A, went to U.S.A alongwith Rakhi in February 2001; that Rakhi, also a Software Engineer, worked in the U.S.A for about 3½ years; that in July 2013, the complainant's brother brought Rakhi to India, where she was detected as having a border line personality disorder; that in April 2014, Rakhi filed divorce proceedings in the U.S.A; that on 23rd April 2014, the Applicant No. 1 on the basis of the Power of Attorney of Akash filed divorce proceedings in the Family Court, Pune; and that on 8th January 2016, the Respondent No. 3 filed a complaint/FIR with the Deccan Gymkhana Police Station, which was registered vide C.R. No. 4281 of 2016, as against the Applicants and Akash, alleging offences punishable under Section 498A, 406, 352, 504 of the Indian Penal Code. According to the

complainant, because of the ill-treatment/harassment meted out by the Applicants and Akash, his sister Rakhi suffered 'post-traumatic stress disorder and border line personality disorder'. According to the complainant, as his sister Rakhi was undergoing treatment for the same in the U.S.A, he lodged the complaint, which was registered vide C.R. No. 4281/2016 with the Deccan Gymkhana Police Station.

8 A perusal of the papers *prima facie* shows that the allegations essentially are as against Akash (accused No. 3) i.e the Applicant's son. As noted above, soon after marriage, Rakhi left for U.S.A and was residing with Akash in U.S.A. The allegations as against the Applicant No. 2 are, that when she went to U.S.A in 2008, she criticized Rakhi over cooking; that she asked Rakhi to cook non-vegetarian food, though Rakhi was a vegetarian; that she asked Rakhi to listen to Akash, or else would be sent to India; that she asked Rakhi to purchase a costly jacket for her daughter and made her exchange it twice; that she made Rakhi pay for her shopping; and that she forced Rakhi to work, though her health was not good. It is also alleged that in 2001, the Applicant No. 2, took Rakhi's two expensive sarees and did not return; and that in 2008, the Applicant No. 2 took Rakhi's

things without her permission including shampoos; and that she moved Rakhi's deceased father's photo from the living room. As far as the Applicant No. 1 is concerned, it is alleged that the Applicant No. 1 praised his own son and complimented him, but not Rakhi for her achievements; that he asked her to give up the treatment for test tube baby and instead spend the money on Akash for his travelling; and that Applicant No. 1 transferred Rs. 15 lakhs given by the Complainant to Akash's account. It is further alleged that in 2001, both the Applicants kept cash gift of Rs. 30,000/- received at the time of marriage, and that in 2008 and 2011, both the Applicants did not support/take care of Rakhi, when she came to India for treatment, was asked not to bear a child and instead insisted that Rakhi should continue working, despite ill-health. It is also alleged that the Applicants insisted that Rakhi works, so that Akash could travel and make payments towards the mortgage taken by him.

9 In the facts of the present case, we do not find sufficient material qua the applicants to proceed against them for the alleged offences punishable under Sections 498A, 406, 502 and 506 of the Indian Penal Code. The essential ingredients necessary to constitute the aforesaid

offences are wanting. Under Section 498A, what is required is 'willful conduct' which is of such a 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 'harassment' of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. It is pertinent to note that soon after marriage, within a month, the Applicant's son – Akash and Rakhi went to the U.S.A., and were living there, whereas the Applicants were staying in Pune. Most of the incidents alleged as against the Applicants, are stated to have taken place, when they visited U.S.A. The alleged incidents essentially pertain to the year 2001, 2008 and 2013. The allegations made *qua* the applicants and in particular set out in the earlier para, do not satisfy the requisite ingredients of Section 498A. Similarly the allegations also do not disclose any of the other alleged offences. It is pertinent to note, that the aforesaid FIR being C.R. No. 4281 of 2016 was lodged belatedly as against the Applicants on 8th January 2016, after the Applicant No. 1 had filed divorce proceedings on behalf of Akash in the Family Court on 23rd April 2014. It is also pertinent to note that as Rakhi was unwell, her brother Mr. Harshad Gandhi was appointed as

Guardian ad-litem and was assigned the powers to make decision regarding Rakhi's marital estate and support matter and accordingly an order was passed by the learned Judge, U.S.A, after considering the medical condition of Rakhi. A perusal of the papers tendered by the learned counsel for the Applicants shows that Rakhi and Akash have been granted divorce by the Court of Common Pleas of Montgomery County, Pennsylvania on 8th August 2017 i.e. during the pendency of this petition.

10 The power of the High Court to quash the FIR/criminal proceedings in exercise of its inherent jurisdiction i.e. under 482 Cr. P. C. is no longer res integra. Having regard to the material as against the applicants, we are of the opinion that continuation of the proceedings *qua* the Applicants, will be an abuse of the process of the Court and hence in order to secure the ends of justice, quash Criminal Case No. RCC 4281 of 2016, pending on the file of the learned Judicial Magistrate First Class, Pune, *qua* them. Accordingly, the Rule is made absolute in terms of prayer clause (a) *qua* the applicants. The application is disposed of.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.