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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 323 OF 2017

Aarti Saxena

.....Applicant

V/s.

1. Veena Suresh Amba
2. Rohit Dyanendra Malhotra
3. Manisha Rohit Malhotra
4. The State of Maharashtra

.....Respondents

Mr. Aabad Ponda i/b Mr. Milan Hebballi for the applicant.
Mr. P. H. Gaikwad APP for the State.

CORAM : NITIN W. SAMBRE, J.

RESERVED ON : APRIL 26, 2018.

PRONOUNCED ON: JUNE 08, 2018

P.C.

Heard Shri. Aabad Ponda, the learned counsel for the applicant-original complainant and the learned APP Mr. P. H. Gaikwad, for respondent no. 4 State.

2 This revision is by original complainant at whose behest offence came to be registered against respondent nos. 1 to 3 punishable under section 498 (A), 306, 328 r/w 34 of the Indian Penal Code resulting into initiation of sessions case no. 331 of 2013. In the said sessions case, respondent nos. 1 to 3 preferred an application under section 227 of the Code of Criminal Procedure, 1973 for their discharge which came to be allowed vide order dated 18/02/2017. As such, this revision by the original complainant.

3 The facts necessary for deciding this revision are as under:

Present applicant approached the investigation agency through a complaint dated 12/02/2011 which is produced at page 88 of the application, addressed to Senior Inspector of Police, Worli Police Station, Mumbai.

Said complaint was also tendered to the office of the Joint Commissioner of Police (C.P.), Law and Order on 09/03/2011 which was further marked to Additional C.P., Central region with an

endorsement 'enquiry and report' on 09/03/2011. The Additional C.P. Central Region has marked the same to D.C.P. Zone-3 and and D.C.P. Zone-3 accordingly set the investigation in motion by issuing appropriate instructions to his subordinate. The said complaint thereafter was reduced in writing resulting into registration of offence against respondent nos. 1, 2 & 3 along with son of respondent no. 1 Vaishnav.

Applicant got married to said Vaishnav, who alleged to be lawyer in United Kingdom, on 22/03/2010. It is claimed that applicant along with her husband, after spending some short time at Chandigarh, shifted to England. It is further alleged that her husband Vaishnav committed cruelty and as such, offence in question.

It is required to be noted that the statement of the applicant came to be recorded on 25/03/2011 wherein offence is alleged from 22/03/2010 till 26/11/2010. The said statement is counter signed by the Police Inspector Investigation, Senior Police Inspector and

Assistant Commissioner of Police.

After recording the statement of witnesses namely complainant Aarti, her mother Asha, her father Kuldeep Kumar, respondent nos. 1 to 3 along with son Vaishnav were charge-sheeted. Respondents thereafter moved an application under section 227 of the Code of Criminal Procedure, 1973 which came to be allowed by way of impugned order. As such, this Revision.

4 Shri. Ponda, the learned counsel for the applicant while questioning the order of discharge would urge that the learned court below has exceeded its jurisdiction while ordering the discharge of the accused persons, particularly in the backdrop of the fact that the learned court has appreciated the defence of the respondents-accused. Shri. Ponda then would take me through contents of in all three statements viz. complaint and two supplementary statements so as to claim that necessary ingredients of the section under which charge-sheet is filed against accused persons can be borne out from the record. Shri. Ponda then would urge that it is not permissible

for the learned court below to appreciate the evidence and reach to conclusion that the offence against the respondents is not made out. According to him, there is an error of jurisdiction and as such, the revision is liable to be allowed.

5 The learned APP supported the claim of the applicant-complainant.

6 In the aforesaid background, this court has proceeded to analyze the reasoning given by the learned Sessions Judge while ordering discharge of respondent nos. 1 to 3.

7 It is not disputed that the applicant and accused Vaishnav got married at Chandigarh on 22/03/2010 and thereafter immediately shifted on 04/04/2010 to London. At London, applicant and her husband resided together and none of the respondents were residing with the applicant at London. It is then alleged by the applicant in the F.I.R. that while residing at London, her parents visited and stayed with her. She went to Chandigarh on 23/11/2010 after

returning from London on 17/10/2010 and stayed with respondent no. 1 for three days i.e. till 26/11/2010.

8 As stated herein above, the complaint of the complainant was rooted through Joint C.P. Law and Order, Mumbai, resulting into registration of crime in question. So far as the complaint which was initially preferred, produced on record at page 88 is concerned, the same named respondent nos. 1 to 3 along with her husband Vaishnav as accused. The majority of allegations are made against husband of the complainant namely Vaishnav whereas accused no. 2 i.e. mother-in-law, accused no. 3 Rohit, son-in-law of accused no. 2 and accused no. 4 Manisha, daughter of accused no. 2 and sister of accused no. 1 are referred to only for the purpose of some passing references. There are hardly any specific allegations against present respondents. The said complaint upon reading of the same appears to have been drafted with professional aid, as apparent from the contents of the said complaint. The first statement of the complainant was recorded in Marathi. After receiving aforesaid complaint, the supplementary statement recorded was typed in

English, shown to have been recorded on 25/04/2011. The only allegation against present respondents are they have not supported the call given by the applicant, against accused no. 1 The first supplementary statement of the complainant was recorded on 04/09/2011 in which there are only passing references against respondent nos. 1 to 3. Another supplementary statement of the applicant was recorded on 08/06/2012 before Assistant Commissioner of Police, Senior Police Inspector and Police Inspector Investigation.

9 So far as the complaint i.e. produced at page 88 received by the office of Joint C.P., Law and Order on 09/03/2011 and first statement recorded by the Investigating Officer on 25/04/2011 is concerned, the first supplementary statement recorded on 04/09/2011 as stated earlier makes only passing references against respondent nos. 1 to 3. Upon bare perusal of these statements, necessary ingredients of section with which respondent nos. 1 to 3 were charge-sheeted namely 498 (A), 406 and 328 were not satisfied.

10 Third supplementary statement of the complainant is produced at page 288 dated 08/06/2012 i.e. almost after period of 14 months from the date of registration of her first statement. The said supplementary statement is reduced in writing in English though earlier two statements were in Marathi. This supplementary statement dated 08/06/2012 has tried to cover up all the short falls which can be noticed and inferred in the earlier three statements. In this supplementary statement dated 08/06/2012, specific allegations are against respondent nos. 1 to 3 for the offence in question.

11 It is not in dispute that supplementary statement cannot be considered, however, such supplementary statement upon bare perusal, if smells of abuse of process of law, same is required to be diligently sift and weigh. Shri. Ponda was right in submitting that defence of the accused cannot be appreciated, however, that won't restrict this court or the court of sessions to sift and weigh the evidence for the purpose of finding out whether *prima facie* case against accused, upon taking evidence on its face value, is made out

or not. This court at the stage of deciding the application for discharge can evaluate the material and documents on record so as to find out as to whether the facts emerging therefrom, even if taken to be true as its face value, discloses or satisfies the ingredients constituting the offence alleged. The court can always find out whether sufficient ground for proceeding against accused persons is available or not, however, has to be cautious in not appreciating the defence of accused person.

12 The third supplementary statement recorded after period of almost 14 months from the date of first statement has changed the entire scenario *qua* the allegation made in earlier first statement and supplementary statement.

13 Furthermore, it will not be out of place to mention here that the supplementary statement dated 08/06/2012, particularly its structure and contents speaks of being author with some professional aid. One can understand supplementing earlier statement, however, altogether new case with an intention to fill in

the lacunas left over in the earlier statement appears to be the intent of third supplementary statement.

14 In the aforesaid background, what could be noticed is at the initial stage upto almost 14 months of lodging F.I.R., there was no specific complaint against respondent nos. 1 to 3 but suddenly same has been substituted in the supplementary statement dated 08/06/2012 which is nothing but an abuse of process of law. All the three statements made by the applicant prior to the supplementary statement dated 08/06/2012 does not satisfy the ingredients upon evaluation of the material on record and upon considering the legal weight of the same.

15 The learned Sessions Judge was well within his jurisdiction and being sensitive to the limitation of powers to be exercised, has dealt with the necessary ingredients of each of the sections and tried to ascertain weightage of evidence for satisfying itself on the issue of satisfaction of ingredients and proceeded to infer that there is no material on record to infer the satisfaction of necessary

ingredients. The statement of the applicant, her parents, affidavit of Ms. Ila Thakur from London in no case justifies the case of prosecution to proceed against respondent nos. 1 to 3. Once the trial court having noticed that there is no ground or material to proceed against respondents or to frame charge against them, in my opinion, has rightly discharged the accused persons.

16 At the cost of repetition, it is worth to observe that material produced on record is not sufficient to proceed against the accused persons particularly when respondent no. 1 is resident of Chandigarh and respondent nos. 2 & 3 husband and wife residing at Pune. It is also required to be noted that at no point of time applicant has stayed with respondent nos. 2 & 3 whereas she had a very short stay with respondent no. 1 at Chandigarh. Handing over of Streedhan by her mother to the respondent no. 1 cannot be inferred from the statement of mother which evidence is rightly looked into by the court below. Apart from above, whether statement of Ila Thakur who is from London reduced in the form of affidavit which was not recorded by the investigating agency pursuant to the

provisions of section 161 & 162 of the Code of Criminal Procedure.

17 Having perused in entirety the order of the learned Sessions Judge, I hardly notice any perversity in the findings recorded. Rather conduct of the applicant in trying to justify the case by way of third supplementary statement is nothing but an abuse of process of law and there is no sufficient ground to proceed against respondent to frame charge.

18 For the aforesaid reasons, no error of jurisdiction is noticed. Revision lacks merit, dismissed.

[NITIN W. SAMBRE, J.]