

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

CRIMINAL WRIT PETITION NO. 2543 OF 2018

Ashish Digambar Bangar & Ors. ... Petitioners
Vs.
State of Maharashtra & Anr. ... Respondents

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Mr. Kunal A. Ambulkar for the Petitioner.
Mrs. N.S. Jain, APP for the Respondent-State.
Mr. Hrishikesh Mundargi for the Respondent.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 3rd AUGUST, 2018.

P.C.

1. The petitioners are prosecuted for the offences punishable under Sections 498-A, 323, 504, 506 read with 34 of Indian Penal Code. The First Information Report was registered vide C.R. No.346 of 2013 with Kothrud Police Station, Pune. The petitioners have preferred an application for discharge before the trial Court which was rejected by order dated 13th July, 2016. Thereafter, the petitioners challenged the order passed by the trial Court before the Sessions Court by preferring Criminal Revision Application and the Sessions Court rejected the said application by order dated 1st March, 2018. During the pendency of the revision application, the charge has been framed on 26th December, 2017.

The petitioners have assailed the order rejecting discharge application as well as framing of charge.

2. At the outset, the learned counsel for the petitioners on instructions submits that he would not press for the relief sought in the petition on behalf of petitioner Nos.1 to 3 and would restrict his petition on behalf of petitioner Nos. 4 to 6. The petitioner No.4 is brother-in-law of the complainant and the petitioner No.5 is wife of petitioner No.4. Petitioner No.6 is sister-in-law of the complainant.

3. In nutshell the prosecution case is that the marriage between the complainant and accused No.1 was solemnized on 1st March, 2011. Since March, 2011 to 30th August, 2013, the complainant was harassed by the accused. There was demand of dowry at the instance of the accused. It is alleged that the ornaments belonging to the complainant were entrusted to the accused. She was abused and tortured. The acts committed by the accused has caused mental and physical cruelty to the complainant. The first information report was lodged on 30th August, 2013.

4. Learned counsel for the petitioners submits that petitioner No.4 and 5 were residing separately at the address mentioned in the cause title of the petition. They are being falsely implicated in

this case and no specific overt act is attributed to them. It is submitted that the allegations in the first information report and the other statement of witnesses are vague, which are not sufficient to prove the guilt against the petitioner Nos. 4 to 6. It is submitted that the petitioner No.6 who is sister-in-law of the first informant is married and residing separately. She has been dragged into this proceeding with a view to cause harassment. It is submitted that the charge framed against the petitioner Nos. 4 to 6 is vague and does not make out any *prima-facie* case to proceed against the petitioners. He relied upon the decision of the Supreme Court in *Geeta Mehrotra & Anr. Vs. State of U.P.& Anr.*¹

5. Per contra, learned APP and the counsel for the first informant submitted that the trial Court has considered all the aspects of the matter and has rejected the application for discharge. Thereafter, the charge has been framed. The statement of the complainant and other witnesses clearly attribute overact to the petitioners and *prima-facie* the case is made out against the petitioners.

6. Learned APP and Mr. Mundargi appearing for the first informant pointed out the allegations in the first informant report

1. 2013 AIR (SC) 181.

and stated that Petitioner Nos. 4 to 6 are also responsible for causing harassment amounting to cruelty within the meaning of Section 498-A of Indian Penal Code. It is further submitted that the grounds raised by the petitioners cannot be considered at this stage and the petition deserves to be dismissed.

7. Apparently, the petitioner Nos. 4 and 5 are residing separately. In the first information report dated 30th August, 2013, the complainant has stated that after the marriage, she started residing at matrimonial home at Akola alongwith husband father-in-law, mother-in-law and sister-in-law. The first informant alleges that accused were taunting that parents of complainant had not solemnised the marriage as per their wishes and they were getting dowry in the sum of Rs.11 Lakhs from another proposals as dowry. Rs.7,50,000/- was given during marriage and on demand balance amount of Rs.3,50,000/- was given to the father-in-law. The allegation is not specific against the accused, it is vague. On perusal of the first information report, it is apparent that specific overt act has been attributed to petitioner No.6. The contentions that petitioner No.6 has been falsely implicated in this case and cannot be appreciated at this stage. However, as far as Petitioner No.4 and 5 are concerned, the allegations are vague in nature.

8. The order of framing charge against the said petitioner No.4 and 5 is not specific. It is pertinent to note that First Information Report and the evidence is silent as to how the petitioner No.4 and 5 meted out harassment when they were not residing in matrimonial home of complainant.

9. In paragraph 24 of the decision of *Geeta Mehrotra & Anr.Vs. State of U.P. & Anr.(supra)*, wherein it is observed by the Hon'ble Supreme Court which read thus.

“However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relative of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the court are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the

FIR in fact discloses commission of an offence by the relative of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding”.

10. Taking into consideration the overall view of the matter in exercise of power under Section 482 of Code of Criminal Procedure, proceedings against Petitioner Nos. 4 and 5 can be quashed. However, *prima-facie* case is made out against petitioner No.6. Hence, I pass the following order.

ORDER

- (i) The Writ Petition is partly allowed;
- (ii) Impugned proceedings against the Petitioner Nos. 4 and 5 are quashed;
- (iii) The petition on behalf of petitioner Nos. 1 to 3 is not pressed and dismissed as withdrawn;
- (iv) Petition at the instance of Petitioner No.6 is dismissed;
- (v) The trial Court shall not be influenced by the order this Court during the trial of the co-accused;
- (vi) The Writ Petition stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed by
Sachidanand
Kuttan Nair
Date: 2018.08.10
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(PRAKASH D. NAIK, J.)