

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.786 OF 2017

Mr. Qayyum Kasam Shaikh & Ors. Applicants/
Ori. accused

Vs.

The State of Maharashtra & Ors. Respondents
(Ori. complainant)

Mr. Javeed Hussein a/w Mr. Mubashir Hussein, Muniba Syed,
Reshma Khatri i/by Hussein & Company for the Applicants.

Mrs. A.S. Pai, Additional P.P. for the Respondent-State.

Coram : **R.M. Savant AND**
Sarang V. Kotwal, JJ
Date : 6th March, 2018

P.C.

1 Heard Shri. Javeed Hussein, learned counsel for the
applicants and Mrs. A.S. Pai, learned A.P.P. for respondent nos.1
and 2. The respondent no.3, who is the first informant was duly
served, however, she did not choose to file her appearance.

2 This is an application under Section 482 of Code of Criminal Procedure filed by the applicants for quashing of the F.I.R., registered with Kamothe police station, District Raigad vide C.R. No. 147 of 2016 on 29th July 2016 under Sections 498A and 406 read with 34 of Indian Penal Code.

3 During the pendency of the present application, the charge-sheet was filed and thereafter with permission of this Court, the applicants have carried out the amendment by annexing the charge-sheet and adding additional prayers for quashing of the report filed under Section 173 of Cr.P.C.

4 At the outset, Shri. Hussein, learned counsel appearing for the applicants submitted that he was pressing the present application in respect of applicant no.4- Saba Kasam Shaikh and he was seeking permission to withdraw the above application in so far as the applicant nos. 1, 2 and 3 are concerned. The permission is granted and the above application qua the applicants nos. 1, 2 and 3 is allowed to be withdrawn.

5 The F.I.R. in the present case was lodged by respondent no.3- Sumaiya Qayyum Shaikh. According to her, she got married with Qayyum Shaikh on 19th February 2016 at Kamothe as per Muslim customs and rites. The present applicant no. 4- Saba is the sister of the said Qayyum Shaikh. According to Sumaiya, her father gifted various expensive household articles as well as kitchenwares to Sumaiya's husband and his family. It is her case that her father also gifted gold, silver and diamond ornaments, dress materials and cosmetics. Besides this, Sumaiya's husband was given Rs.25,000/- in cash and 12 cloth pieces for other relatives. Sumaiya further alleged that during a couple of days, after marriage, while she was residing in her matrimonial house with all the applicants, her mother-in-law told her that Sumaiya's articles would be given to the present applicant no.4. It is further alleged that Sumaiya's mother-in-law made a grievance that Sumaiya's father had not given enough articles and gifts. It is further alleged that Sumaiya was assaulted by her with fists and kick blows. In the

F.I.R., it is mentioned that Sumaiya's mother-in-law and the present applicant no.4 used to taunt her. It is further alleged that Sumaiya's husband used to tell her to bring money from her parents. Her father-in-law was not decent in his behaviour. It is further alleged that Sumaiya's husband used to harass her physically and mentally on the instigation by his parents and the present applicant no.4. The F.I.R. further mentions that in the month of May, 2016, when she had undergone abortion, nobody from her husband's family visited her. It is further alleged that initially Sumaiya and her husband were called by the Crime Branch, Navi Mumbai and the counselling sessions failed and ultimately she had lodged the F.I.R. at Kamothe police station.

6 Apart from the F.I.R., we have perused the entire charge-sheet, which consists mainly of receipts of various articles and photographs as well as the medical papers of the first informant-Sumaiya. There are only two statements included in the entire charge-sheet and those are the statements dated 29th July 2016 given by the maternal uncle and mother of the

first informant-Sumaiya. Both these statements are exact replica of the F.I.R. itself and there are no new allegations in those statements. A panchanama dated 22nd March 2017 shows that the first informant's husband had produced various articles, which were seized.

7 In these background, if the entire material in the charge-sheet is examined, in our opinion, no offence whatsoever is made out against the present applicant no.4-Saba Shaikh. There are vague allegations that apart from the parents, the present applicant no. 4 was instigating Sumaiya's husband to cause mental and physical harassment. However, apart from these vague allegations, there is absolutely nothing against the present applicant no. 4 and no role is attributed to her. Learned APP also could not point out any particular role against the present applicant no.4, which would attract the ingredients of either Section 498-A or 406 of Indian Penal Code even after taking aid of Section 34 of Indian Penal Code.

8 Therefore in the facts of the present case, applying the ratio laid down by the Hon'ble Supreme Court in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and Others, reported in A.I.R. 1992 Supreme Court, page 604, the present case falls in the category of 1 and 3 as mentioned in paragraph 108 of the said case, which are as under :

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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9 Thus, this is a fit case where Section 482 of Cr.P.C. can be invoked to quash the proceedings against the present applicant no.4. The continuation of present criminal proceedings against her would be abuse of process of law.

10 In the result, the application of the applicant no.4 is allowed in terms of prayer clause a(i) and the proceedings against the applicant no. 4- Saba Kasam Shaikh arising out of C.R. No.147 of 2016, registered at Kamothe police station under Sections 498-A and 406 read with 34 of Indian Penal Code and the resultant final report dated 26th July 2016 under Section 173 of Cr.P.C. are hereby quashed and set aside.

11 The application is disposed of in the aforesaid terms.

(Sarang V. Kotwal, J.)

(R.M. Savant, J.)