

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3259 OF 2017

Mary Kochappu Emmatty & Anr.	]	... Petitioners
Versus		
The State of Maharashtra & Ors.	]	... Respondents

Mr. Durgesh Jaiswal i/b Mr. L. V. Bommer for Petitioners.
Mrs. S. V. Sonawane, APP for State.
Mr. Venkateshwar Satyanarayan for Respondent No.3.

CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.

DATE :- 25 APRIL, 2018

P. C. :-

1. **Rule.**
2. Rule is made returnable forthwith.
3. Heard Mr. Durgesh Jaiswal, learned Counsel for the Petitioners, Mr. Venkateshwar Satyanarayan, learned Counsel for the Respondent No.3 and Mrs. S. V. Sonawane, learned APP for State.
4. The present Petition was initially filed for quashing of the FIR registered against the present Petitioners. However, during the

pendency of the Petition, the charge-sheet came to be filed and vide the order dated 28/02/2018, the Petitioners were granted leave to amend the Petition to annex the charge-sheet and to incorporate all consequential prayers. Accordingly, the charge-sheet was annexed and further prayer was made for quashing of the proceedings being C.C.No.560/PW/2018 pending before the 26th Court of the learned Metropolitan Magistrate at Borivali.

5. On 04/05/2017, an FIR vide C.R.No.188 of 2017 was registered at Dahisar Police Station under Sections 498A, 506 and 323 read with Section 34 of the IPC and under Section 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015, at the instance of the Respondent No.3. The Petitioner No.1 is the mother-in-law and the Petitioner No.2 is the brother-in-law of the Respondent No.3. The FIR was lodged against the Respondent No.3's husband Thomas and another brother-in-law Francis, along with the present Petitioners.

6. In her FIR, the Respondent No.3 has stated that before marrying Thomas, she was earlier married and had a son and a daughter from her first marriage. After the death of her husband, she

was residing at Kerala and decided to marry again. The Respondent No.3 registered her name on a matrimonial website through which Thomas's sister-in-law contacted her. After initial interaction, both Thomas and the Respondent No.3 decided to get married. Accordingly, the marriage took place on 16/05/2015 in Kerala. Before marrying the Respondent No.3, Thomas had lost his first wife. Thomas had two children from his first wedlock. After marriage, the Respondent No.3 and Thomas started residing at Mumbai along with their children from their first marriages. Their children did not get along well with each other and there were constant bickerings. The FIR mentions that the differences between the couple started growing. Many times the cause for quarrel was the behaviour of their children. According to the Respondent No.3, her children suffered because of Thomas and his children. The Respondent No.3 has mentioned in her FIR that on 01/01/2017, the Petitioner No.1 came to Mumbai to reside with Thomas and the Respondent No.3. On 14/01/2017, Thomas's brother Francis and the Petitioner No.2 Timothy visited them. At that time, there was a quarrel on some petty issue between the Respondent No.3 on one hand and the Thomas's family on the other. It is the case of the Respondent No.3 that during the quarrel,

Francis and the Petitioner No.2 raised hands to hit her. It is alleged that the Petitioner No.2 started telling people that the Respondent No.3 was suffering from bipolar disorder. The Respondent No.3, in her FIR, has alleged that the Petitioner No.1 used to harass her mentally. On 15/01/2017, the police officer visited their house and pacified the quarrelling parties. However, the relationship did not improve and Thomas left their matrimonial house with his children on 15/02/2017. On 26/03/2017, Francis called the Respondent No.3's father and suggested that the Respondent No.3 and Thomas should reside in one house but in different rooms. She has further alleged that Thomas, Francis and the Petitioner No.1 called her father and asked to provide a flat and give dowry. The FIR mentions that during their stay together, Thomas had caused hurt to the Respondent No.3's daughter and therefore, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 were applied.

7. After registration of the FIR, the investigation was carried out and the charge-sheet was filed. The charge-sheet contained statements of the Respondent No.3's daughter who has stated only about the quarrels between the Respondent No.3 and Thomas and

there is no reference to the present Petitioners. There is a statement of one Smt. Smita Sanjay Pathak who was the neighbour residing in the society where the Respondent No.3 was staying with Thomas. This witness, in fact, blames the Respondent No.3 for the marital discord and has given the statement in support of Thomas. She has stated that in January 2017, she heard that quarrel was going on in Thomas's house. When she went there, she saw that the police had arrived there. Even at that time, according to her, the present Petitioners were not taking part in the quarrel. Similar statements are given by the other neighbours namely Smt. Rashmi Bhaskar Deshmukh and Smt. Bhoomi Ramlal Chawla.

8. The Respondent No.3 has filed her Affidavit-in-reply contesting the Petitioners' claim for quashing of the proceedings. It is her case in the Affidavit that the offences are made out and there was no material to show that the complaint was *mala fide*, frivolous or vexatious and that the complaint could not be quashed. It is mentioned in the Affidavit that this Court should not embark to analyze the case as the findings recorded herein would prejudice the proceedings for divorce pending before the Family Court.

9. After carefully considering the rival submissions, we find that there is no material against the present Petitioners warranting continuation of the criminal proceedings. The FIR shows that the Petitioner No.2 was not residing with the Respondent No.3 and her husband Thomas. The Petitioner No.1 had come to reside with them only in the month of January 2017. There is a reference to an incident dated 14/01/2017 when the Petitioner No.2 had visited the Respondent No.3 and Thomas. The said incident is nothing but a petty domestic quarrel and cannot be termed as a serious incident warranting any criminal action against the Petitioners. In the said incident, there is no role assigned to the Petitioner No.1 and, at the highest, there are allegations that the Petitioner No.2 raised his hand.

10. The allegation that the Petitioner No.2 was telling people that the Respondent No.3 was suffering from bipolar disorder, is not supported by any material in the charge-sheet. Even in the FIR, it is not stated as to when and to whom the Petitioner No.2 made such statement. The FIR shows that since 14/02/2017, even Thomas was not residing with the Respondent No.3. There are general allegations that Thomas, Francis and the present Petitioners called the

Respondent No.3's father and demanded a flat and dowry, which was not paid during marriage. However, even this allegation is general in nature and is not specifically directed at the Petitioner No.2 with reference to a particular phone-call made by the Petitioner No.2. In any case, such allegations are in respect of the period when the couple has already started living separately and therefore, there is no question of the Petitioner No.2 harassing the Respondent No.3 on that ground. In our opinion, the allegations in the FIR fall miserably short of the requirements of Section 498A of the IPC. The Petitioner No.2 was not residing with the Respondent No.3 and Thomas. The Petitioner No.1 who is an old lady of 83 years of age, had visited the Respondent No.3 and Thomas only in January 2017 and there are no allegations against her. Even the statements of the neighbours forming part of the charge-sheet show that the Respondent No.3 was at fault as she was harassing Thomas. These statements, in fact, support the Petitioners' case. The other offences namely under Sections 323 and 506 read with Section 34 of the IPC and under Section 82 of the Juvenile Justice (Care and Protection of Children) Act, 2015 are not even alleged against the present Petitioners. The learned APP also could not point out any incriminating material

against the Petitioners warranting continuation of the criminal proceedings. Therefore, continuation of the prosecution against the present Petitioners is nothing but an abuse of process of law and therefore, in the interest of justice, the prosecution against them is liable to be quashed. The Petitioner No.1 is a 83 year old lady. In these circumstances, we are not inclined to relegate the Petitioners to the trial Court to pursue the remedy of filing a discharge application. Instead, we are inclined to exercise our jurisdiction under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings against the Petitioners.

11. In this view of the matter, the Petition succeeds and the Rule is made absolute in terms of prayer clause (c-1) *qua* the Petitioners.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)