

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

CRIMINAL WRIT PETITION NO.3986 OF 2016

Sunita S. Gangawane & Ors. ... Petitioners

Vs.

The State of Maharashtra ... Respondent

**With
CRIMINAL APPLICATION NO.466 OF 2017
IN
CRIMINAL WRIT PETITION NO.3986 OF 2016**

**Smt.Kiran Deepak Verma Nee
Ms.Kiran Khimanand Pandey**

**... Applicant/
Org. Complainant**

IN THE MATTER OF:

Sunita S. Gangawane & Ors. ... Petitioners

Vs.

The State of Maharashtra ... Respondent

**with
CRIMINAL WRIT PETITION NO.3576 OF 2017**

**Ramdulari Laxminarayan Varma @
Ramdulari Ramkuber Sharma & anr.**

... Petitioners

Vs.

The State of Maharashtra & anr. ... Respondent

Mr.Sandesh Patil I/b Jeet Gandhi for the Petitioner in both WPs
Ms.Rutuja Ambekar, APP, for the Respondent – State
Mr.Santosh Vhatkar I/b Santosh Vhatkar & Associates for Resp.
No.2 in WP/3576/2017

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: OCTOBER 22, 2018

P.C.:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally at the stage of admission.
2. These two criminal Writ Petitions are directed against the order dated 25.10.2016 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi in Criminal Revision Application No.30 of 2015, thereby confirming the order dated 22.12.2014 passed in C.C. No.661/PW/2014 by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai.
3. The petitioners in both these petitions are facing prosecution for the offence under sections 498A, 406, 506(2) r/w section 34 of the Indian Penal Code. Respondent No.2 is the original complainant. She has filed criminal case against her husband, mother in law, elder sister in law, younger sister in law and her husband. One petition is filed by the mother in law and the elder

sister in law. The second petition is filed by the younger sister in law and her husband seeking discharge. They are the original accused Nos.2, 3, 4 and 5. The husband is the original accused No.1 and he has not filed any discharge application. The original discharge application under section 239 of the Code of Criminal Procedure on the ground that the complainant has falsely implicated the accused, was filed. The said application was rejected and the said order was confirmed by the Sessions Court. Hence, these petitions.

4. Mr.Patil, the learned Counsel appearing for the petitions in both the writ petitions, has submitted that there is no evidence against the petitioners. He submitted that the complainant has falsely implicated the petitioners. Her main grievance is against her husband. He submitted that the complainant and the co-accused got married on 11.2.2005 at Goregaon, Mumbai and thereafter, on 30.8.2007, the complainant lodged a complaint at Borivali Police Station against her mother in law and sisters in law. A non-cognisable complaint was registered at serial No.2501/2007 on 30.8.2007. He pointed out that thereafter, she did not stay with her husband and there was no occasion that she was subjected to

cruelty by these petitioners. He submitted that the orders passed by the learned Metropolitan Magistrate and the learned Sessions Judge be set aside and the petitioners be discharged.

5. Learned Counsel appearing for Respondent No.2 / original complainant, has submitted that the petitioners are the abettors. They have ill-treated her when she was staying in the matrimonial home. He has submitted that the accused No.1 i.e., her husband during the subsistence of their marriage, got married with another girl and now they have one daughter out of the said wedlock. She has also prosecuted him under section 494 of the Indian Penal Code. The learned Counsel has submitted that the petitioners have tortured her mentally and physically and she was cheated by the husband.

6. The learned APP appearing for the State has adopted the submissions of the learned Counsel for respondent No.2.

7. Perused the FIR, supplementary statements of the complainant, which was recorded in 2013. It appears that the complainant has made very superficial allegations against the petitioners/accused. There are no specific instances. Moreover, she approached the Borivali police station on 30.8.2007 and the

non-cognisable complaint was registered and after enquiry, a warning was given to the husband, mother in law and the father in law by the police. Thereafter, she did not go alongwith them as they refused to stay with her. She went to her father's house and then, she stayed with her relatives. There is nothing on record to show that after 30.8.2007, she continued to stay with the petitioners and there was any occasion that she was subjected to ill-treatment. Moreover, in the course of arguments, it was pointed out that she has filed a private complaint before the learned Metropolitan Magistrate i.e., C.C. No.843/N/2007 and the said criminal case filed under Domestic Violence Act was only against the husband. The present petitioners were not party to the said criminal case and no allegations were made in the said offence. The husband is acquitted from the said case. In view of these, there is no sufficient evidence against the petitioners so that the charge can be framed against them under any of the offences for which they are prosecuted.

8. In the circumstances, the orders dated 25.10.2016 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi in Criminal Revision Application No.30 of 2015 and the

order dated 22.12.2014 in C.C. No.661/PW/2014 passed by the learned Metropolitan Magistrate, Borivali, are set aside. Rule made absolute in terms of prayer clause (a).

9. Writ Petitions are disposed of accordingly.

10. In view of the disposal of the Writ Petitions, Application No.466 of 2017 does not survive and the same is disposed of as such.

(MRIDULA BHATKAR, J.)