IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 465/2016

(Sainuddin Khan s/o Sanaullah Khan and others ***VS.*** The State of Maharashtra and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

Mr. A.J. Mirza, Advocate for the applicants
Mr. Ambarish Joshi, Additional Public Prosecutor for the non-applicant no.1
Mr. A.M. Sudame, Advocate for the non-applicant no.2.

CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.
DATED : **5th April, 2018.**

Heard.

By this Criminal Application, the applicants seek the quashing and setting aside of the First Information Report registered against them for the offences punishable under Sections 498A, 504 and 506 read with Section 34 of the Penal Code.

The applicant no.7-Parvez Khan is the husband of non-applicant no.2-Heena. They were married in December, 2012. The applicant no.1 is the father-in-law of Heena; the applicant no.2 is the mother-in-law of Heena; the applicant no.3 is the sister-in-law of Heena, the applicant no.4 is the husband of the sister-in-law of Heena, the applicant no.5 is the maternal uncle of the applicant no.7 Parvez Khan; the applicant no.6 is the maternal aunt of the applicant no.7 Parvez Khan; the applicant no.8 is another sister of Parvez Khan and the applicant no.9 is the brother of Parvez Khan. A report was lodged by Heena against the applicants on 09.01.2016 stating therein that immediately after her marriage, her husband and her in-laws had started treating her with cruelty. It is alleged in the said complaint which is filed first in the point of time that the applicant nos. 1 to 7 used to quarrel with Heena and used to abuse her without any just or reasonable cause. It is alleged in the complaint that the applicant nos. 1 to 7 used to torture her. It is alleged in the complaint that one month after her marriage, her husband Parvez Khan started residing in Riyadh for his job. It is alleged that immediately after the marriage, the applicant nos. 1 to 7 started demanding a sum of Rs. 5,00,000/- from her parents. It is alleged that when she had resided for about 6 to 7 months in her parents' house when Parvez Khan was at Riyadh, her other in-laws quarreled with her and abused her. The non-applicant no.2-Heena and some of the applicants were referred to the *Mahila* Cell but a settlement was not possible. It appears that a second complaint was lodged by Heena on 10.05.2016 alleging therein that all the nine applicants had harassed and ill-treated after her marriage. It appears that though in the first complaint dated 09.01.2016 no allegations were made against the applicant nos. 8 and 9, in the complaint dated 10.05.2016 it was alleged that the applicant nos.1 to 9 had ill-treated her. It is alleged in the complaint dated 10.05.2016 that the applicant no.7-Parvez Khan was suspicious that the child born to Heena was not his child and therefore he had started ill-treating her. It is alleged that the applicant no.7-Parvez Khan and all the other applicants (without mentioning them specifically) had asked Heena to get a sum of Rs. 5,00,000/- from her parents or to execute a sale -deed of the plot owned by Heena's father at Kanhan in favour of Parvez Khan. It appears that on the basis of the said complaint, the First Information Report was registered against the applicants for the offences punishable under Sections 498A, 504 and 506 of the Penal Code. The applicants have sought for the quashing and setting aside of the said First Information Report.

Shri A.J. Mirza, the learned counsel for the applicants submitted, on the basis of the documents/ receipts produced by him on record that money was transferred by Parvez Khan from Riyadh in favour of Heena from March, 2013 till December, 2015. It is stated that it is apparent from the receipts that are placed on record that the applicant no.7-Parvez Khan had transferred a sum of Rs 1,97, 998/- in favour of Heena through Western Union. It is stated that the said fact is not disputed by the non-applicant no.2-Heena. It is submitted that the said receipts would falsify the allegations levelled by Heena in the First Information Report about the demand of Rs. 5,00,000/- by Parvez Khan and the other applicants. It is stated that in the report lodged by Heena on 09.01.2016, general allegations are made against the applicant nos. 1 to 7 without mentioning as to which of the applicant had actually made the demand of Rs. 5,00,000/- and which of the applicant had tortured her and in what manner. It is stated that in the complaint dated 09.01.2016, the applicants had levelled allegations only against the applicant nos.1 to 7 whereas in the complaint dated 10.05.2016 allegations are levelled against the applicant nos.1 to 9. It is stated that the father of Heena had suffered a serious heart ailment in 2014 and Heena's family had borrowed Rs. 1,50,000/- from the applicant no.7 and when the applicant no.7 had asked Heena's family to return the said amount, a quarrel was picked-up by Heena and her family members against the applicant no.7 and the other applicants and had falsely lodged the report dated 09.01.2016. It is submitted that on a reading of the reports, it is apparent that the allegations levelled in the same are concocted and they are falsified by the admitted documents that are produced by the applicants on record.

Shri Ambarish Joshi, the learned Additional Public Prosecutor appearing for the non-applicant no.1 submitted that since the allegations in the complaint lodged by Heena would show that the applicants had demanded a sum of Rs. 5,00,000/- from the parents of Heena and since, according to Heena, the applicants were harassing and ill-treating her due to non-fulfillment of the demand, the non-applicant no.1 has rightly registered the First Information Report against the applicants. It is, however, fairly admitted that specific allegations are not made against any of the applicants except the applicant no.7 Parvez Khan against whom Heena has alleged that he had suspected her character and had ill-treated her as he doubted that the son born to Heena was not his son. It is stated that since an allegation of illegal demand is made in the complaint, the First Information Report is rightly registered.

Shri A.M. Sudame, the learned counsel for the non-applicant no.2 has opposed the prayer made in the Criminal Application. It is stated that on a reading of the allegations in the First Information Report, it cannot be said that an offence under Section 498A, 504 and 506 of the Penal Code cannot be made out against the applicants. It is submitted that the applicants used to abuse the non-applicant no.2 without any rhyme and reason. It is stated that the non-applicant no.2 was asked to secure a sum of Rs. 5,00,000/- from her parents and due to non-fulfillment of the said demand, the applicants had ill-treated the non-applicant no. 2. It is stated that the non-applicant no.2 has clearly alleged that if the parents of the non-applicant no.2 were not ready to pay the sum of Rs. 5,00,000/- to the applicants, the applicants had demanded that the plot at Kanhan be registered in the name of the applicant no.7. The learned counsel, thus, sought for the dismissal of the Criminal Application.

It is apparent from a reading of the complaint lodged by Heena and the other undisputed documents that are placed on record that the allegations made by Heena in the two complaints in regard to the illegal demand of Rs. 5,00,000/- from the parents of Heena are false and concocted. It appears that funds were continuously transferred by the applicant no.7-Parvez Khan from Riyadh to Heena from March 2013 i.e. immediately after he went to Riyadh till December, 2015. On most of the occasions, a sum of Rs. 49,999/- was transferred by Parvez Khan in favour of Heena through Western Union. It appears that the transfer of funds is made continuously from March, 2013 till December, 2015 for non-applicant no.2 Heena, in the name of her brother at Nagpur. The said fact is not disputed. If the applicant no.7 had transferred a couple of lakhs for Heena from Riyadh during the said period, it is difficult to digest that Parvez Khan and his family members were demanding a sum of Rs. 5,00,000/- from the parents of Heena. The allegations in respect of demand appear to be false and baseless. We find that in the complaint dated 09.01.2016, allegations are made by the non-applicant no.2 only against the applicant nos.1 to 7 but in the complaint dated 10.05.2016 allegations are levelled by the non-applicant no.2 against the applicant nos.1 to 9. In none of the complaints, the non-applicant no.2 has stated as to what role was played by each of the applicant in harassing the non-applicant no. 2-Heena. Only in the first paragraph of both the complaints, the name of the applicants are mentioned and in the other paragraphs general allegations in regard to the illegal demand and the alleged ill-treatment meted out to Heena are made. In both the complaints, the non-applicant no.2 has alleged that from the beginning of the year 2013, the applicants had started making the illegal demand. However, we find from the undisputed facts that the applicant no.7 as continuously sending money to Heena by transferring it in the name of her brother. Allegations are made by the applicants that all was well between Heena and the applicants till applicant no.7 Parvez Khan had asked the family of Heena to refund the amount of Rs.1,50,000/- that was advanced by Parvez Khan to them for the expenses incurred by them at Crescent Hospital where the father of Heena was admitted for serious heart ailment. It is apparent from the reports that are belatedly lodged by Heena on 09.01.2016 and 10.05.2016 that when there were some disputes between the parties after December, 2015, Heena had lodged the false complaints against the applicant nos.1 to 7 on 09.01.2016 and against the applicant nos.1 to 9 on 10.05.2016. It is necessary to note that some of the applicants are the maternal uncle and the paternal aunt of applicant no.7-Parvez Khan. It appears that the applicant no.3,who is the sister of Parvez Khan, resides in Uttar Pradesh and the applicant no.4 resides in Kamptee Colliery No.3 *Khadan,* which is far away from the matrimonial house of the applicant no.7 and the non-applicant no.2. It further appears from both the reports lodged by Heena that Heena had stopped staying with her in-laws within a few months from her marriage as the applicant no.7-Parvez Khan has secured a rented house for her in Kamptee and Parvez Khan and Heena used to stay with their son when Parvez Khan came to Kamptee from Riyadh. It is apparent from the complaint that the non-applicant no.2 was not residing with the applicants except applicant no.7 within a few months from her marriage. If that be so, it is apparent that the complaints were lodged by the non-applicant no.2 against the applicants merely with a view to teach a lesson to them, though most of the applicants did not have any concern with the matrimonial relationship between the applicant no.7 and the non-applicant no.2. It is apparent from the allegations in the complaint lodged by the non-applicant no.2 that the allegations made in the complaints are inherently improbable which makes us believe that there is an absence of sufficient grounds for proceeding against the applicants. We find that the complaints are manifestly attended with *mala fide,* with a view to wreak vengeance on the applicant no.7 and all the members of his family though some of them are not very closely related to him. The allegations in the complaint that the applicant no.7 doubted the character of non-applicant no.2 would not be an allegation which would result in inflicting "cruelty" on the non-applicant no. 2, as is defined under Section 498A of the Penal Code. The only allegation on which the offence under Section 498A could have been registered against the applicants is the allegation in regard to the demand of the sum of Rs. 5,00,000/- but we find that the said allegation is based on an improbability as the applicant no.7-Parvez Khan was continuously sending money for the non-applicant no.2 from Riyadh till the previous month of the filing of the first complaint by the non-applicant no.2. In the circumstances of the case, it would be an abuse of the process of the court if we permit the continuance of the trial against the applicants on the basis of the First Information Report registered against them. With a view to secure the ends of justice and to prevent the abuse of the process of the court, it is necessary to quash and set aside the First Information Report registered against the applicants and all the proceedings arising therefrom.

Hence, for the reasons aforesaid, the Criminal Application is allowed. The First Information Report registered against the applicants for the offences punishable under Sections 498A, 504 and 506 and section 34 of the Penal Code and the proceedings arising therefrom are hereby quashed and set aside. Order accordingly.

JUDGE **JUDGE**

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