

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1128 OF 2018

Mrs. Amruta Ajay Mane @]
Amruta Manohar Gaikwad]
Age: 32 years, Occupation: Housewife]
Residing at- 4/C-Wing, Nilesh Park,]
Sade Satra, Nail Road, Malwadi,]
Hadapsar, Pune- 411028.]

...Applicant
(Original Accused)

Versus

1. Mr. Ramesh Dhodiba Mane]
Age: 60 years, Occupation: Service.]
]
2. Mrs. Pushpa Ramesh Mane]
Age: 58 yrs., Occupation: Housewife]
]
- Both Nos. 1 & 2 are residing at F2/303,]
Puranik City Phase-2, behind to Global]
Gallery Showroom, Ghodbundar Road,]
Thane (W)- 400416]
3. The State of Maharashtra]
(At the instance of Kasarvadavali Police)]
Station, Thane).]

...Respondents
(Respondent No. 1
& 2 are original
complainants)

Mr. Swapnil S. Mhatre, Advocate for Applicant.
Mr. Kaushik Jayant i/b. Mr. Amol P. Mhatre a/w. Mr. Nilesh
Mandavkar, Advocate for Respondent No. 1 and 2.
Mr. A.R. Patil, APP for Respondent-State.

CORAM : S. S. SHINDE, J
DATE : 26th August 2019

JUDGMENT

1. Rule. Rule made returnable and heard with the consent of learned counsel appearing for the parties.
2. This criminal application takes an exception to the order below Exhibit-1 dated 16.05.2016 in (old- O.M.A. No. 1023/2015) now renumbered as R.C.C. No. 3811/2016, passed by JMFC, Thane, thereby issuing process against the Applicant for the offences punishable under Section 504 and 506 of Indian Penal Code (for short "IPC").
3. Brief facts leading to filing of this application are as under:-

It is the case of the Applicant that, Respondent No. 1 and 2 are father in law and mother in law respectively of the Applicant. The marriage of the Applicant and son of Respondent Nos. 1 and 2 was solemnized on 18/12/2015 at B.N. Vaidya Sabhagraha Dadar (E), Mumbai. At the time of marriage, it was made clear that, the Applicant has to live in joint family and she herself showed her willingness to join job after marriage. However, after marriage, the Applicant neither performed household work nor joined job, whereas she was demanding her husband for separation from the Respondent Nos. 1 and 2, and was insisting for separate house. At the time of marriage, the parents of the Applicant did not bring any gold either for the Applicant or to

Bhagyawant

the son of Respondent No. 1 and 2. On 29/03/2015, 16/04/2015 and 26/04/2015 while the Applicant was in matrimonial house and the Respondent No. 1 and his sons were out for work, the parents of the Applicant took her to her parental house on the pretext of her ill-health. However, when their son Ajay went for taking back the Applicant, the Applicant refused to come back while saying that “unless son of Respondent No. 1 and 2 removes the Respondent Nos. 1 and 2 and his brother from the house then only she shall come”. Applicant abused Respondent Nos. 1 and 2's son by saying that, they would take legal action against him if he did not remove his parents and brother from their house. Thereafter, Respondent Nos. 1 and 2 received call from Women cell, Pune and the Applicant lodged a complaint under Section 498-A of IPC. against Respondent Nos. 1 and 2 and few others including their son Ajay. Thereafter, Respondent Nos. 1 and 2 filed the O.M.A. No. 1023/2015 against the Applicant and other Co-accused therein for the offences punishable under section 120B, 415, 504, 506, 406 and 340 of IPC., without filing list of witnesses to be examined by them. The verification statement of Respondent No. 1 was recorded by the learned JMFC, Thane on 07/05/2016. Learned JMFC, Thane was pleased to issue process against the Applicant for the offences punishable under Section 504 and 506 of IPC vide its impugned order dated 16/05/2016. Hence, this criminal application.

4. Heard learned counsel appearing for the parties. Learned counsel appearing for the Applicant submits that, Applicant/Accused is not residing within the jurisdiction of the learned J.M.F.C., Thane. Therefore, in view of mandate of Section 202 of Code of Criminal Procedure, judgment of the Hon'ble Supreme Court in the case of **Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Another (2017) 3 SCC 528** and in particular directions issued in para 12 thereof, it was required for the Magistrate to cause an enquiry as contemplated under Section 202 of Cr.P.C. and pass the reasoned order. However, in the present case, it is clear from the impugned order that, neither the inquiry has conducted by the Magistrate nor the reasons are assigned for issuance of summons.

5. On the other hand, learned counsel appearing for the contesting respondents invites attention of this Court to the reported judgment of this Court (Coram:- J.H. Bhatia, J.) in the case of **Rajeev Sawhney Vs. State Bank of Mauritius Ltd. & Ors. 2011 ALL MR (Cri) 2116** and in particular paragraph 13 thereof and submits that, if the Magistrate heard the Advocate for the complainant and applied its mind to the documents submitted by the complainant, this is a sufficient compliance as held by this Court in the case of **Rajeev Sawhney** (supra).

6. Upon appreciating the rival contentions and perusal of impugned order and also other material placed on record, prima facie it appears that, the learned Magistrate without assigning any reasons in the impugned order, though learned Magistrate was obliged to give reasons so as to reflect in the order, whether the inquiry was conducted or otherwise, proceeded to issue summons to the Applicant. Certainly, the course adopted by the learned Magistrate is not keeping in view the observations made by the Hon'ble Supreme Court in para 12 of the judgment in the case of **Abhijit Pawar** (Supra). In the facts of the present case, Applicant-Accused is residing outside the jurisdiction of J.M.F.C, Thane and therefore, it was incumbent upon the learned Magistrate to cause the inquiry himself or entrust the said task with concerned Police officer. However, learned Magistrate by cryptic order proceeded to pass the impugned order.

7. In view of discussion made herein above the impugned order dated 16.05.2016 in (old- O.M.A. No. 1023/2015) now renumbered as R.C.C. No. 3811/2016, passed by JMFC, Thane, thereby issuing process against the Applicant for the offences punishable under Section 504 and 506 of Indian Penal Code is quashed and set aside.

8. Needless to observe that, the complainant would be at liberty to approach the concerned Court afresh for redressal of his grievance, if he is so

advised. If such complaint is filed, the learned Magistrate is not precluded from entertaining fresh complaint, however after following procedure under Section 202 Cr.P.C. and other relevant provisions. In the light of above, criminal application is partly allowed and stands disposed of accordingly. Rule made absolute to above extent.

[S. S. SHINDE , J]