

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.301/2020

(LD-VC/CRIMINAL WRIT PETITION NO.786/2020)

Smt. Jyoti Tijare w/o Kaustubh Gandhalikar

...Versus...

State of Maharashtra, through its Police Station in Charge, Sitabuldi Police Station, Nagpur and others

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

Court's or Judge's orders

Mrs. Gauri Venkatraman, Advocate with Shri Yash Venkatraman, Advocate for petitioner
Shri S.M. Ukey, Addl. P.P. for respondent no.1

**CORAM : Z. A. HAQ AND
AVINASH G. GHAROTE, JJ.
DATE : 21/08/2020**

1. Heard Mrs. Gauri Venkatraman, learned Advocate with Shri Yash Venkatraman, learned Advocate for the petitioner and Shri S.M. Ukey, learned Additional Public Prosecutor for the respondent no.1.
2. By the present petition, the petitioner seeks direction against the respondent no.1 through Police Station In-charge, Sitabuldi Police Station, Nagpur to register F.I.R. against the respondent nos.2, 3 and 4 on the basis of the complaint dated 13/6/2020 at Annexure-I and the missing complaint dated 27/7/2019 at Annexure-XII to the petition.

A further direction by way of interim order is sought against the respondent no.5 - Passport Authority of India, to impound the passport of the respondent no.2 so as to disable him from leaving the country so that the prayers as made in the petition are not frustrated.

3. It is pertinent to note that the respondent no.2 – Kaustubh Gandhalikar, is the husband of the petitioner and the respondent nos.3 and 4 are the father and mother-in-law of the petitioner respectively. The contention of the petitioner is that she was married to the respondent no.2 on 25/11/2007, from which date, she is suffering mental and verbal harassment at the hands of the respondent nos.3 and 4. Several allegations have been made against the respondent no.2 of evading his marital and parental responsibilities and so also of ill-treating the petitioner and the minor son who was born on 2/8/2010 at Dubai. It has been categorically stated in the petition that the respondent no.2 on various occasions, for months together has remained incommunicado, without disclosing his whereabouts which has led to mental harassment of the petitioner. It is further alleged that the respondent no.1 was also imprisoned in Dubai for issuing a cheque in bad faith. It is further submitted that the respondent no.2 has been living apart from the petitioner and her son without any definite future plan. It is submitted that the last meeting between the

petitioner and the respondent no.2 was at Dubai on 9/6/2019 after which the petitioner is not aware of the whereabouts of the respondent no.2. It is further contended that the respondent nos.3 and 4 have also evaded to disclose the whereabouts of the respondent no.2, in spite of being aware of the same as the respondent no.2 has opened a company and the address of the company is shown as the residential premises of the respondent nos.3 and 4. In this background, the petitioner, has sent to complaint to the respondent no.1 on 13/6/2020 stating that she is not aware of the whereabouts of respondent no.2, since June, 2019 and thus the conduct of the respondent no.2 in not looking after the welfare of the petitioner and her child was clearly intentional, deliberate and amounted to playing a fraud upon her and her son, which was in conspiracy with the respondent nos.3 and 4 and therefore, the respondent no.1 ought to register F.I.R. under Section 498-A, 120 (b) read with Section 34 of Indian Penal Code in that regard against the respondent nos.2 to 4. On the same grounds, relief has been sought to impound the passport of the respondent no.2.

4. The reply of the respondent no.1 indicates that upon receipt of the complaint dated 13/6/2020, a preliminary enquiry was made and it was found that the matter related to a matrimonial dispute and did not disclose any cognizable offence. It was further stated that the

respondent no.2, had landed in Mumbai on 10/6/2019 and was residing at Dombivali (West) Mumbai and therefore, the matter was forwarded to Police Station, Vishnu Nagar, Dombivali (West) for investigation and appropriate action. It was further stated that there was no violation of the directions as contained in the judgment of the Hon'ble Apex Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and others***, reported in ***(2014) 2 SCC 1***, as preliminary enquiry was indeed conducted and it was determined that it was not a case of cruelty as contemplated by Section 498-A of I.P.C. It was stated that the complaint demonstrated that the petitioner was aggrieved by the respondent no.2 not maintaining her and her son, for which appropriate redressal could be obtained by availing the provisions under the Family Courts Act.

5. The contention of learned Advocate Mrs. Venkatraman that there has been violation of the dictum of the Hon'ble Apex Court in the case of ***Lalita Kumari*** (supra), is clearly unfounded, in light of the position, as recorded in the reply of the respondent no.1 that a preliminary enquiry was indeed conducted, in which it was found that the respondent no.2 had returned in the country on 10/6/2019 itself. On the own admission of the petitioner, she has not been in contact with the respondent no.2 since June 2019. The facts as reproduced in the petition, clearly do

not disclose any cognizable offence by the respondent nos.2 to 4, in light of which, the relief for direction as claimed in prayer clause (a) in the petition cannot be granted.

6. Insofar as the contention raised for directing the respondent no.5 to impound the passport of the respondent no.2, the position in that regard is clearly covered by the requirements as contained in the provisions of Section 10 (3) (a) to (h) of the Passports Act, 1967, the existence of which has to be verified to the satisfaction of the Passport Authority, which being the situation, we are not willing to examine the same in this petition.

7. In the result, the writ petition is dismissed. However, the petitioner shall be at liberty to file appropriate proceedings, if available in law, for ventilating her grievance. The petitioner shall also be at liberty to approach the Passport Authority by making appropriate representation regarding her grievance, if any.

JUDGE

JUDGE