

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 CRIMINAL APPLICATION NO.5 OF 2020

SANDIP S/O. GOVIND POPALGHAT

VERSUS

THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr Narayan B. Narwade
APP for Respondent No.1 – State : Mr Anand S. Shinde
Advocate for Respondent No.2 : Mr A.T. Ghute h/f Mr V.B. Anjanwatikar

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 23rd AUGUST, 2021

PER COURT :

1. Heard finally with the consent of the parties at admission stage.
2. The learned counsel for the applicant/husband has filed this application for quashing of the criminal proceeding vide RCC No. 224/2019 pending before the Judicial Magistrate First Class, Shirpur, Tal. Shirpur, Dist. Dhule for the offence punishable under section 498A, 406, 323, 504, 506 read with section 34 of IPC out of the FIR bearing crime No. 252/2018 registered with Shirpur City Police Station, Shirpur, Dist. Dhule.
3. The learned counsel for the applicant submits that the husband/ applicant is working at Zilla Parishad School at Patil Pada, Tq. Vikramgad, Dist. Palghar and respondent No. 2 wife is in service at Municipal Council

School, Shirpur, Dist. Dhule. They are working at two different places. Respondent No. 2 was insisting the applicant-husband for getting transferred at her place. However, the applicant allegedly was refusing for the same. The learned counsel submits that thus, the relations became strained on account of the said aspect as alleged in the complaint. The learned counsel submits that though there are other allegations, however, those hardly attract the provisions of section 498A of the IPC. The learned counsel submits that this court (Coram : T.V. Nalawade and K.K. Sonawane, JJ) by order dated 21.06.2019 in criminal application No. 5/2019, has quashed the FIR as against accused Nos. 2 to 16.

4. The learned counsel submits that the allegations are general in nature. Thus, the continuation of the criminal proceeding in the backdrop of those allegations would be the abuse of the court process.

5. The learned counsel for respondent No.2/informant submits that the applicant/husband has refused to get himself transferred at the place where respondent No. 2 was working or near to her place. Further, respondent No. 2 had given birth in the month of July, 2015 to a female child. It has been alleged in the complaint that even the applicant and his family members were disappointed on account of the birth of a female child. It has been specifically alleged in the complaint that respondent No.2/informant was subjected to beating on various counts by the applicant-husband. In the year 2016, respondent No. 2 and applicant-husband have decided to purchase the plot and it was purchased for a consideration of Rs. 10,00,000/- in the name of the applicant. At the

instance of the applicant/husband, respondent No. 2 has availed the loan from HDFC Bank to the tune of Rs. 3,10,000/-. However, even thereafter, the applicant/husband used to insist her to resign from the post and come at the place where his parents are residing. It has been specifically alleged that even in the year 2017, since respondent No. 2 has refused to resign and leave her working place situated in Shirpur, the applicant/husband had started suspecting about her character. He was causing physical and mental harassment to respondent No. 2 by suspecting about her character.

6. The learned counsel submits that even the applicant/husband has refused further to co-habit with her and she is now residing with her parents along with the girl child.

7. We have also heard the learned A.P.P. for the State.

8. We have carefully gone through the allegations made in the complaint, police papers, charge sheet and also perused the statement recorded by the Investigating Officer. All the accused persons including the applicant herein have filed criminal application bearing No. 5/2019 for quashing of the FIR and this court (Coram : T.V. Nalawade and K.K. Sonawane, JJ) in criminal application No. 5/2019 by order dated 21.06.2019 has partly allowed the said application and so far as the present applicant is concerned, his application stands disposed of as withdrawn.

9. It further appears that this Court has not granted any liberty to the applicant to file an application for quashing of the proceedings after the charge sheet. Though we have requested the learned counsel for the applicant to take instructions as to whether the applicant is ready to file his application for discharge before the trial court, the learned counsel on instructions submitted before us that the court should pass the order.

10. On careful perusal of the complaint, we find that respondent No. 2/informant was not only subjected to ill-treatment on account of the transfer from the work place, but she was also subjected to ill-treatment on various counts by the applicant/husband. Firstly, she was subjected to cruelty on the count that she is not ready to resign or leave her working place. Secondly, respondent No. 2 has given birth to a female child and thirdly, on account of the transaction in respect of the purchase of plot and lastly, respondent No. 2 was also subjected to cruelty by suspecting about her character.

11. Respondent No. 2 is presently staying with her parents along with her small girl child.

12. In a case of ***Taramani Parakh Vs. State of Madhya Pradesh and others reported in (2015) 11 SCC 260***, the Supreme Court in para Nos. 14 and 15 has made the following observations :-

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced

her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

15. The decisions referred to in the judgment of the High Court are distinguishable. In *Neelu Chopra*, the parents of the husband were too old. The husband Rajesh had died and main allegations were only against him. This Court found no cogent material against other accused. In *Manoj Mahavir*, the appellant before this Court was the brother of the daughter-in-law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier section 498-A IPC case. This Court found the said case to be absurd. In *Geeta Mehrotra*, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused.

13. It is, thus, clear that the parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of the court's process,

quashing jurisdiction can be exercised. The reference of the same is made in the cases of *K. Ramkrishna and Ors. Vs. State of Bihar and Anr. reported in (2000) 8 SCC 547*, *The Pepsi Foods Ltd and Anr. Vs. Special Judicial Magistrate and Ors. reported in (1998) 5 SCC 749* and *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. reported in AIR 1992 SC 604* and *Asmathunnisa Vs. State of Andhra Pradesh and Anr. reported in (2011) 11 SCC 259*.

14. In the instant case, we find the triable issue from the reading of the complaint and also after going through the charge sheet, it cannot be held that even if the allegations are taken as proved or admitted, no case is made out. Thus, we find no substance in the present criminal application, hence we proceed to pass the following order :

ORDER

The criminal application is hereby dismissed.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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