

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 350 OF 2020

- 1) Vikas Omprakash Kejriwal,
Age 41 years, Occ. Doctor.
- 2) Vinay Omprakash Kejriwal,
Age 47 years, Occ. Insurance Agent.
Both R/o. Plot No. 2, State Bank
Colony, Pachora, Tq. Pachora,
Dist. Jalgaon. ... **Petitioners.**

VERSUS

The State of Maharashtra,
Through Police Inspector,
Pachora Police Station. ... **Respondent.**

...

Advocate for the Petitioners : Mr. PR. Katneshwarkar.
APP for the Respondent/State : Mr. PG. Borade.

CORAM : MANGESH S. PATIL, J.
DATE : 22.02.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. By invoking the powers of this Court under Article 227 of the Constitution of India the petitioners who are the original accused No. 1 and 4 in Regular Criminal Case No. 17/2016 pending on the file of the learned Judicial Magistrate First Class Pachora are impugning the order passed by the learned Magistrate rejecting their application (Exhibit 46) filed under Section 239 of the Code of Criminal Procedure seeking discharge. They are also impugning the order passed by the learned Additional Sessions Judge dismissing the revision preferred by them under Section 397 of the Code of Criminal Procedure and confirming the order of the learned Magistrate.

3. In substance the allegations as can be discerned from the charge sheet are to the effect that the informant is the wife of petitioner No. 1. The couple had married in the year 2009. She alleges that since 5 to 6 months after the marriage the petitioners and other in laws started demanding dowry for setting up a hospital. She was subjected to cruelty on that count. She also alleges that the petitioners have misappropriated 60 tolas of gold and five lakh rupees gifted by her father in the marriage. So far as the petitioner No. 2 is concerned she alleges that he tried to molest her on two to three occasions by touching her inappropriately. Accordingly the petitioner No. 1 is now being charged for the offences punishable under Section 498A, 406, 323, 504 read with Section 34 of the Indian Penal Code and under Section 3 and 6 of the Dowry Prohibition Act whereas the petitioner No. 2 is charge-sheeted for the offence punishable under Section 354 of the Indian Penal Code.

4. The learned advocate for the petitioners would take me through the entire charge sheet and particularly the statements of few witnesses who happen to be the neighbours of the petitioners. He would point out that these witnesses have never heard about any marital discord between the petitioner No. 1 and the informant. They have also no knowledge about he having subjected her to any illtreatment on account of demand or about the petitioner No. 2 having molested her. The learned advocate would also point out that in fact the informant herself had left her matrimonial home as she did not want to continue to cohabit. The petitioner No. 1 had lodged a missing report on 11.05.2014. Subsequently she appeared in the police station. Her statement was recorded. She clearly confessed about having left the matrimonial home on her own accord. She is a Medical Practitioner and highly qualified person and could not have made such a statement had there been any demand for money or illtreatment on that count. The learned advocate would, therefore, submit that a false and concocted complaint has been filed falsely implicating the husband and all in laws.

5. The learned advocate would also point out that there are statements of the witnesses annexed to the charge sheet wherein the witnesses have stated about the gold ornaments having been returned to the informant in their presence. But she did not acknowledge it in writing. Therefore there would not be any question of misappropriation. There is no sufficient and cogent evidence which would be sufficient to bring home the charge. Both the Courts below have grossly erred in appreciating the law and the facts and have reached illegal conclusion.

6. The learned A.P.P. strongly opposes the petition. He submits that there are concurrent findings of the two Courts below. They have taken a plausible view. The Revisional Court after appreciating the vague and omnibus allegations against the other in laws has rightly discharged them whereas having found that there is enough material to demonstrate that there is substance in the allegations qua the petitioners has refused to interfere with the order passed by the Magistrate.

7. I have carefully gone through the impugned orders. Needless to state that in exercising the powers under Article 227 of the Constitution of India this Court would be slow in interfering in the concurrent findings of the two Courts below. It is equally trite that while exercising the powers under Article 227 of the Constitution of India, this Court would cause interference only if the orders passed by the Courts below are perverse, arbitrary and capricious. If it finds that the views taken by the two Courts below are plausible, based on reasonable appreciation of the facts and circumstances and applying the law correctly, this Court is not expected to intervene.

8. Bearing in mind all the aforementioned facts, circumstances and law the scope of the scrutiny would be limited in ascertaining as to if the charge can be said to be groundless. As has been rightly observed by the learned Magistrate the scope of enquiry does not require ascertainment of veracity or otherwise of the material produced with the charge sheet and its

sufficiency or otherwise at the ultimate trial. The scope of the enquiry does not take within its sweep conclusions as to if the material is sufficient enough to ultimately result in conviction. The learned Magistrate has objectively considered the law and the facts and circumstances while reaching a conclusion that the charge is not groundless.

9. The very fact that there has been a marital discord is quite eloquent. For whatever reason, at this juncture it is sufficient to bear in mind that the informant could not get along and had to leave the matrimonial home. In my considered view this is sufficient to *prima facie* infer that there must have been some matrimonial dispute which in all probability must have compelled her to take the steps.

10. The question whether there was demand for money is a matter which can be decided finally at a full fledged trial. So far as the appropriation of gold ornaments are concerned, there are statements of the witnesses pointed out by the learned advocate for the petitioners showing that in fact in their presence the gold ornaments were returned to the informant. The very fact that such gold ornaments had to be returned after the dispute had cropped up is sufficient at this juncture to infer that indeed there is substance in the allegations regarding misappropriation.

11. As far as the petitioner No. 2 is concerned there are allegations about he having attempted to touch the informant inappropriately on two to three occasions. Conspicuously, he is not being roped in for any other charge except under Section 354 of the Indian Penal Code.

12. Considering all the aforementioned facts and circumstances, in my considered view both the Courts below have taken a plausible view of the matter. The observations and conclusions drawn by them by no stretch of imagination can be said to be either perverse, arbitrary and capricious so as to enable this Court to invoke the powers under Article 227 of the Constitution of India.

13. The Writ Petition is dismissed.
14. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-