

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL WRIT PETITION NO.1750 OF 2021

Shri Sunil Khali Panda & others

... Petitioners

Vs.

State of Maharashtra & another

... Respondents

Mr.Manish S. Gadre for the Petitioners

Ms.A.S. Pai, Public Prosecutor, for Respondent – State

Ms.S.B. Jagtap for Respondent No.2

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

DATED: AUGUST 12, 2021

P.C.:

1. Heard the learned Counsel appearing for the Petitioners and the learned Counsel appearing for the contesting respondent. It is submitted by the learned Counsel appearing for the petitioners that though the informant went to the police station on four occasions, she did not narrate the allegations which are now appearing in the impugned First Information Report. It is submitted that the allegations in the First Information Report are after-thought and such incidents, as alleged in the First Information Report, have never taken place. The informant stayed for a short duration in the

matrimonial home. It is further submitted that petitioner No.3 was not staying in the matrimonial home and, therefore, the allegations made against petitioner No.3 cannot be countenanced. Therefore, relying upon the pleadings in the petition, grounds therein and annexures thereto, the learned Counsel appearing for the petitioners submitted that the petition may be allowed.

2. On the other hand, the learned Counsel appearing for the contesting respondent and the learned APP appearing for the Respondent – State relying upon the allegations made in the First Information Report, statements of the witnesses and other accompaniments of the chargesheet, would urge that there is sufficient material collected during the course of investigation and, therefore, trial can proceed on the basis of such material. It is submitted that the allegations made in the First Information Report and the statements of the witnesses, will have to be tested only during the course of trial.

3. Upon appreciating the rival contentions and perusal of the allegations in the First Information Report, so also the statements of the witnesses, we are of the considered view that the from the allegations made in the First Information Report coupled with the

statements of the witnesses, the alleged offences are disclosed. In support of the allegations made in the First Information Report, the Investigating Officer has collected sufficient material and the trial can proceed on the basis of such material.

4. The Supreme Court in the case of **Bhaskar Lal Sharma and Another vs. Monica and others**¹ has held thus:

“9. We disagree. ‘Cruelty’ as defined in the Explanation to Section 498A of the Penal Code has a two-fold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression “cruelty”. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.

10. The facts, as alleged, therefore will have to be proved which only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court’s power to quash a criminal proceeding. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied

1 AIR 2014 SC (Supp) 1310

before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.”

5. In that view of the matter, we are unable to persuade ourselves to entertain the petition. Hence, the petition is rejected.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)