

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3244 OF 2021

Ms. Zula Sanjay Katariya

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Ashok Kumar Dubey i/b. SAVJ Law Solutions for Petitioner.

Ms. S. D. Shinde, APP for State/Respondent No.1.

Ms. Kalpana R. Trivedi a/w. Jitendra Gor, Shreenath Trivedi for
Respondent No.2.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 9 DECEMBER 2021

P.C. :

. Heard the learned counsel for the parties. Taken up for disposal.

2. The Petitioner has sought to quash the F.I.R. No.124 of 2021 registered at Borivali Police station under sections 498A, 504 and 506 r/w. 34 of the Indian Penal Code. The main contention of the Petitioner is that, even if contents of the F.I.R. are taken as true and correct, no offence is made out against the Petitioner. Thus, in that context we have examined the averments made in the F.I.R.

3. The Respondent No.2 has filed an F.I.R. against four persons i.e. the Petitioner, husband of the Respondent No.2 and father-in-law and mother-in-law of the Respondent No.2. The case of the Respondent No.2 is that, she was married on 14 December 2016 to Accused No.1 stated in the F.I.R. The Accused No.1 - Husband had extramarital relationship with the Petitioner. According to the Respondent No.2, her husband misled her that the Petitioner was her special friend, however, illicit relationship with the Petitioner continued. The Respondent No.2 had narrated the incidents in the F.I.R. wherein she had confronted her husband in respect of relationship with the Petitioner. She has also narrated that her husband and her in-laws had subjected her to mental cruelty and they were demanding dowry. It is also stated that the Respondent No.2 caught the Petitioner and husband of the Respondent No.2 in compromising position and when confronted they had quarrel with the Respondent No.2. It is stated that the Respondent No.2 also filed proceeding under the Protection of Women from Domestic Violence Act. On the allegations that, after her marriage her husband having illicit relationship with the Petitioner and subjected her to mental and physical cruelty along with her in-laws, F.I.R. was lodged.

4. Admittedly, the Petitioner is not related to husband of the Respondent No.2. The provisions of Section 498A of the Code, therefore, do not apply. This fact is even accepted by the learned APP and the learned counsel for the Respondent No.2. As regards Section

504 of the Code is concerned, it is regarding breach of public peace and Section 506 of the Code is about criminal intimidation and threats be to cause death etc. In the entire F.I.R. none of these ingredients having been demonstrated to be present. The allegations are against the husband of the Respondent No.2 of having illicit relationship with the Petitioner.

5. In the light of this position, contention of the learned counsel for the Petitioner that, if the F.I.R. read as it is will disclose no offence against the Petitioner, will have to be accepted and the F.I.R. will have to be quashed as against the Petitioner. Therefore, the Petitioner is entitled to succeed.

6. We make it clear that our observations are in the context of jurisdiction which we called out to exercise for quashing of F.I.R. on the ground that no offence is disclosed against the Petitioner, upon reading of the F.I.R. and they be understood accordingly.

7. The Writ Petition is allowed in terms of prayer clause (b).

8. Order accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)