

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

Criminal Writ Petition No. 129 of 2020

Vasant Ukaram Kokate and Others Vs. State of Maharashtra Through P.S.O. Wadi Tq. & Distt.
Nagpur

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

Court's or Judge's orders

Mr. Mahesh Rai, Advocate for the petitioners
Ms. Shamsi Haider, APP for the respondent No.1
Mr. D.G. Takwale, Advocate for the respondent No.2

CORAM : MANISH PITALE, J.

DATED : AUGUST 27, 2021

By this application, the petitioners (original accused) have approached this Court, challenging concurrent orders passed by the Magistrate and Sessions Court, rejecting the application for discharge filed on behalf of the petitioners.

2. The informant in the present case is the daughter of the petitioner No.1. It is an admitted position that there is matrimonial discord between the petitioner No.1 and his wife. The informant and her sister i.e. two daughters reside with their mother and there are pending litigations between the parties in the backdrop of the matrimonial discord. It is also an admitted position that in a prosecution launched against the petitioner Nos.1 and 3 along with two other accused persons for offence under Section 498-A of the Indian Penal Code (IPC), the Court of the Magistrate by judgment and order dated

17/06/2013, acquitted the accused, including the aforesaid petitioners.

3. The alleged incident in the present case is said to have taken place on 25/06/2014. The FIR was caused to be registered by the informant two days after the incident i.e. on 27/06/2014. In the report leading to registration of FIR, the informant alleged that on 25/06/2014, a case pending between the parties was listed before the Court and after the proceedings were over, when the informant and her sister went to the house of their father i.e. petitioner No.1, he asked as to how the two had come to that place and that he would proceed to lodge a police complaint against his own daughters. Thereafter, it is alleged that the petitioner No.3 dragged the informant and her sister to the door of the house and at that place, the petitioners No.2, 3 and 4 allegedly abused the informant and her sister and along with the petitioner No.5, threatened them with dire consequence.

4. In the statements recorded during the course of investigation, the informant has stuck to her version stated before the police and her sister has also supported the same. The statements were recorded on 30/06/2014. The statement of the mother of the informant and the sister-in-law of the mother of the informant also referred to the incident

and they claimed that they reached the spot of the incident upon being called by the informant on phone. Such statements are on record along with other material and after the chargesheet was filed, the petitioners applied before the Magistrate for discharge.

5. By order dated 30/08/2016, the Magistrate rejected the application, although he observed that out of four witnesses only two witnesses i.e. the informant and her sister were eye witnesses and mother and mother-in-law of the informant were hearsay witnesses. Aggrieved by the order of the Magistrate, the petitioners filed revision application before the Sessions Court. By the impugned judgment and order dated 05/09/2019, the revision application was dismissed. The Sessions Court commented upon the ingredients of offence under Section 294 of the IPC and found that since the material on record, *prima facie*, indicated that the incident had occurred near a public place, it was enough to proceed against the petitioners. It is relevant that in the present case, the chargesheet has been filed against the petitioners for offences under Section 294, 506, 504 read with 34 of IPC. Only the offence under Section 294 of IPC is a cognizable offence and other two offences are non-cognizable in nature.

6. Upon dismissal of the revision application, the present Petition was filed. It has been taken up for final hearing.

7. Mr. Mahesh Rai, learned counsel appearing for the petitioners submitted that even if the material available on record filed along with the chargesheet is taken into consideration, no suspicion, much less grave suspicion is raised against the petitioners and therefore, they deserve to be discharged. By elaborating upon the ingredients of offence under Section 294 of IPC, it was submitted that the material was not sufficient to show that the petitioners deserved to face trial. The ingredients of the offence were not made out by the material on record. It was emphasized that FIR was registered after a delay of two days and that it was obviously due to the bitterness in the matrimonial life of the petitioner No.1. It was claimed that FIR was the result of vengeance that the informant and her sister had in their minds against the petitioners. It was further submitted that spot inspection was not carried out and that this was a crucial lacuna in the context of offence under Section 294 of the IPC. On this basis, it was submitted that the Petition deserved to be allowed.

8. On the other hand, Mr. D.G. Takwale, learned counsel appearing for the respondent No.2

(original informant) invited attention of this Court to the statements of the witnesses. It was submitted that the statements clearly made out the ingredients of the offence under Section 294 of the IPC. It was submitted that the incident as per the version of the witnesses took place outside the door of the house petitioner No.1, which was certainly near a public place. The nature of the abusive language stated in the version of the witnesses was enough to *prima facie* attract offence under Section 294 of the IPC. On this basis, it was submitted that the Petition deserved to be dismissed and the petitioners deserved to face trial.

9. Ms. Shamsi Haider, learned APP has appeared on behalf of the respondent – State and supported the impugned orders passed by the Magistrate and Sessions Court.

10. Having heard the learned counsel for the rival parties, this Court is of the opinion that the material on record needs to be appreciated specifically with reference to offence under Section 294 of the IPC. This is because, it is only the said offence, which is a cognizable offence and the other two offences are admittedly non-cognizable offences. If it is found that the ingredients of the said offence cannot be said to be made out on the basis of material on record pertaining to offence under

Section 294 of the IPC, the contentions raised on behalf of the petitioner deserve to be accepted.

11. In order to reach a finding in respect of offence under Section 294 of the IPC, it would be appropriate to refer to the said provision. A perusal of Section 294 of the IPC would show that when annoyance is caused to others due to an obscene act or use of obscene words in any public place or near any public place, the offence is said to have been committed. In the present case, the Sessions Court has placed much reliance on the fact that the incident, according to the witnesses, took place outside the door of the house of the petitioner No.1, which was clearly near a public place. In this context, a specific contention is raised on behalf of the petitioners that a perusal of the chargesheet and material on record would show that there is no spot *panchanama* conducted in the present case. Attention of this Court is invited to the list of witnesses to show that there is not a single pancha witness to support the statements of witnesses regarding the place of the incident. Therefore, it appears that the statement of only the Investigating Officer is on record, who claims that upon registration of FIR, two days after the incident, he had visited the spot in question where the alleged incident had taken place. Therefore, other than the statement of the witnesses and the Investigating Officer, there is no document in

the form of a spot *panchanama* or otherwise to support the version of the informant and the witnesses regarding the place of the incident. This is crucial insofar the offence under Section 294 of the IPC is concerned.

12. Apart from this, in the case of **Narendra H. Khurana and Others Vs Commissioner of Police and Another 2004(2) Mh.L.J. 72**, upon which the learned counsel for the petitioners has placed reliance, a Division Bench judgment of this Court, while answering a reference in respect of ingredients of offence under Section 294 of the IPC, has emphasized that for the said offence the crucial words are “annoyance to others”. These are found to be the operative words in order that the offence is attracted under Section 294 of IPC. When the statements of witnesses in the present case are perused, it is found that the Magistrate correctly concluded that only the informant and his sister could be said to be eye witnesses, while the other two witnesses are hearsay witnesses.

13. A perusal of the statements of the informant and his sister would show that according to them use of abusive language can be attributed only to the petitioners No.2, 3 and 4. A bare reading of the statements, as also the report leading to registration of the FIR, does not indicate that use of

alleged abusive language by the petitioners No.1 and 5. Apart from this, the statements of the witnesses do not indicate as to whether such abusive language caused annoyance to them and others in the vicinity. The impression that is gathered is that the manner in which the petitioners No.2, 3 and 4 allegedly threatened and abused the informant and her sister with the petitioner No.3 allegedly pulling the informant and her sister out of house caused a sense of fear amongst the two of them. The material on record falls short of *prima facie* satisfying the crucial ingredients of offence under Section 294 of the IPC, pertaining to “annoyance to others”.

14. Apart from this, it is evident from the material on record that the FIR was caused to be registered by the informant in the backdrop of admitted matrimonial discord between the parents of the informant i.e. the petitioner No.1 and his wife. A prosecution under Section 498-A of the IPC was launched against the petitioners No.1 and 3, and two other accused persons, which culminated in an order of acquittal on 17/06/2013. It is also an admitted position that there were Court cases pending between the parties and in fact a specific reference is made by the informant in her report that the incident occurred when the informant and her sister visited the house of the petitioner No.1, after one of the pending Court cases was attended by them before the

Court. Another crucial factor is the admitted position that while the incident is said to have taken place on 25/06/2014, the report was lodged after about two days i.e. at 3:30 PM on 27/06/2014. This aspect does indicate that the criminal process was set into motion in the backdrop of bitterness generated between the petitioner No.1 and his wife.

15. Sending a person to face criminal trial, is a serious matter. No person should be made to face the humiliation and harassment of a criminal trial, unless grave suspicion is raised against such a person on the basis of material available on record with the chargesheet.

16. In the present case, this Court finds that the material falls short of raising grave suspicion against the petitioners and therefore, the present Writ Petition deserves to be allowed.

17. Accordingly, the Writ Petition is allowed. The impugned orders are quashed and set aside and the application for discharge (Exh.3) filed on behalf of the petitioners is allowed in terms of the prayer made therein.

18. The Writ Petition is disposed of.

JUDGE