

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

Criminal Writ Petition No. 251 of 2021

Urmila Kumari Wd/o Jibachprasad Roy Vs. The State of Maharashtra Through
Police Station Officer, Police Station Gittikhadan, Nagpur

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for the petitioner
Mr. Amit Chutke, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : JULY 08, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The petitioner before this Court is aggrieved by rejection of her application for discharge, by order dated 13/11/2019, passed by the Court of Adhoc District Judge-2, Nagpur.

3. In the instant case, the petitioner is mother-in-law of the victim. The father of the victim had submitted a report on 20/12/2016 at Police Station Gittikhadan, Nagpur, alleging that the husband of the victim (his daughter), her father-in-law, mother-in-law (petitioner herein), sister-in-law and brother-in-law were responsible for an incident that took place on 28/11/2016. According to the informant, the husband

of the victim had forcibly given acid to his daughter, resulting in serious injuries to her, due to which she had to take treatment in hospital for about a month.

4. It was alleged in the report dated 20/12/2016 that the backdrop of the incident was alleged repeated harassment caused to the victim by the accused including the petitioner herein, while making illegal demands of dowry. On this basis, FIR was registered against the accused persons, including the petitioner herein. Investigation was completed and chargesheet was filed, alleging that the accused had committed offences under Sections 307, 326-A, 294, 498-A r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

5. The petitioner filed an application for discharge before the aforesaid Court, contending that no case was made out against her and that she deserved to be discharged. By the impugned order, the application stood rejected and thereafter on 15/01/2020, charge was framed against the accused persons, including the petitioner herein.

6. Mr. R.M. Daga, learned counsel appearing for the petitioner submitted that in the present case, the sister-in-law and brother-in-law of the victim had been discharged and this was significant because the nature of allegations made against the petitioner (mother-in-law) and said sister-in-law and brother-in-law were identical, thereby demonstrating error

committed by the Court below. By inviting attention to the reasoning given by the Court below while discharging the sister-in-law and brother-in-law and contrasting the same with the reasoning given in the impugned order rejecting the application for discharge filed on behalf of the petitioner, the learned counsel for the petitioner submitted that the error was apparent. The learned counsel then invited attention of this Court to the report dated 20/12/2016, lodged by the father of the victim, resulting in registration of FIR. It was submitted that general and vague allegations were made against the petitioner. It was further submitted that the victim and her husband i.e. the son of the petitioner were admittedly staying separately at Nagpur from May, 2016, while the petitioner continued to stay at Begusarai in Bihar. It was submitted that when the petitioner was not present at the time and place of the incident, there was no question of her involvement in the alleged incident of the victim being forcibly made to drink acid. Attention of this Court was invited to the statements made by the victim herself before the police and the Magistrate, clearly stating that only her husband was present at the time of the incident on 28/11/2016. On this basis, it was submitted that the ingredients of the offences were not made out against the petitioner and, therefore, the present Writ Petition deserved to be allowed.

7. Mr. Amit Chutke, learned APP has appeared on behalf of the respondent - State. He submitted that a perusal of the report, leading to registration of FIR,

would show the nature of allegations made against the petitioner. It is submitted that they were distinct from the allegations made against the sister-in-law and brother-in-law and, therefore, the Court below was justified in rejecting application for discharge filed on behalf of the petitioner.

8. The learned APP could not deny the fact that the victim had stated before the police and the Magistrate and that the petitioner was not present on the date of incident and only her husband had allegedly committed the said act of forcibly making her drink acid.

9. A perusal of the material on record, particularly the statements given by the victim herself before the police on 22/12/2016 and before the Magistrate on 23/12/2016, show that only the husband of the victim was present with her on 28/11/2016, when the alleged incident took place. There is no role attributed at all to the petitioner in that regard. Record also shows that even as per the complainant, the victim and her husband shifted to Nagpur in May 2016. The petitioner undisputedly continued to live at Begusarai in Bihar. Therefore, there is hardly any material on record to connect the petitioner with the incident that took place on 28/11/2016. It is not the case of the complainant that the husband of the victim forced her to drink acid due to any instigation by any other person, much less the petitioner before this Court. Therefore, to that extent,

the learned counsel appearing for the petitioner is right that there is no material on record to indicate any role of the petitioner insofar as the offences under Sections 307 and 326-A of the Indian Penal Code are concerned. Similarly, insofar as Section 294 of the Indian Penal Code is concerned, there is hardly any allegation either in the report leading to registration of FIR or otherwise to connect the petitioner with the said offence.

10. But, it needs to be examined whether the learned counsel for the petitioner is justified in contending that even the charge under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, is not made out on the basis of material on record. In this regard, since the learned counsel has placed reliance on discharge of the sister-in-law and brother-in-law of the victim, the order passed in their favour needs to be perused. A perusal of the order dated 30/01/2019, passed in their context by the Court below shows that the Court has taken into consideration the fact that the said two accused persons were residing separately at Ranchi in Jharkhand and the allegations pertaining to offence under Sections 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, pertained to the grievances of the victim after having joined her husband in the matrimonial home at Begusarai in Bihar. Apart from this, the Court found that there was absence of allegations of actual involvement of the aforesaid two accused in respect of the said offences.

11. But, insofar as the petitioner is concerned, a perusal of the report leading to registration of FIR would show that after the victim joined the matrimonial house in the year 2012, there is reference to the manner in which the petitioner allegedly harassed the victim mentally by making comments about the quality of articles given in dowry by the father of the victim. Apart from this, there is reference to demand of certain amount and in that context the manner in which the mental torture was faced by the victim. There is specific reference to the petitioner in the context of harassment and taunts given to the victim, allegedly in the backdrop of demand of dowry. Therefore, it cannot be said that there are only vague and omnibus allegations against the petitioner insofar as the offences under Sections 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, are concerned.

12. The Court below has, therefore, treated the case of the petitioner on a different footing as compared to the sister-in-law and brother-in-law of the victim. This Court does not find any error in the approach adopted by the Court below. Perusal of allegations levelled against the petitioner and the material brought on record do show that it cannot be said that the ingredients of offence under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, are not made out at all.

13. In view of the above, the present Writ Petition deserves to be partly allowed. Accordingly, the application for discharge moved on behalf of the petitioner is partly allowed to the extent that she stands discharged for alleged offences under Sections 294, 307 and 326-A of the Indian Penal Code. Consequently, the trial against the petitioner would proceed only for charges under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

14. Needless to say, the charge framed against the petitioner by order dated 15/01/2020, shall stand set aside to the extent of charges under Sections 294, 307 and 326-A of the Indian Penal code.

15. The Writ Petition stands disposed of.

JUDGE