

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

CRIMINAL APPLICATION (APL) NO. 330 OF 2019

Krishna Shivaji Ganeshe and others

vs.

State of Maharashtra and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Phalguni Badani, h/f. Mr. S. V. Sirpurkar, Advocate
for applicants.

Mr. S. D. Sirpurkar, APP for respondent No.1.

CORAM : MANISH PITALE J.

DATE : 11/08/2021

By this application, the applicants have challenged order passed by the Magistrate and the Sessions Court, whereby their application for discharge has been rejected. According to the applicants, the material brought on record regarding the charge-sheet in the present case does not raise even a grave suspicion against for alleged offence under Section 498-A read with Section 34 of the Indian Penal Code (IPC).

2. The respondent No.2 i.e. original informant had caused an FIR registered on

17/09/2015, against the applicants and her husband for offence under Section 498-A r/w. 34 of the IPC. As per the report leading to registration of the FIR, the respondent No.2 stated that she got married to the son of applicant Nos.1 and 2 on 15/05/2015 and that after marriage, the applicants and her husband harassed her physically and mentally. The respondent No.2 named all the accused in the said report leading to registration of FIR. Upon registration of FIR investigation was undertaken and charge-sheet was filed against all the accused persons for offence under Section 498-A read with 34 IPC.

3. At this stage, the applicants approached the Magistrate by filing an application seeking discharge, on the ground that ingredients of the offence alleged were not made out even if the material placed on record was to be accepted and appreciated in the correct perspective. The Judicial Magistrate First Class, Amravati, rejected the said application on 06/02/2017 and aggrieved by the same, the applicants filed revision application before the Sessions Court at Amravati. By judgment and order dated 29/01/2019, the Sessions Court dismissed the revision application. The present application has been filed challenging the aforesaid two orders.

4. Ms. Phalguni Badani, learned counsel appearing for the applicants submitted that in the present case, the applicant Nos.1 and 2 are the parents of the husband of respondent No.2. The applicant No.3 is the brother of the husband. The applicant No.5 is the sister and applicant No.4 is her husband, while the applicant No.6 is the daughter of applicant Nos.4 and 5. The applicant Nos.8 and 10 are also the sisters of the husband and applicant Nos.7 and 9 are their respective husbands.

5. It is contended that a perusal of the report leading to registration of the FIR would show that vague and omnibus allegations are made against the applicants before this Court and that the respondent No.2 has named the applicants only because of matrimonial discord between the respondent No.2 and her husband and the consequent bitterness that was generated in the mind of respondent No.2. The learned counsel for the applicants took this Court through the oral report, leading to registration of the FIR and pointed out insofar as applicants before this Court are concerned, that the respondent No.2 has made very general, vague and omnibus allegations as regards physical and mental harassment meted out to her. It was contended that respondent No.2 was not happy with the marriage and that she has roped in all

the relatives of her husband, only due to the bitterness in the relationship with her husband.

6. The learned counsel for the applicants also took this Court through the statements of witnesses filed along with charge-sheet. The witnesses happened to be the sisters, brother and other relatives of the respondent No.2. The said witnesses have repeated what the respondent No.2 claims in terms of the physical and mental harassment suffered in the matrimonial house. Such statements, apart from being hearsay, according to learned counsel for the applicants, are also general in nature and there are no specific allegations made against the applicants. It is further pointed out that while the matrimonial house was located in Amravati, the applicant Nos.3 to 10 were all residents of places outside Amravati i.e. Chandrapur, Pune and Panipat (Haryana). By emphasizing upon the said fact, learned counsel for the applicant submitted that both the Courts below erred in rejecting the application for discharge filed on behalf of the applicants.

7. Notice was issued in this application and the respondent No.2 was served. She chose not to appear before this Court despite service.

8. Mr. S. D. Sirpurkar learned APP had appeared on behalf of State.

9. In order to allow an application for discharge, the Court would have to come to the conclusion that the material available on record upon completion of investigation and filing of charge-sheet is not enough to raise grave suspicion against the accused seeking discharge. The aforesaid test is to be applied to the facts of the present case, in order to examine the contentions raised on behalf of the applicants.

10. A perusal of the report leading to registration of the FIR dated 17/09/2015, shows that while the marriage between the respondent No.2 and her husband took place on 15/05/2015, matrimonial discord seems to have occurred almost immediately. This is evident from the fact that FIR stood registered within about 04 months from the date of their marriage.

11. A perusal of the report shows that the applicants, as also the husband of respondent No.2 have been specifically named in the report. Allegations of the husband being drunkard and physically and mentally harassing the respondent

No.2 can be found in the said report. At the same time, the respondent No.2 has stated repeatedly in the said report that she was being mentally and physically harassed by the applicants also. It is generally stated that the aforesaid relatives of the husband had indulged in such acts that led to mental and physical harassment of respondent No.2. It is also claimed that they provoked the husband to physically and mentally harass the respondent No.2.

12. A proper appreciation of the aforesaid report would show that the allegations made by respondent No.2 against the applicants before this Court are general in nature. Specific incidents have not been stated and it appears that vague and omnibus statements are made in order to claim that the applicants had indulged in acts which caused physical and mental harassment to the respondent No.2.

13. A perusal of the statements of witness recorded during the course of investigation would show that such witnesses who have supported the allegations levelled by respondent No.2 are her brother, sister and other relatives. All of them have repeated the allegations levelled by respondent No.2, on the basis of information that respondent No.2

provided them. It is only the sister of respondent No.2 who has stated that on one occasion the husband of respondent No.2 had come home drunk and that he had physically assaulted the respondent No.2. None of the witnesses have stated about any specific incident involving the applicants, which resulted in mental and physical harassment to the respondent No.2.

14. It is also crucial that, other than applicant Nos.1 and 2 who are residents of Amravati where the matrimonial house is located, all the other applicant Nos.3 to 10 are residents of Chandrapur, Pune and Panipat (Haryana). It appears that in the present case, the respondent No.2 has sought to rope in all the near relatives of the husband due to the matrimonial discord between the husband and wife. It is not uncommon that in such cases, the bitterness that arises in the relationship between husband and wife leads to roping in of near relatives while initiating criminal proceedings.

15. This Court is of the opinion that even if the material that has come on record along with the charge-sheet is to be accepted, there does not appear to be cogent material to arrive at a conclusion that a grave suspicion is raised against the applicants

herein, in the context of the offence registered i.e. 498-A of the IPC. Although applicant Nos.1 and 2 are the parents of the husband of respondent No.2 and they are residents of Amravati, there is absence of specific material to indicate as to in what manner and on which specific dates, the incidents of mental and physical harassment were suffered by respondent No.2 at the hands of applicant Nos.1 and 2. As regards the applicant Nos.3 to 10, this Court finds that respondent No.2 has not made any specific allegation and all the allegations are general, vague and omnibus.

16. Sending a person to trial is a serious matter and if the material on record does not inspire any confidence regarding grave suspicion being raised, the Court is expected to exercise power and grant discharge to such accused person. The Courts below failed to appreciate this aspect in the correct perspective and rejected the application for discharge filed on behalf of the applicants.

17. In view of the above, the application is allowed.

18. The impugned orders passed by the Magistrate and Sessions Court are quashed and set aside.

19. The applicants before this Court are discharged.

20. Application stands disposed of.

JUDGE