

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

CRIMINAL APPLICATION (APL) 889 OF 2019

1. Nitinkumar s/o Wamanrao Solanke
Aged about 37 years, Occ. Service
R/o Balaji Nagari, Karanja, Tq. Karanja,
Dist. Washim

2. Wamanrao s/o Bhavsingh Solanke
Aged about 70 years, Occ. Retired

3. Suman w/o Wamanrao Solanke,
Aged about 63 years, Occ. Household

4. Ravindra s/o Madhukar Pawar
Aged about 43 years, Occ. Service

5. Maya w/o Ravindra Pawar,
Aged about 42 years, Occ. Household,

Nos.2 to 5 are R/o Behind Ganpati Temple,
Asiad Green Park Colony, VMV Road,
Amravati, Tq. & Dist. Amravati

6. Varsha w/o Dinesh Chauhan
Aged about 34 years, Occ. Service
R/o Palash Line, Near Deshmukh Market,
Gadge Nagar, Amravati, Tq. & Dist. Amravati

... Applicants

-vs-

1. State of Maharashtra,
Through Police Station Officer,
Police Station Khadan, District Akola
Tq. & Dist. Akola

2. Monika w/o Nitinkumar Solanke
Aged about 26 years, Occ. Household
R/o C/o Ganesh Ramrao Sonone,
Golkul Duplex No.6, Samir Nagar,
Malkapur, Akola, Tq. & Dist. Akola

... Non-applicants

Shri P. R. Agrawal, Advocate for applicants.

Shri D. P. Thakare, Additional Public Prosecutor for non-applicant No.1/State.

Non-applicant No.2 served.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : August 23, 2021

Judgment : (Per : A. S. Chandurkar, J.)

Admit.

Heard the learned counsel for the parties pursuant to the notice for final disposal issued on 30/08/2019. Despite service, the non-applicant No.2 has not chosen to contest the proceedings.

2. By this application filed under Section 482 of the Code of Criminal Code, 1973 (for short, the Code) the applicants who are the accused named in FIR 19/2018 registered with Khadan Police Station, Akola for the offences punishable under Sections 498-A read with Section 34 of the Indian Penal Code and against whom charge-sheet No.169/2018 has been filed under Sections 498-A, 323, 504, 506 read with Section 34 of the Penal Code seek quashing of the same.

3. The facts in brief are that the applicant No.1 and the non-applicant No.2 were married on 04/06/2013. According to non-applicant No.2-informant after about 5-6 months after her marriage she was residing at her husband's place at Karanja and thereafter she alongwith her husband and in-laws started residing at Khamgaon. According to her an amount of

Rs.5,00,000/- was paid as dowry and amount of Rs.8,00,000-10,00,000/- was spent by her father on the marriage. Initially the informant was treated well but after about six to seven months the applicants started harassing her on the ground that the amount of dowry given to the applicant No.1 was meagre. Such harassment was meted by all the applicants being the in-laws and married sisters of the husband. Her in-laws used to instigate her husband against her. On 22/10/2015 her husband met with an accident while riding his two wheeler and medical expenses of about Rs.30,000-35,000/- were incurred by her father. It was further stated that as the informant did not conceive she was being taunted by the applicants. On 22/05/2016 all the applicants assaulted her and tried to set her on fire by pouring kerosene. However with the intervention of neighbours she was set free and hence she was saved. On this basis the FIR was lodged on 12/01/2018.

4. After registration of the aforesaid offence the investigation was undertaken. All the applicants were questioned and were released after being given an understanding. Pursuant to such investigation being completed, the charge-sheet came to be filed on 29/08/2018. Since the applicants have been named as accused in the aforesaid crime they have sought quashing of those proceedings by filing the present application.

5. Shri P. R. Agrawal, learned counsel for the applicants submitted that since 03/05/2016 the applicant No.1 and the informant have been residing separately. A report was made by the applicant No.1 with Khamgaon Police Station, Sangrampur where the applicant No.1 was serving. This report was sent by registered post on 25/05/2016 to the police authority making a grievance about the abnormal behaviour of the non-applicant No.2. Thereafter on 15/06/2016 the applicant No.1 filed marriage petition under provisions of Section 13(1)(1A) of the Hindu Marriage Act, 1955 (for short, the Act of 1955) against the informant seeking a decree of divorce on the ground of cruelty. It is thereafter that on 18/08/2017 the informant filed proceedings under provisions of Protection of Women from Domestic Violence Act, 2005 (for short, the said Act) against the applicants as well as the husband of applicant No.6. In those proceedings an order was passed on 18/04/2018 directing payment of maintenance to the informant at the rate of Rs.7000/- pm. It is submitted by the learned counsel for the applicant that in the FIR which has been filed belatedly and by way of an afterthought as well as a counter blast to the proceedings for divorce filed by the applicant No.1 there are no specific allegations made therein that could attract the provisions of Section 498-A of the Penal Code. Similarly in the charge-sheet as filed there was not material whatsoever to invoke the provisions of Sections 323, 504 and 506 in addition. Despite the allegation that on 22/05/2016 an attempt to cause

bodily harm to the informant was made the same does not find reference in any of the statements recorded by the prosecution. It was submitted that despite the allegation as regards occurrence of the incident dated 22/05/2016 there was no report lodged by the informant for a period of more than 18 months. The same was therefore not believable and it was clear that only with a view to harass the applicants and to pressurise them in view of filing of divorce proceedings that the FIR came to be lodged. It was urged that the father of the informant was serving in the Police Department and at his instance such a belated report came to be filed. In absence of any specific allegations against the applicants to indicate occurrence of any incident there was no basis for filing the FIR belated on 12/01/2018. He referred to the application filed by the informant under provisions of the said Act on 18/08/2017 in which it was pleaded that from 22/05/2016 she and the applicant No.1 were residing separately. In support of his submissions the learned counsel placed reliance on the following decisions :

- (a) *Raghuvir vs. The State of Maharashtra and anr. 2018 ALL MR (Cri) 4055*
- (b) *Geeta Mehrotra and Anr. vs. State of U.P. and Anr. 2013(1) Mh.L.J. (Cri) 570*
- (c) *Preeti Gupta and Anr. vs. State of Jharkhand and Anr. 2011 (2) MLJ (Cri) 89*
- (d) *Anand Kumar Mohatta and Anr. vs. State (Govt. of NCT of Delhi) Dept. of Home and Anr. 2019 (4) Mh.L.J. (Cri) 247.*
- (e) *Kamlesh Kalra vs. Shilpika Kalra and Ors. 2020 (4) JKJ 176 (SC)*

It was thus submitted that this was a fit case to exercise jurisdiction under Section 482 of the Code and quash the proceedings. Pertinently, it is submitted that applicant Nos.2 to 6 were residing separately from the applicant No.1 who is in service and is presently residing at Karanja.

6. Shri D. P. Thakare, learned Additional Public Prosecutor for non-applicant No.1 opposed the aforesaid submissions. According to him on perusal of the FIR it was clear that on the basis of allegations made therein, offence under Section 498-A read with Section 34 was initially registered. In view of the allegations pertaining to incident dated 22/05/2016 the provisions of Sections 323, 504 and 506 were also added in the charge-sheet. The material on record including the statements of witnesses were sufficient to indicate existence of prima facie material against the applicants and there was no reason to quash the FIR as sought by the applicants.

The non-applicant No.2-informant have been duly served as per affidavit of service dated 18/04/2021. Notice by registered post with acknowledgment is shown to have been served on the informant along with private service thereof. There is no appearance on behalf of the non-applicant No.2.

7. We have heard the learned counsel for the parties and we have also perused the material placed on record in form of the FIR and the charge-sheet. Before considering the rival submissions we may note that the challenge by the applicants to the registration of FIR and the subsequent charge-sheet is on the basis that registration of the same amounts to an abuse of the process of the Court and hence it would be necessary to quash the same. In this regard we may refer to the decision in *Anand Kumar Mohatta and Anr.* (supra) wherein the Hounourable Supreme Court has observed that the provisions of Section 482 of the Code are not limited for being exercised only at the stage of registration of the FIR. Even if the allegations as made have materialized into a charge-sheet the power under Section 482 can be exercised provided that the same is an outcome of abuse of process of any Court. While conducting this exercise if it is found that the criminal proceedings have been instituted with an ulterior motive or as a counter-blast to the proceedings already initiated by the accused such power can be exercised as held in *Raghuvir* (supra). It is also to be borne in mind that when the proceedings arise out of a matrimonial dispute a mere casual reference of the names of the family members without allegation of any active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel that take place in a matrimonial dispute specially if it happens soon after the

wedding as held in *Geeta Mehrotra and Anr.* (supra). On the basis of omnibus allegations it would not be permissible to rope in family members. Moreover the aspect of delay in lodging the FIR is also a material factor. Keeping these aspects in mind we have examined the material on record.

8. At the outset we may state that we are entertaining the application at the behest of applicant Nos.2 to 6 who are in-laws and the married sisters of the husband thus leaving the husband to seek discharge before the trial Court. It is not in dispute that the applicant No.1 and non-applicant No.2 were married on 04/06/2013 and as per the version of the informant she was residing separately from the matrimonial house after 22/05/2016. On 26/05/2016 the husband lodged a report with Police Station Sangrampur expressing apprehension as to the behaviour of the informant in view of the threats given by her. Thereafter on 15/06/2016 the husband filed proceedings for grant of divorce in the Civil Court under Section 13(1)(ia) of the Act of 1955. When these proceedings were pending, the informant initiated proceedings under the said Act on 12/01/2018, that is after about eighteen months of leaving the matrimonial house said FIR came to be lodged. There is no explanation in the said report as to the reason for the delay in lodging the said report. It can thus be gathered that after filing of proceedings for divorce by the husband the wife sought to lodge the FIR against her husband and his family members.

9. On perusal of the FIR it can be seen that in so far as applicant Nos.2 to 6 are concerned, allegations made against them are of a general nature without any specific or overt act being imputed against them. In the FIR itself it has been stated that immediately after marriage for a period of 5-6 months the informant resided with her husband and her in-laws at Karanja. During that period the accused treated her well. Subsequently the husband, his wife and parents started residing at Khamgaon and it is stated that the other accused relatives used to instruct her husband and in-laws on telephone to harass her. It is to be noted that in the FIR itself the address of the sister-in-law and her husband is shown at Amravati and that of accused No.6-another sister-in-law is also shown at Amravati. Except general statements of omnibus nature we do not find any specific allegation made against the in-laws and other relatives. In the FIR however there is a reference to an incident dated 22/05/2016 as regards which it is stated that all the accused were at home on that day and they all beat her and tried to set her on fire by pouring kerosene. On account of intervention of neighbours nothing further happened. It may be noted that after this alleged incident of 22/05/2016 there is no immediate report lodged and the same finds mention for the first time only in the FIR dated 12/01/2018. It may also be noted that the statement of the parents of the informant and other relatives were also recorded in February 2018 but all of them are silent with regard to this particular incident. Their silence in this regard speaks volume

as it was expected in normal course that the informant would have informed her parents as to the occurrence of the incident dated 22/05/2016. Even their statements are of general nature without any particulars or overt act being attributed to any particular accused.

10. We thus find on perusal of the FIR and charge-sheet that insofar as accused Nos.2 to 6 are concerned the allegations are of a general nature without any particulars. Accused Nos.5 and 6 being the married sisters of her husband they were residing separately at another place. It is seen that the in-laws and other accused have been named merely with a view to harass and pressurize the husband. In absence of any specific instances of their involvement in the alleged crime they are not liable to be roped in on the basis of the omnibus allegations. Thus the proceedings under Section 482 of the Code seeking quashing of the FIR and charge-sheet at the instance of accused Nos.2 to 6 warrant acceptance. However in the light of the statements in the FIR and in view of the fact that the charge-sheet has now been filed we are inclined to permit accused No.1 to seek appropriate remedy before the Sessions Court.

11. In that view of the matter the following order is passed :

The FIR bearing No.19/2018 registered at Khadan Police Station, Akola as well as Charge-Sheet bearing No.169/2018 filed in RCC

No.808/2018 against the applicant Nos.2 to 6 is quashed and set aside. In so far as applicant No.1 is concerned he is at liberty to seek discharge before the trial Court. If such application is moved, it shall be considered on its own merits without being influenced by any observations in this order.

The Criminal Application is partly allowed in aforesaid terms. No order as to costs.

JUDGE

JUDGE