

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.861 OF 2022

MANOJ S/O RAM PURI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Petitioners : Mr. V. D. Gunale
APP for Respondent No.1-State : Mr. B. V. Virdhe
.....

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 06-07-2022

ORDER :

1. By this writ petition, the original accused No.1 to 3 intend to invoke the Constitutional powers of this Court under Article 226 and 227 of the Constitution of India and the inherent powers under Section 482 of Cr.P.C. to challenge the dismissal of their revision i.e Cri. Revision Appln.No.08 of 2021 by learned Additional Sessions Judge, Biloli on 02-03-2022, thereby refusing to discharge them and setting aside the order of rejecting the application to discharge them by learned Judicial Magistrate First Class under Section 498-A, 504, 506 r.w.34 of IPC from R.C.C.No.121 of 2017, pending before learned Judicial Magistrate First Class, Degloor.
2. Petitioner No.1 is the husband of respondent No.2 informant.

Petitioners No.2 and 3 are the parents of petitioner No.1.

3. Heard learned Advocate Mr. V. D. Gunale for petitioners and learned APP Mr. B. V. Virdhe for respondent No.1-State. It is not even necessary to issue notice to respondent No.2.

4. It is to be noted that respondent No.2 has lodged the FIR vide Crime No.319 of 2017 with Degloor Police Station, District Nanded, on 25-06-2017 alleging that the present petitioners/ original accused persons No.1 to 3 have committed offence punishable under Section 498-A, 323, 504, 506 r.w.34 of IPC. After the completion of the investigation, the charge-sheet has been filed on 04-08-2017. By application Exhibit 34 the present petitioners had filed application for discharge. It was strongly objected by the prosecution and after hearing both sides, the learned Magistrate, Degloor rejected the said application Exhibit 34 on 16-03-2020, and as aforesaid, the Revision Application No.08 of 2021 filed by the present petitioners before learned Additional Sessions Judge, Biloli has been dismissed by him.

5. It will not be out of place to mention here that the present petitioners along with other three co-accused had filed Criminal Application No.2927 of 2018 before this Court for quashing the FIR

and criminal proceedings of R.C.C. No.121 of 2017. After the disinclination was shown by this Court to grant any relief to present petitioners who were the applicants No.1 to 3 before the Division Bench of this Court ; they sought withdrawal of the application and accordingly the said application stood withdrawn against them. It came to be allowed against co-accused who were the married sisters-in-law. Under such circumstances, when even the entire proceeding was sought to be quashed before the Division Bench by the present petitioners and they got that application withdrawn against them when disinclination was shown, the question is whether again almost on the same material they can approach either Judicial Magistrate First Class or revisional authority, or even this Court. The exercise that was to be undertaken by the Hon'ble Division Bench of this Court at the time of considering that application was same, that means the material along with the charge-sheet. No doubt there is a stage under Section 239 of Cr.P.C. where either the Court may think that the charge would be groundless taking into consideration the material on record or it is so pointed out by the accused, then the Court may discharge the accused persons. The question is then the same material is then required to be considered. Therefore, merely because there is such a stage, there was no fresh cause of

action for the petitioners to make an application under Section 239 of Cr.P.C. for discharge before the Magistrate. On this ground itself both the Courts below have correctly dismissed the said application Exhibit 34 and the revision respectfully.

6. For the sake of arguments we say that such application is maintainable, then it is required to be seen as to whether there was any such material which was pointed out by the accused to the Magistrate that no charge can be framed against them.

7. The learned Advocate appearing for the petitioners mainly submitting that on the merits of the case i.e. the defence and his own interpretations about the statements have been made in the entire charge-sheet, however, with respect to him, the disputed facts cannot be gone into in the writ jurisdiction by this Court and also before any opportunity is given to the prosecution to lead evidence in defence and the accused persons take cross of those persons and the interpretations of the statements on oath cannot be considered at any premature stage. What was there on record was the statements of witnesses though most of them are the relatives of the wife, yet there are certain witnesses who say that the demand for dowry of Rs.2 lakh was made by the accused persons on 02-02-

2017 and at that time informant wife was assaulted and these witnesses have seen the said incident. Witnesses Yogesh Uttam Giri, his neighbour Shailendra Laxman Dange and Subhash Vishwanathrao Wadgave are stated to be the eye-witnesses to the said incident. Merely because the informant is not saying that those witnesses were present, we cannot jump to the conclusion that there is contradiction and omission. Question of contradiction and omission would come only when these witnesses are examined before the Court. Those statements of the witnesses have been considered by both the authorities below and they have arrived at a correct finding that there is evidence against the present petitioners to frame charge. No case is made out for exercise of the Constitutional powers of this Court or even inherent powers, under such circumstances, the writ petition stands dismissed.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.