

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2031 OF 2020

SANTOSH S/O. VISHWANATH SHETE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Applicant : Mr. Tungar Hrishikesh V
APP for Respondent No.1/State : Mr. S. W. Mundhe
Advocate for Respondent No.2 : Mr. Ashok A. Mundhe (appointed Through
Legal Aid)

...

CORAM : KISHORE C. SANT, J.
DATE : 13th DECEMBER 2022.

Per Court :

Heard both the parties.

1. The application is filed praying for following two reliefs;
 - (i) that the order of issuance of process dated 05.12.2018 passed by the learned Judicial Magistrate First Class, Beed be quashed and set aside;
 - (ii) the proceeding of R.C.C. No.591/2018 pending in the Court of JMFC, Beed, be stayed.
2. Learned Advocate for the applicant submits that the application is

mainly on two grounds, first is limitation under Section 468 of the Code of Criminal Procedure (Cr.P.C. for short) and secondly that the order of issuance of process dated 05.12.2018 does not show any application of mind and is passed without properly appreciating the contents of the complaint.

3. The learned Advocate submits that the major offence alleged against the applicant is under Section 498-A, wherein punishment prescribed is three years. In view of Section 468 of Cr.P.C., the limitation provided for taking cognizance or lodging the complaint is of three years, wherein the offence is punishable with maximum period of three years. He submits that in this case, FIR is lodged on 08.03.2018. Wherein occurrence of an offence is stated to be from 12.12.2008 till 18.11.2014 and thus the complaint is lodged after period of three years from the date of last cause of action. From the contents of the FIR, it is seen that the allegations are only till the period of 18.11.2014. Thus, he submits that a specific reference is made to the dates in the format as well as in the contents of the FIR. At least at three places, there is a reference of the date of 2014. He relies upon the judgment reported in

LAWS(SC) 2020 4 55, in the case of **Kamlesh Kalra Vs. Shilpika Kalra**, delivered by the Hon'ble Apex Court. He invited my attention to Paragraph Nos. 9 and 13 of the said judgment, which are reproduced herein below.

9. The High Court, vide its judgment and order dated 12.10.2018, held that since no charge-sheet was filed against the brother-in-law and sister-in-law (Avnish Kalra and Suman Kalra, respectively), the petition seeking quashing of FIR on their behalf was rendered infructuous. Further, the High Court allowed the said Writ Petition to the extent that the Writ Petitioners Manish Kalra and Kamlesh Kalra were not liable to be proceeded under Section 498A IPC, as the FIR was filed beyond the period of limitation of three years. However, with regard to the offence under Section 406 IPC, it was observed that the same was a continuing offence and every day of non-return of Stridhan articles would give fresh cause of action, and thus it was held that the same would not be liable to be quashed on the ground of limitation. However, since the entrustment of the Stridhan articles was alleged only against mother-in-law Kamlesh Kalra and not the husband-Manish Kalra, the FIR under Section 406 IPC was quashed with regard to Manish Kalra alone, and not against the mother-in-law Kamlesh Kalra.

13. As regards, the finding recorded by the High Court in respect of complaint/FIR filed under Section 498A IPC, we are of the firm opinion that

the same does not call for interference. In the facts of this case, it is clear that the FIR filed in this regard in 2015 was time barred, having been filed much more than three years after the separation of Manish Kalra (husband) and Shilpika Kalra (wife) and the filing of the divorce petition by the husband, both in 2009. In the facts of the case, the reasons given by the High Court for quashing the proceedings under section 498A IPC are justified and do not call for interference by this Court.

4. He further relied upon the judgment reported in 2022 SCC OnLine SC 1383 in the case of **Lalankumar Singh and Others Vs. State of Maharashtra**. He invited my attention to Paragraph No.38 of the said judgment to submit that the issuance of process is not an empty formality and the learned Magistrate is required to apply his mind as to whether sufficient ground to proceed exists in the case or not. Looking at the impugned order, it is not seen that the learned Court below has applied its mind. In this case, it appears that the learned Magistrate has applied its mind and therefore has rightly not issued process under Section 494 of the Indian Penal Code. So this Court is not much impressed by the submission that the learned Magistrate has not applied its mind to the facts of the case. However, the learned

Magistrate has failed to apply its mind so far as legal aspect is concerned, it ought to have been seen as to whether the complaint/FIR was lodged in time in view of Section 468 of the Cr.P.C. Certainly had it been seen probably there was no occasion for the JMFC to issue process against the applicant.

5. The learned Advocate for Respondent No.2 submits that the cause of action in 498-A cases as always continues cause of action. He further submits that there were attempts made for reconciliation and it is for this reason, a complaint was not filed immediately and tried to justify filing of the complaint in 2018 for the first time.

6. The learned APP vehemently submitted that clearly a case of issuance of process was made out. He also submits that since it is 498-A case arising out of matrimonial disputes, there is continues cause of action. He further submitted that the applicant has performed second marriage on 14.12.2016 and that also amounts to cruelty. He pointed from the enquiry held against the applicant by the Railway Department, wherein it is found that petitioner has married to another lady. However, this complaint cannot be read under Section 498-A. He also

submitted that the order of issuance of process is not challenged by filing Revision. Since the alternate remedy is available, he ought to have filed a Revision and on that count this application need not be entertained.

7. Considering all these submissions, this Court finds that certainly the FIR was lodged after period of limitation as provided under Section 468 of the Cr.P.C. The learned Magistrate could not have taken cognizance of the said case after period of limitation and therefore the order of issuance of process is not legal. Secondly to this extent, there is no application of mind by the learned Magistrate. Considering the legal position as discussed above and the submissions of the learned Advocates, this Court finds that a case is made out to allow the application. Hence, the Criminal Application is allowed in terms of prayer clause 'B' and the proceeding of R.C.C. No.591/2018 pending in the Court of JMFC, Beed is hereby quashed.

8. With this, the Criminal Application is disposed off.

[KISHORE C. SANT, J.]

Najieb.