

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

WRIT PETITION NO. 2528 OF 2019

Sneha Gautam Waghchoure

... Petitioner

V/s.

State of Maharashtra and Anr.

... Respondents

Ms. Rekha Musale for the Petitioner

Mr. Nitin Gaware Patil for the Respondent No.2

Mr. J.P. Yagnik, APP for the State

***CORAM : NITIN JAMDAR &
ARUN R. PEDNEKER, JJ.***

DATE: 19 JULY 2022

P.C.:-

Heard the learned Counsel for the parties. Taken up for disposal.

2. The Petitioner has prayed for quashing of the FIR of C.R. No. 116 of 2015 registered against the Petitioner by Sanghvi Police Station, Pune, for offences punishable under Section 498A, 406, 307, 325, 328, 323, 504 & 506 of the Indian Penal Code at the instance of Respondent No.2.

3. Respondent No.2 filed an FIR stating that she worked in a college and her husband worked as an Engineer in the Municipal Corporation. They got married in the year 2006. After that, Respondent No.2 was subjected to mental and physical cruelty by her husband, father-in-law and mother-in-law. She informed that on 30 December 2013, the husband of the Respondent No.2 assaulted her with an iron rod and her fingers were fractured. In December 2013, the in-laws of Respondent No.2 took away her gold ornaments. At the time of valentine's day, the husband of Respondent No.2 told her to leave the house because he wanted to bring the Petitioner home. Since Respondent No.2 refused, her father-in-law tried to attack her with a sound system, and she had to leave home and report to the Police Station. The police told the husband and the in-laws of Respondent No.2 to behave properly. Respondent No.2 met the Petitioner at her office and told her to leave her husband alone, to which the Petitioner refused and stated that if the Complainant did not divorce, the Petitioner would tell Complainant's husband to kill her. Then on 22 December 2014, the husband of Respondent No.2 and her in-laws tried to poison her. After that, in November 2014, her husband, father-in-law, mother-in-law and brother-in-law attacked Respondent No.2. On these allegations, she filed the FIR against her husband, father-in-law, mother-in-law and brother-in-law and the Petitioner.

4. The learned Counsel for the Petitioner submitted that no case was made against the Petitioner. She is not a relative of Respondent no.2 to attract Section 498A of the Indian Penal Code, and she has not committed any assault nor attempted to commit murder. The learned Counsel submitted that the only allegation against the Petitioner is that when the Respondent No.2 came to her office to leave her husband alone, she said that if she told Respondent No.2's husband, he would kill Respondent No.2. The learned Counsel submitted that thereafter, the Respondent No.2 and her husband have settled their *inter-se* dispute, and they have obtained divorce by mutual consent, and it is an abuse of process of law to continue the prosecution against the Petitioner who has suffered in her service carrier because of the false FIR. The learned Counsel submitted that the mental and physical cruelty as per the FIR itself is since the year 2008 upon the daughter being born to her and the assaults are nothing to do with the alleged affairs of the Petitioner with the husband of the Respondent No.2. The learned Counsel for the Respondent No.2 submitted that the Petitioner had applied for discharge and the application was rejected which the Petitioner has not challenged. The learned Counsel for Respondent No.2 submitted that Section 498A would not be attracted in respect of the Petitioner; however, the case is made out for criminal intimidation. The learned Counsel submitted that this is not a fit case where the FIR can be quashed. The learned APP also accepted

that Section 498A would not be attracted to the Petitioner.

5. The FIR narrates the physical and mental cruelty on the part of the husband of Respondent No.2 and the in-laws. It is stated in the FIR that the cruelty and the dispute arose because a girl was born to Respondent No.2. It is alleged that her husband and in-laws did not come to see the girl. It is alleged that the mother-in-law assaulted Respondent No.2 and told her to commit suicide. On 28 December 2013, the husband of Respondent No.2, as stated in the FIR, attacked her with an iron rod. The Petitioner's only interaction with Respondent No.2 is in the office of the Petitioner. It is not even alleged that the Petitioner ever came to the house of Respondent No.2 or met her anywhere, but it was Respondent No.2 who met the Petitioner in her office. At that time, the Petitioner is alleged to have stated that if she did not give divorce, she would tell her husband, and if she told her husband, he might kill her. There is no direct threat to the Respondent No.2. Apart from this position, the person who would carry out this threat, the husband of Respondent No.2, she has settled the dispute with him, and they have filed the Petition (P.F. No. 79 of 2021) for divorce by mutual consent in the Family Court, Ahmednagar and by order dated 9 July 2021, the divorce by mutual consent was granted. Respondent No.2 and her husband have agreed that they would withdraw the cases against each other and will not file new cases.

6. That being the position, the dispute within the family of Respondent No.2 is now settled; however, the Respondent No.2 now wants to continue the prosecution against the Petitioner, who, as above, is no role to play at all except communicating that the husband of Respondent No.2 might kill her. According to us, this is an abuse of process of law, and the Court has ample powers to stop such an abuse of process of law.

7. Regarding rejection of the application for discharge filed by the Petitioner, we have perused the order passed by the learned Additional Sessions Judge. The learned Additional Sessions Judge has observed that there is an abatement by the Petitioner as regards Section 498A, which is not even the contention of the Respondents. Once we find that the proceedings against the Petitioner at the behest of Respondent No.2 are an abuse of the process of law, the rejection of application of remand in these facts and circumstances will not preclude us from exercising our inherent and extraordinary jurisdiction. Case is therefore made out to grant relief in favour of the Petitioner.

8. The Petition is allowed in terms of prayer clause (a). Order accordingly.

ARUN R. PEDNEKER, J.

NITIN JAMDAR, J.