IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2338 OF 2012

Sapna Chandrkant Shah And Ors ...Petitioners

Versus

Chandrakant C. Shah And Anr ...Respondents

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Mr. Abhijit Kandharkar, Advocate for the Petitioners.

Mr.Chandrakant C. Shah Advocate for Respondent No.1 in person present.

Mr. A. R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th SEPTEMBER, 2022

PC :

1. The Petitioners were indicted in private complaint filed by Respondent No.1 before the Court of Metropolitan Magistrate, 27th Court, Mulund at Mumbai, which was registered as C.C. No.24/I&R/ 2011. The complaint was filed alleging offences under Sections 420, 406, 379, 380, 384, 385, 323, 324, 504, 506, 507 read with 34 of the Indian Penal Code.

2. The grievance of the complainant/Respondent No.1 is that, the accused No.1 is his wife, accused No.2 is his brother-in-law; accused No.3 is his father-in-law; accused No.4 is his mother-in-law and

accused No.5 is the cousin brother of accused No.1. The marriage between complainant and accused No.1/Petitioner No.1 was solemnized on 30th November 1993. Out of the said wedlock, they have a son. It is alleged that, the behaviour of accused No.1 towards the complainant and his family members were dominating, harassing and cruel. The accused hatched conspiracy to harass the complainant and made unjust demands. The complainant lodged various complaints against the accused. The accused No.1 had suppressed that she was suffering from Rheumatoid Arthritis. After the marriage, she was treated for the said ailment. The accused Nos.2 and 3 had borrowed loan from the complainant. The accused No.1 had tortured the family members of the complainant. The accused in collusion with each other committed theft of important document relating to bank, cash, articles, jewelry and valuable items from complainant's house without his knowledge and consent. The accused No.1 had deserted complainant on several occasions from the matrimonial relationship. One Ms. Radhika Shenoy was working with the complainant. She was also good friend of accused No.1. The accused No.1 had requested Ms. Radhika Shenoy for financial help and she had provided money to accused No.1 on several occasions. Ms.Radhik Shenoy demanded money, which was not returned to her. There were matrimonial differences between complainant and accused No.1. Accused had threatened Ms.Radhika Shenoy. The complainant had lodged various NC complaints against the accused much prior to the complaint filed by accused No.1 under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code. The accused Nos. 2 to 5 are the persons, who aided and abetted the accused No.1 in filing false complaints. Accused No.1 in collusion with other accused persons took her stridhan and other articles without knowledge and consent of the complainant. She took away National Savings Certificate and Bank Fixed Deposit Receipts of HDFC Bank and ICICI Bank, Kisan Vikas Patra, PPF passbook, HDFC Bank Cheque Book, documents relating to residence of complainant, property documents, gold ornaments and cash etc. The police did not take cognizance of complaint of the complainant.

3. Learned Metropolitan Magistrate directed the Police to conduct inquiry under Section 202 of Cr.P.C. On completing inquiry and investigation, the police submitted report dated 14th October 2011 to the Court. The report indicated that, no offence is made out.

4. Learned Metropolitan Magistrate, 27th Court Mulund, Mumbai vide order dated 23rd May 2012 issued process for the offences punishable under Sections 380, 504, 507 read with 34 of the Indian Penal Code.

5. The Petitioners are aggrieved by order issuing process dated 23rd May 2012 and proceedings initiated by Respondent No.1.

6. Learned Advocate for Petitioners submitted that, learned Metropolitan Magistrate had mechanically issued the process. No offences under Sections 380, 504, 507 read with 34 of the IPC were made out. The proceedings initiated by Respondent No.1 is an abuse of process of law. The order issuing process reflects non-application of mind. The report under Section 202 of Cr.P.C. did not support the allegations made in the complaint. The private complaint was filed as counter-blast to the proceedings initiated by the Petitioner No.1 against the complainant. Learned Metropolitan Magistrate while issuing the process had observed that, the accused No.1 has taken National Saving Certificate, Fixed Deposit Receipts, documents of house of complainant and papers of plot of Jodhpur. The accused No.1 has admitted that, the complainant would misuse the said documents and therefore it has been taken out from the house. The learned Magistrate has misread the report under Section 202 of Cr.P.C.

7. The Respondent No.1 has appeared in person. He has filed affidavit-in-reply dated 20th March 2014 and 21st July 2022. He submitted that, the police report is biased. The learned Magistrate has considered the documents on record and issued process. Report

under Section 202 of Cr.P.C. is vague. Police took personal interest in the matter. The Investigating Machinery was biased against the complainant. The complainant was assaulted by the accused. Reliance is placed on several documents including photographs annexed to the affidavit-in-reply. Complaints were made to the Police against the accused. Police refused to take cognizance of complaints of the complainant. The concerned DCP was acting against interest of the complainant. He was accused in one of the case. While issuing process, the learned Magistrate was *prima facie* satisfied that, the case for issuance of process is made out. The grounds urged by Petitioner cannot be considered at this stage. There is sufficient evidence to support the order of process. False complaints were filed against complainant. The complainant had filed C.C. No.24/I&R/2011 before the Court of learned Metropolitan Magistrate. The Police filed inquiry report under Section 202 of Cr.P.C. The complainant filed Protest Petition. The learned Magistrate vide order dated 8th December 2020 had observed that, *prima facie* it appears that, the accused have committed an offence punishable under Section 500 of IPC. The documents filed by complainant are also supporting the case of complainant. The inquiry report was rejected and process was issued against the Petitioner Nos.1 and 3. The grounds urged by petitioners cannot be considered for quashing the proceedings.

8. The Petitioner No.1 and Respondent No.1 performed marriage in 1993. The Petitioners had lodged the FIR against Respondent No.1 and Smt. Radhika Shenoy on 31st July 2010 vide C.R. No. 318 of 2010 with Mulund Police Station under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code. The Petitioner No.1 had lodged another FIR with Mulund Police Station on 18th July 2011 vide C.R. No. 254 of 2011 for offences punishable under Sections 294 and 507 of the IPC against the Respondent No.1. The impugned complaints contained several allegations. The Respondent No.1 had prayed for investigation under Section 156(3) of Cr.P.C. and registered FIR under Sections 420, 406, 379, 380, 384, 385, 323, 324, 504, 506, 507 read with 34 of the IPC. Complaint was filed on 18th October 2010. Vide order dated 28th February 2011, the learned Magistrate recorded that, the accused No.1 has filed complaint under Sections 498-A of IPC against the complainant and thereafter the complainant has filed this complaint. In such circumstances, the complainant to file verification statement on 8th April 2011. Subsequently, the verification statement was recorded. The learned Magistrate directed the inquiry under Section 202 of Cr.P.C. The Police conducted inquiry. Statements of several persons were recorded by the police. Report dated 14th October 2011 was

submitted to the Court of learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai. In the report it is stated that, the marriage between complainant and accused No.1 was solemnized in 1993. They have a son aged around 15 years. According to complainant, there used to be quarrels between him and the accused No.1. The relatives of accused No.1 were harassing the complainant by abusing and assaulting him. He lodged NC complaint with the Police on 31st July 2010. There was quarrel between accused No.1 and complainant. Her relatives had visited the residence of complainant. FIR was registered vide C.R. No.318 of 2010 against the complainant and Smt.Radhika Shenoy under Sections 498-A, 323, 504, 506 read with 34 of the Indian Penal Code. After registration of FIR, the accused No.1/Petitioner No.1 and others had collected the articles from the house and went to reside at Bhiwandi. According to complainant, he came to know about it on 3rd August 2010. He lodged the complaint with Police on 4th September 2010. He furnished details of the articles taken away by the accused No.1 such as National Saving Certificate, Fixed Deposit Receipt, Pass book, Cheque book, documents relating to property and jewelry etc. The report further mentioned that statements of complainant and several other persons were recorded by the police. While recording the statement, the accused had stated that, accused No.1 left her matrimonial home and took along with her, the documents which were in joint name of accused No.1 and her son such as National Saving Certificate, HDFC and ICICI Bank Fixed Deposit receipts, Kisan Vikas Patra, passbook, cheque book, documents relating to house of complainant etc. This fact is admitted by accused No.1. The statement indicate that, the complainant and Smt. Radhika Shenoy were likely to misuse the said documents and therefore her son was residing with her. Hence, she was taken away from aforesaid document with her. Accused No.1 denied having taken away the ornaments worth Rs.5 lakhs. The accused No.1 has stated that, the complainant is in relationship with Smt. Radhika Shenoy and that, they have been abusing, threatening and assaulting her. They have lodged false complaints against the accused No.1. Their conduct caused mental torture to her. The report indicate that, there is no evidence supporting the complaint lodged by complainant amounting to any cognizable offence and non-cognizable complaints were registered in the past.

9. Although, the complainant had alleged that, the accused have committed several offences, learned Magistrate had issued process for offences under Sections 380, 504, 507 read with 34 of IPC. Process was issued on the ground that the police report mentioned that the accused No.1 has admitted that the complainant would

misuse the documents and therefore same has been taken out from the house. It was also observed that, the complainant has given report with police for offences punishable under Sections 504, 506 of IPC was registered against the accused Sapana Shah, Jayesh Bagrecha and Kishor Bagrecha. The complainant lodged another complaint on 11th February 2010 against Kundanmal Kapoorchand Bagrecha, Meena Bagrecha, Jayesh Bagrecha and Sapana Shah for offence punishable under Section 507 of IPC. The relation between the complainant and accused are strained. Apparently, the learned Magistrate has misread the police report. The report clearly indicated that, the documents which were relating to joint name of accused No.1 and her son were taken away. No offence of theft is made out. Prima facie, no case for issuance of process for aforesaid offences was made out in the complaint. There was no reason to discard the report under Section 202 of Cr.P.C. The complaint lodged by Respondent No.1 is clearly abuse of process of law. It is counter blast to the complaints lodged by the Petitioner No.1. This is a fit case to exercise power under Article 227 of the Constitution of India and inherent powers under Section 482 of Cr.P.C. to quash the impugned proceedings and order issuing process. The impugned order reflects non-application of mind by the learned Magistrate. It would to be an abuse of process of law to continue such proceedings.

Most of the documents relied upon by Respondent No.1 in the affidavit in reply filed by him were beyond the scope of private complaint filed by him and the inquiry conducted by police under Section 202 of Cr.P.C. In such circumstances, the impugned order and the proceedings are required to be quashed and set aside.

ORDER

(i) Criminal Writ Petition No. 2338 of 2012 is allowed.

(ii) The impugned order issuing process dated 23.05.2012 passed by Metropolitan Magistrate, 27th Court, Mulund, Mumbai in Case No.24/I & R/2011 and the impugned proceedings in the said case subsequently numbered as C.C. No. 211/SS/2011 are quashed and set aside.

(iii) Writ Petition stands disposed of.

(PRAKASH D. NAIK, J.)