

[1]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.25 OF 2018

1. Shri Irshad Khan s/o Akil Ahmade Khan
Aged about 38 Years, Occu.: Service,
R/o Plot No.152, Noori Colony, Noori
Masjid, Nara Road, Nagpur.
2. Fahmida wd/o Akil Ahmad Khan
Aged about 56 years, Occu.: Household,
Nos.1 and 2 both R/o Plot No.152,
Noori Colony, Noori Masjid, Nara Road,
Nagpur.
3. Tarannum w/o Firoz Khan Kannoje,
Aged about 36 years, Occu.: Household,
4. Firoz Khan s/o Habib Khan Kannoje,
Aged about 41 years, Occu.: Service,
Nos.3 and 4 both R/o Near Biyani
Petrol Pump, Tukhum Road, Chandrapur,
District Chandrapur.
5. Rashida Nawab Patel,
Aged about 59 years, Occu.: Household,
R/o Kamla Nagar, Wadasa, Tahsil
Wadasa, District Gadchiroli.

..... PETITIONERS

// VERSUS //

1. Afsha Khan,
Aged Major, Occu.: Business,
C/o & R/o Mohd. Yahya
(Baba Khairiwale),
Canal Road, M.S.E.B. Colony,
Rajeev Gandhi Chowk,
Bhandara District Bhandara
2. The State of Maharashtra,
Through Police Station Officer,
Police Station, Bhandara.

(Amendment carried
out as per Court's order
dated 20.7.2018.)

.... RESPONDENTS

Mr. Amit Khare, Advocate for petitioners.
Mr. Shashibhushan Wahane, Advocate for respondent No.1.
Mr. S. M. Ghodeswar, APP for respondent No.2./State.

CORAM : AVINASH G. GHAROTE, J.
DATED : 07/01/2022

ORAL JUDGMENT :

Heard Mr. Khare, learned counsel for the petitioners, Mr. Wahane, learned counsel for the respondent No.1 and Mr. Ghodeswar, learned APP for respondent No.2.

2. The petition challenges the order dated 13.03.2015, which issues process against the petitioners, in Complaint Case No.268 of 2014, by the learned Judicial Magistrate First Class, Bhandara, for the offences punishable under Sections 143, 506, 294, 323, 427, 451 and 498-A of the Indian Penal Code and the subsequent order of the learned Sessions Judge, Bhandara in Criminal Revision No.49 of 2017 dated 20.12.2017, dismissing the revision challenging the order of issuance of process to the petitioners. Mr. Khare, learned counsel for the petitioners submits that a perusal of the Complaint would indicate that in so far as the petitioner Nos.3 to 5 are concerned, there are no specific allegations against them regarding the alleged offences and only generalized statements have been made. Relying upon *Kailash Chandra Agrawal*

[3]

and another Vs. State of Uttar Pradesh and others, (2014) 16 SCC 551,

he submits that the petitioner Nos.3 and 5, who are sisters of the petitioner No.1, the husband of the respondent No.1, and who are residents of a different town, as well as the petitioner No.4, who was the husband of the petitioner No.3, could not have been arraigned as accused as they were relatives and not residing with the petitioner Nos.1 and 2 at all. That apart, he also submits, that no specific allegations have been made against them, considering which, the issuance of the process against them could not have been ordered. He further submits, that in so far as petitioner Nos.1 and 2 are concerned, the allegations against them are also vague, and on this ground itself, merely on the say of the respondent No.1/complainant the issuance of the process is incorrect. He further submits, that the order passed by the learned Revisional Court does not consider all the aspects and is bereft of any reasons whatsoever and therefore, indicates non-application of mind to the factual position on record and the law as applicable, and therefore, cannot be sustained. Mr. Khare, learned counsel for the petitioners submits that considering the relationship of the petitioner Nos.3, 4 and 5, merely on the ground that they were related to the petitioner No.1, that could not be the reason for them to be arrayed as an accused before the Trial Court, on which ground also, the issuance of process was incorrect.

[4]

3. Mr. Wahane, learned counsel for the respondent No.1 submits, that the complaint indicates specific allegations, against not only the petitioner Nos.1, and 2 but also against the petitioner Nos.3 to 5, who have been instrumental in instigating the petitioner No.1, in committing the aforesaid offences. Inviting my attention, to the averments made in Para Nos. 3, 4, 5 and 10 of the complaint, he submits, that the averments made therein, categorically demonstrate, the involvement of all the petitioners, considering which, the issuance of process by the learned Magistrate and so also the dismissal of the revision by the learned Sessions Court is fully justified.

4. In ***Kailash Chandra Agrawal*** (supra) the Hon'ble Apex Court, while considering the question of quashing of criminal proceedings, was considering a case in which the complaint was made against the elder brother of the husband's father, who was claimed to be the head of the joint family and had held that since the relationship with the husband of the complainant was remote as grandfather of appellant No.1 was brother of grandfather of the husband of the complainant, in such remote relationship, the appellants therein would have no interest in raising any demand for dowry or causing any harassment to the complainant, and therefore, their implication was clear and abuse of the process of the Court. It is, however, also material to note that in ***Kailash Chandra Agrawal*** (supra) itself the Hon'ble Apex Court has also held

[5]

that the implication of a person as accused, is necessary to be on the basis of an individual role being attributed to him in the complaint. In the above background, if the complaint is perused, the averments in Para Nos.3, 4, 5 and 10 in so far as the petitioner Nos. 3, 4 and 5 are concerned, are generalized in nature and merely attribute a vague allegation of instigation against the petitioner Nos.1 and 2 i.e. the husband and mother, and nothing else. No specific allegations have been made as against the petitioner Nos.3 to 5 as would be apparent from the complaint. Para 3 makes a specific allegation against the petitioner No.1 regarding assault, Para 4 makes a specific allegation against the petitioner Nos.1 and 2 of driving out the complainant from the matrimonial house on the ground that she should bring the amount and vehicle demanded from her parents. Para 7 also speaks about specific allegations against the petitioner Nos.1 and 2. It is thus apparent, that a complaint does not disclose any specific averments regarding the alleged offences as against the petitioner Nos. 3, 4 and 5, considering which, in my considered opinion, the issuance of process as against the petitioner Nos.3, 4 and 5, who are the sisters and brother-in-law of the petitioner No.1, who are residing out of Nagpur, cannot be sustained. The same is therefore, quashed and set aside to that extent. In so far as the issuance of process against the petitioner Nos.1 and 2 are concerned, there is ample material in the complaint, against them

[6]

regarding the demand and harassment meted out to the respondent No.1, considering which, I am not inclined to interfere in the order of issuance of process, in so far as the petitioner Nos.1 and 2 are concerned. The order of the learned Sessions Judge, does not in my considered opinion, indicate an application of mind in the proper perspective to the allegations made in the complaint, and therefore, cannot be sustained in light of what has been stated above.

5. The criminal writ petition is accordingly partly allowed. The order of issuance of process against the petitioner Nos.3 to 5 is hereby quashed and set aside. In so far as the order of issuance of process by the learned Magistrate as against the petitioner Nos.1 and 2 is concerned, the same is maintained.

Rule is made absolute in the aforesaid terms.

(AVINASH G. GHAROTE, J)

Sarkate.