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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1019 OF 2019

1. Yuvraj Jaysingrao Patil,
Age : 37 years, Occu-Business.
2. Rohini Jaysingrao Patil,
Age: 67 years, Occu-Household.
3. Jaysingrao Annaso Patil. (Deleted)
4. Sanyogita Jaysingrao Patil, Age: 35 years, Occu-
Service, R/o C/o Hemant Boravake, Suyog Nagar,
Shivaji Housing Society, Shivaji Nagpur, Pune,
Dist.-Pune.

APPLICANTS

- VERSUS -

1. The State of Maharashtra, Through Rajarampuri
Police Station, Kolhapur, Dist.-Kolhapur.
2. Sarika Yuvraj Patil, Age 37 years, Occu-Govt.Service,
C/o Bhimrao Krishanaji Patil, R/o At Post Shirate,
Tal. - Walwa, Dist.- Sangli.

NON-APPLICANTS

Shri Anand S. Patil, counsel for the applicants.

Ms S.S. Kaushik, Additional Public Prosecutor for the non-applicant no.1.

Shri S.A. Rajeshirke, counsel for the non-applicant no.2.

CORAM : NITIN W. SAMBRE AND N.R. BORKAR, JJ.

DATE : OCTOBER 16, 2023

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

ADMIT. Heard finally with the consent of the learned counsel for the parties.

2. The prayer is for the quashing of the First Information Report in Crime No. 217 of 2019 for an offence punishable under Sections 498-A, 323, 504, 506, 507 read with Section 34 of the Indian Penal Code, 1860 (for short, 'the Code') at Rajarampuri Police Station, Kolhapur. The alleged offence came to have been committed in between November 26, 2016 and October 18, 2018.

3. The marriage between the applicant no.1 and the non-applicant no.2 was solemnized on November 26, 2016. For the sake of convenience, the parties are being referred to by the relationship they acquired after the marriage viz. applicant no.1 as husband, applicant no.2 as mother-in-law, applicant no.3 as father-in-law, the applicant no.4 as sister-in-law and the non-applicant no.2 as the complainant-Wife. Complainant-Wife is a Class-II Officer working with the Agricultural Department of the State Government, whereas the husband is an Engineer and Contractor by occupation. The father-in-law has expired during the pendency of the present application.

4. In the complaint dated June 21, 2019, it is alleged by the Complainant-Wife that after marriage, the husband had become addicted to alcohol and smoking. It is further claimed that the husband and the mother-in-law are of complaining nature. A general statement is made that the mother-in-law and the father-in-law had assaulted the complainant in 2016. A further statement is made against the sister-in-law that she used to issue threats through WhatsApp messages. A specific statement is made that on January 25, 2017, when the complainant-Wife had returned from her duty, the husband and the father-in-law had objected to her joining the duty without their permission and assaulted her. As such, it is alleged that an offence punishable under Sections 498-A, 323, 506, 507 read with Section 34 is committed by the applicants.

5. Shri Anand Patil, learned counsel for the applicants while making out a case for quashing, would urge that the ingredients of the offence punishable under Section 498-A of the Code cannot be said to be satisfied. So as to substantiate his contention, he would invite our attention to the specific ingredients under the said provision. Apart from above his contention is, vague, general and non-specific allegations are made in the First Information Report lodged against the applicants which cannot be found to be the basis for prosecution of the applicants. So as to substantiate his contentions, the learned counsel for the applicants has drawn support from the judgment of the Apex Court in *Abhishek Versus State of Madhya Pradesh* [2023 SCC OnLine SC 1083] and *Kahkashan Kausar alias Sonam & Others Versus State of Bihar & Others* [(2022) 6 SCC 599]. Based on the aforesaid cases, his contention is that on vague, general and non-specific allegations, the prosecution arising out of a matrimonial dispute cannot be said to be sustainable.

6. Further, it is contended by the learned counsel for the applicants that on October 30, 2017 the complainant-Wife admittedly lodged a complaint with the Superintendent of Police thereby alleging that the husband is an impotent person and required to be medically examined. It is also urged in the said complaint that the husband has an extra marital affair. Various instances are mentioned in the complaint so as to allege that after the marriage she was not treated with honour by the applicants. The learned counsel for the applicants would urge that the complaint was lodged with the

Superintendent of Police on October 30, 2017 whereas the First Information Report came to be registered on June 22, 2019 based on the complaint dated June 21, 2019. According to him, the instance narrated in the complaint dated June 21, 2019 is of physical assault by the husband, mother-in-law and father-in-law on January 25, 2017 which is prior to the lodging of the complaint with the Superintendent of Police on October 30, 2017. It is also claimed by the learned counsel for the applicant that since the incident dated January 25, 2017 was not narrated by the complainant-Wife at the time of lodging of the complaint with the Superintendent of Police on October 30, 2017, registration of a false case can be inferred. In addition to above, the learned counsel for the applicants would urge that the attempt on the part of the complainant-Wife to infuse restitution of conjugal rights through present proceedings is not a *bona fide* attempt. According to the learned counsel for the applicants, the complainant-Wife is making such submission for the first time before this Court though such claim goes contrary to what has been stated in the complaint dated October 30, 2017 wherein allegations of impotency were made against the husband. In addition, the learned counsel for the applicants would urge that the mediation before the Family Court has failed.

7. While countering the aforesaid submissions, the learned counsel for the complainant-Wife would urge that the Court is not supposed to appreciate the evidence and pleadings while deciding the prayer for quashing as the same is not permissible in law. According to the learned counsel for the

complainant-Wife, same can be gone into at the stage of trial. It is claimed that the applicants have tried to read the contents of the complaint in isolation and if the same is read in entirety, it satisfies the ingredients of the offence alleged under Section 498-A of the Code. The learned counsel for the complainant-Wife is supported by the learned Additional Public Prosecutor to submit that since the contents of the complaint disclose a cognizable offence, the same was registered and accordingly investigated into. Apart from above, they would invite our attention to the proceedings being Criminal Case No. 590 of 2017 initiated by the complainant-Wife under the provisions of the Prevention of Women from Domestic Violence Act, 2005.

In the aforesaid background, the contention of the learned counsel for the complainant-Wife and the Learned Additional Public Prosecutor is that the criminal application is liable to be rejected as no case for causing indulgence is made out.

8. We have appreciated the rival submissions.

9. The applicants are booked for an offence punishable under Section 498-A viz. husband or relative of husband of a woman subjecting her to cruelty; Section 323 viz. punishment for voluntarily causing hurt; Section 504 viz. intentional insult with intent to provoke breach of the peace; Section 506 viz. punishment for criminal intimidation; and Section 507 viz. criminal intimidation by an anonymous communication read with Section 34 of the Code.

10. If we consider the allegation in the complaint, it is not about the demand of dowry or the wilful criminal conduct as is likely to drive the complainant-Wife to commit suicide or to cause grave injury or danger to her life or health. The aforesaid provisions are added in the Statute book so as to prevent the torture of the woman by her husband or relative of husband. In case if they harass or torture the woman, to coerce her or her relatives to satisfy the unlawful demand of dowry.

11. The record depicts that after the marriage of the complainant-Wife and the applicant no.1 was solemnized on November 26, 2016, the complainant-Wife had lodged Complaint no. 463 of 2017 on October 30, 2017 with the Superintendent of Police, Kolhapur alleging the aforesaid factual matrix. Subsequent thereto, the statement of the complainant-Wife and the husband appears to have been recorded on December 04, 2017.

12. A perusal of both these statements depicts that post marriage, the applicant no.1 and the non-applicant no.2 were not getting along well. It appears that amongst others, the point of difference between them was the employment of the complainant-Wife with the State Government and her adjustment in the family of the applicants. The complainant-Wife in her statement dated December 04, 2017 stated that her complaint dated October 30, 2017 was filed (closed) as she was intending to stay with the applicant having right to do so.

13. The husband has filed Petition No. 187 of 2017 under Section 13(i-a) of the Hindu Marriage Act, 1955 before the Family Court, Kolhapur thereby seeking divorce on the ground of cruelty. Similarly, the complainant-Wife has filed the proceedings under Section 12 of the Prevention of Women from Domestic Violence Act, 2005 and the same are registered as Criminal Application No.591 of 2017 with the Judicial Magistrate First Class, Islampur. We are informed that both these proceedings are pending before the respective Courts.

14. After the initial complaint dated October 30, 2017 lodged with the Superintendent of Police Kolhapur was not pressed by the complainant-Wife, she has lodged a fresh complaint on June 21, 2019 alleging the offences referred hereinabove. As a sequel of which Crime No. 297 of 2019 punishable under Section 498, 323, 504, 506, 508 read with Section 34 of the Code came to be registered.

15. In the said complaint, the following allegations are made, viz. (a) After her marriage, she was not treated properly and honourably by the applicants which amounts to the cruelty under Section 498-A of the Code; (b) The husband is a smoker and alcoholic; (c) The mother-in-law and the father-in-law had assaulted her; (d) The sister-in-law used to send insulting and threatening WhatsApp messages. It is claimed that the aforesaid acts on the part of the applicants are in the form of offence.

16. This Court in view of the law laid down by the Apex Court in the matter of *Abhishek* (supra) is not supposed to enter into the factual arena to address the allegations in the complaint. However, the High Court is vested with the power to consider the prayer for quashing based on the as it is pleadings of the parties. This Court as such is not keen on going into the enquiry as to the genuineness of the allegations levelled in the complaint.

17. In another judgment of the Apex Court in the matter of *Kahkashan Kausar Alias Sonam & Others* (supra), while considering the entire law on the point of quashing of the First Information Report in the matrimonial matter, it has been held by the Apex Court that in absence of the specific and distinct allegations against the party who are into the matrimonial discord, the general, omnibus and non-specific allegations cannot be relied on for continuing the prosecution and in such an eventuality the High Court is empowered to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 for quashing the First Information Report. It has been further held that a husband or his relative cannot be roped in on the basis of omnibus allegations unless specific instances of their involvement is narrated. In the light of aforesaid law laid down by the Apex Court, this Court is required to consider whether the applicants are satisfying the very essentials of justifying the prayer for quashing the First Information Report.

18. We have already observed that the detail complaint lodged in 2017 was not pressed by the complainant-Wife and subsequent thereto the Husband has initiated the proceedings for divorce on the ground of cruelty, while the complainant-Wife has initiated the proceedings under the Prevention of Women from Domestic Violence Act, 2005.

19. During the pendency of the proceedings the father-in-law has already expired against whom the allegations of assault are made. As far as the husband and mother-in-law are concerned, the complainant-Wife has levelled allegations of misbehaviour against them. As far as sister-in-law is concerned, there is allegation against her that she used to send threatening WhatsApp messages to the complainant-Wife.

20. The fact remains that the First Information Report contains general, vague and non-specific allegations. On one hand, the complainant-Wife in the complaint lodged with the Superintendent of Police on October 30, 2017 had claimed that the husband is impotent and subsequent thereto she claimed that she intended to reside with the husband. In the subsequent complaint dated June 21, 2019 the said allegations are absent. This speaks of revengeful attitude and approach of the complainant-Wife as she is making contradictory and false allegations against the applicant no.1-husband.

21. The fact remains that the complainant-Wife is financially secured as she is serving with the State Government, whereas the husband is an Engineer and Contractor by profession. In the aforesaid backdrop the narration of the allegations in the complaint dated October 30, 2017 and June 21, 2019 clearly depicts that post marriage the complainant-Wife was not getting along well with the applicants as there was no tuning and bonding developed among them. As a consequence of above, the husband has initiated the proceeding for divorce and the complainant-Wife has initiated the proceedings under Section 12 of the Prevention of Women from Domestic Violence Act, 2005 against each other. The complaint dated June 21, 2019 speaks of the incident dated January 25, 2017 wherein the complainant-Wife had alleged that her father-in-law and mother-in-law had assaulted her and the husband assaulted her on October 16, 2017. As far as the alleged incident of assault dated October 16, 2017 by the husband and the alleged incident dated January 25, 2017 with regard to mother-in-law and father-in-law are concerned, a perusal of the earlier complaint does not speak of any such incident of assault by the mother-in-law and father-in-law or that of by the husband for that matter which demonstrate contradictory allegations. The complaint made in 2017 to the Superintendent of Police was not pressed, however, some of the allegations are renewed in the complaint of which quashing is sought.

22. As such we are not going into the enquiry of the truthfulness of the allegations but what can be noticed is that the initial complaint to the Superintendent of Police which narrates in detail the alleged ill-treatment was not pressed by the complainant-Wife and subsequently both the husband and the complainant-Wife have instituted separate proceedings against each other. As such it has to be inferred that the complaint which is preferred by the complainant-Wife is based on general, vague and non-specific allegations and that too by way of an afterthought. We have also observed that the two instances which were narrated in the earlier complaint dated October 30, 2017 are missing in the complaint dated June 21, 2019 though they were available with the complainant-Wife.

23. The fact remains that in the proceedings for divorce initiated by the husband, the complainant-Wife has already taken recourse to the proceedings of Restitution of Conjugal Rights, which are pending consideration. In the aforesaid background, if we appreciate the case of the applicants based on the law laid down by the Apex Court in the matter of *Abhishek* (supra) it has to be said that a case is made out for quashing of the First Information Report under Section 482 of the Code of Criminal Procedure, 1973. So as to substantiate the aforesaid finding, reliance can be placed on paragraphs 13, 14, 15 and 16 thereof, which read thus :-

“13. Instances of a husband’s family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband’s close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali v. State of U.P.* (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.PC. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.PC. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines."

24. Apart from above, the Apex Court in the matter of *Kahakashan Kausar Alias Sonam* (supra) has observed that there is increase in tendency of implicating relatives of the husband in matrimonial disputes without analyzing the long term ramifications of a trial on the complainant as well as the accused. Paragraph 13 of the aforesaid judgment reads as under:-

“13. Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar, it was also observed : (SCC p. 276, para 4)

‘4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.’”

25. In the aforesaid background what can be observed is as far as role attributed to the sister-in-law is concerned, the fact remains that she was never staying with the husband and the complainant-Wife. The complainant-Wife herself claimed that the sister-in-law used to issue threats through telephonic messages. Apart from above, the husband and the mother in law are roped in on the basis of the general, vague and non-specific allegations which were introduced by way of an afterthought, i.e. after the proceedings were initiated for divorce and under the provisions of the Prevention of Women from Domestic Violence Act, 2005.

26. In this background, it has to be held that the applicants are entitled for the relief claimed in the application. That being so, the criminal application is liable to be allowed in terms of Prayer Clause (b), which reads as under :-

(b) This Hon'ble Court may be pleased to quash & set aside FIR No.217/2019 registered against the applicants u/s. 498-A, 323, 504, 506, 507 r.w. 34 of I.P.C. at Rajarampuri Police Station, Kolhapur, Dist-Kolhapur on such terms and conditions as this honourable court may fit and proper.

27. The criminal application is allowed in aforesaid terms and disposed of.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)

APTE