

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4358 OF 2022

Devidas Vitthal Sawant

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Purushottam G. Chavan, for the Petitioner.

Mr. B. A. Lawate, for the Respondent No.2.

Ms. Sharmila S. Kaushik, APP for the Respondents.

Mr. Vishal Mohan Lendve, Sangola Police Station – present.

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

DATE : 27th OCTOBER, 2023

PC.

1. Based on the statements dated 9th and 10th August, 2022 at the behest of respondent No.2/complainant offence No.932 of 2022 came to be registered for an offence punishable under Section 498A, 323, 504, 506 r/w 34 of IPC.

2. Petitioner is informed to be a real brother of father-in-law. The submissions are, even if what has been stated in the FIR and supplementary statement is taken to be true at its face, still satisfaction of ingredients of the offence alleged cannot be inferred. Mr. Purushottam Chavan, counsel appearing for the petitioner would urge that apart from aforesaid, claim made in the complaint dated 9th and 10th August, 2022 are by way of afterthought and far

away from truth, as the case narrated in the FIR was never mentioned in legal notice dated 6th January, 2022.

3. While countering aforesaid submissions, counsel for the respondent No.2/complainant and learned APP would urge that the petitioner is specifically named in the FIR with attribution of instigation to other accused persons in commission of offence. It is claimed that whether the petitioner has instigated the other co-accused is an issue which can be looked into at the stage of trial and this Court should exercise powers of quashing under Section 482 of the CrPC.

4. With the assistance of respective counsels, we have perused the charge-sheet.

5. The statement of the respondent No.2/complainant came to be recorded on 9th August, 2022, wherein she alleges of marriage on 30th November, 2020. The gift of Rs.2,00,000/- and other articles worth about Rs.6,00,000/-. She also mentions that at the behest of petitioner, other co-accused persons started interfering with her marital life.

6. According to respondent No.2/complainant, she parted company on 5th June, 2022, as she was unable to sustain the cruelty and satisfy the demand of dowry.

7. Perusal of the FIR i.e. contents of the complaints dated 9th August, 2022 and 10th August, 2022 and the other material on record speaks of the cruelty being practiced by the accused persons for non-fulfilment of demand of dowry.

8. If we read contents of the FIR and supplementary statement dated 9th and 10th August, 2022, what can be noticed is, the same contains vague, general and non-specific allegations. The complaint and the supplementary statement contains omnibus allegations. Even if the aforesaid allegations are taken to be correct at its face value, the fact that such general, non-specific and omnibus allegations cannot be found to be basis for inferring satisfaction of the ingredients, particularly, in the light of the law laid down by the Apex Court in the matter of ***Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.*** reported in ***(2022) 6 SCC 599***.

9. Paragraphs 17 and 18 of the said judgment reads thus :-

“17. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law.

Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.2019, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein i.e. none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

10. In view of law laid down by the Apex Court in the aforesaid judgment, what can be noticed is the complaint preferred by the respondent No.2/complainant cannot be taken to its logical end, particularly, when the dispute or the differences have cropped up out of matrimonial discord.

11. In the wake of aforesaid observations, we deem it appropriate to allow the present petition thereby exercising powers

under Article 226 of the Constitution of India r/w Section 482 of the CrPC. We are justified in exercising of powers under Section 482 of the CrPC based on the judgment of Apex Court in the matter of ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.*** reported in ***1992 AIR 604.***

12. The petition as such stands allowed in terms of prayer clause (a).

13. Needless to clarify that the observations made herein-above are restricted to the claim made by the petitioner.

[N. R. BORKAR, J.]

[NITIN W. SAMBRE, J.]