

B-35, 208 SFS, Opp.Mother Dairy
New Town Yelahanka,
Bangalore, Karnataka

.. Applicant
(Original Respondent
No 2 in APL 321 of
2016)

VERSUS

Smt. Yadvi Kunder
Aged :37 years, Occupation :Service
Pushpavatika Building, Shiv Vallabh
Cross Road, Ashokvan, Rawalpada
Dahisar(East), Mumbai-400068

..Respondent No 1
(Original Petitioner in
APL 321 of 2016)

AND

The State of Maharashtra
Through Public Prosecutor
Appellate Side, High Court
Mumbai.

.. Respondent No 2
(Original Respondent
No 1 in APL 321 of 2016)

Mr Abhiraj Parab, Advocate a/w Anjali Malekar for petitioner.
Mr Vivek Joshi, Advocate for respondent No.2.
Mr HJ Dedhia, APP for State.

Coram : R. N. Laddha, J.

**Reserved on : 13 October 2023.
Pronounced on : 10 November 2023.**

Order :

Rule. The rule is made returnable forthwith. Heard

finally at the request and with the consent of the learned Counsel for the parties.

2. The petitioner is the wife of respondent No.2. They got married on 16.7.2016 and they have a son named Yash Vikram, who lives with the petitioner. The petitioner claims that respondent No.2 treated her with cruelty, deserted her and their son for no valid reason. The petitioner and respondent No.2 have been in a marital conflict since 2010. Their divorce and maintenance cases are pending in the Family Court, Mumbai. Respondent No.2/husband lodged a criminal case bearing No.382/SW/2013 against the petitioner wife in the Court of the Metropolitan Magistrate, 26th Court, Borivali, Mumbai, for the offences punishable under Sections 415, 416, 417, 419, 420, 463, 464, 468, 470 and 471 of the Indian Penal Code (for short 'IPC'). The complaint accuses the petitioner wife of applying for their son's passport by falsifying facts and changing the child's name without her husband's (respondent No.2) consent. According to the petitioner, the passport was never issued. The complaint case is at the stage of evidence before charge and the testimony of three witnesses, including the husband (respondent No.2 herein) have been taken.

3. Mr Abhiraj Parab, the learned Counsel for the petitioner, submitted that the complaint was based solely on the “the issuance of a passport”, which was never issued. The police officer’s evidence showed that he only recorded the statement of the complainant, the accused. The forensic expert’s evidence was irrelevant to the complainant’s case as the expert did not implicate the petitioner’s wife in this case. The entire complaint and the evidence recorded before the charge fail to reveal any loss or injury caused to the respondent/husband. There is no financial gain, loss, or benefit for anyone. The child’s name was also changed back to the original. Learned Counsel submitted that this complaint is only a tool of personal revenge to get back at the petitioner/wife. In support of his contention, he relied on the decision of ***Vijay Narayandas Rizwani Vs. Dilip @ Dhanraj s/o Navalrai Rizwani & Anr¹ and Dr. Vimla v. Delhi Administration²***.

4. Mr Vivek Joshi, learned Counsel for the respondent No.2 submitted that the petitioner had deliberately concealed facts and purposely failed to produce many documents before this Court. He further alleged that the petitioner had forged the signatures of respondent No.2/husband on their minor

1 1996(1) Bom.C.R.322

2 2 S.C.R.585

son's passport application and a false affidavit. The petitioner also dishonestly changed the name of the child from Yash Vikram to Greesh Narayan Vikram. Respondent No.2 became aware of the name change only when the petitioner filed a maintenance petition. Respondent No.2 then approached the Family Court to restore the original name. Although the Family Court ordered the petitioner to do so, the petitioner did not comply.

5. This made respondent No.2 suspicious, and he filed an RTI application with the passport office in Mumbai. The passport office provided him all the documents, including the application. Upon examining those documents, respondent No.2 discovered that his signatures were forged in them. He then filed a private complaint against the petitioner. The learned Magistrate verified the complaint and instructed the police to conduct an enquiry under Section 202 CrPC, which established a *prima facie* case against the petitioner. The learned Magistrate issued a process only after receiving the enquiry report under Section 202 CrPC. Mr Joshi, submitted that the petitioner had forged signatures of respondent No.2 and produced many forged documents. The petitioner used these forged documents as if they were genuine. He also

stated that the petitioner obtained her passport as a single person and did not obtain a NOC from Air India, even though she worked for PSU. The petitioner intentionally concealed her marital status, and her passport was impounded, as she was penalised for lying.

6. Learned Counsel further argued that a trial was at the stage of framing charge and that respondent No.2 had made a strong case against the petitioner to frame charge. Additionally, the petitioner did not cross-examine the police officer who conducted the enquiry under Section 202 CrPC and found substance in the complaint. The forensic expert also opined that the disputed signatures were not of respondent No.2 and were forged by someone else.

7. This Court has carefully considered the submissions made by the learned Counsel for both parties and the materials on record.

8. It reveals from the record that respondent No.2 filed a private criminal complaint bearing No.382/SW/2013 before the Court of learned Magistrate against the petitioner. The learned Magistrate verified the complaint and instructed the police to conduct an enquiry under Section 202 CrPC. After

examining the enquiry report, the learned Magistrate issued a process against the petitioner under Sections 415, 416, 417, 419, 420, 463, 464, 468, 470 and 471 of the Indian Penal Code. Thereafter, evidence of three witnesses, including the complainant/respondent No.2, was recorded before charge, as contemplated under Section 244 of CrPC. The trial is at the stage of framing charge.

9. The enquiry conducted by PI Mr Sachin Patil (PW2) under Section 202 CrPC reveals that the respondent No.2's complaint has substance. The material on record shows that several documents related to the passport application, such as affidavit for name change, minor, marriage, and proof of address like electricity bills and correspondence with the regular passport office, had respondent No.2's signature tampered with. The newspaper advertisement claimed that respondent No.2/husband had renamed his son from Yash Vikram to Greesh Narayan Vikram based on an affidavit of name change. The Notary's affidavit demonstrates that the petitioner/wife brought someone with her and that he signed the papers in front of him as respondent No.2. From the contents of the complaint, the documents brought on record, and the evidence, it is clear that a *prima facie* case is made out

to frame charge against the petitioner/wife. At the stage of framing charge, the probative value of the material brought on record cannot be gone into; the materials brought by prosecution have to be accepted as true at that stage. The petitioner has not cross-examined the police officer who conducted the enquiry, submitted a report under Section 202 CrPC, and found substance in the complaint of respondent No.2. That would mean that whatever has been stated by this witness in his examination-in-chief, at this stage, would have to be accepted as it is for the purpose of framing of charge against the petitioner. Perusal of the evidence brought on record is sufficient to frame charge against the accused petitioner/wife. In such circumstances, no case is made out to quash the criminal complaint case No.382/SW/2013, pending before the Court of learned Magistrate.

10. It is settled position in law that while exercising the powers under Section 482 CrPC, the allegations made by the witnesses against the accused persons are to be scrutinised on their face value, taking them to be true and it is not possible for the Court to go into the aspect of reliability or credibility or trustworthiness of the witnesses.

11. The facts of the cited cases are altogether different from

the case in hand, and therefore, are not relevant in the present case.

12. For the foregoing reasons the Criminal Application No.321 of 2016 stands dismissed. In view of the disposal of the aforesaid criminal application, the pending application bearing No.183 of 2019 stands disposed of. As the criminal complaint case No.382/SW/2013 is pending since 2013, the learned trial Court is requested to expedite the same.

[R. N. Laddha, J.]