

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1048 OF 2019

Anoop Singh Khalsa and ors. ... Petitioners

Versus

The State of Maharashtra and anr. ... Respondents

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Mr. Apoorv Singh for the Petitioner.

Mr. S. V. Gavand, APP for the State.

Mr. Girish Paryani i/b A and G Legal Associates LLP for Respondent
No. 2.

.....

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

DATED : 4 OCTOBER 2023

P.C. :-

The prayer is for quashing of the FIR in Crime No. 146 of 2018 punishable under Sections 498-A, 406 r/w 34 of the Indian Penal Code, in which the petitioners are already charge-sheeted.

2. The genesis of the offence alleged against the petitioners is, respondent No. 2/complainant was married to the son of petitioner Nos. 1 and 2, the petitioner No. 3 is brother-in-law, petitioner No. 5 is wife of the petitioner No. 3 and the petitioner No. 4 is sister-in-law.

3. The marriage between the complainant/respondent and the son of the petitioner Nos. 1 and 2, namely, Jaspal Singh was performed on 17 April 2005 and they are blessed with son and daughter.

4. It is the case of the prosecution against the petitioners that immediately after the marriage, the petitioners started ill-treating the respondent/complainant and have taken custody of her jewellery, which was never returned in spite of demand being made.

5. Apart from the above, it is clear that the son of the petitioner Nos. 1 and 2 has migrated to West Africa and has not taken appropriate care of the children so also the respondent/complainant. Certain instances of cruelty and ill-treatment being practiced by the petitioner Nos. 3 to 5 is also stated in the complaint.

6. Since the cognizable offence was disclosed, the offence came to be registered. After completion of investigation the petitioners came to be charge-sheeted resulting into registration of the regular criminal case against them, which is informed to be pending on the file of Court of Metropolitan Magistrate, Chembur.

7. It is the contentions of the learned counsel for the petitioners

that the petitioners are falsely implicated in the offence. It is claimed that default if any, in discharge of matrimonial duties on the part of their son i.e., husband of the respondent/complainant cannot be considered for prosecuting the petitioners for the offence.

8. Apart from above, it is urged that allegations against the petitioners are too vague to bring home the guilt of the accused. According to learned counsel for the petitioners, distant relatives of the husband are implicated purely with an intention to target them and forced the accused persons to accept settlement. Learned counsel would invite our attention to the statement of various witnesses so as to claim that the ingredient of the offence alleged cannot be held to be satisfied.

9. A support is drawn from the judgment of the Apex Court in the matter of **K. Subba Rao and others Vs. State of Telangana and others Reported in (2018) 14 SCC 452** so as to claim that the immediate family members/distant blood relatives cannot be prosecuted for the offence. The omnibus general and non specific instances cannot be relied on for the purpose of justifying the prosecution against the

petitioners.

10. In addition to the above, the reliance is also placed on the similar view expressed by the Apex Court in the matter of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another Reported in (2012) 10 SCC 741** and **Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others Reported in (2022) 6 SCC 599**.

11. While countering the aforesaid submissions, learned APP would urge that the complaint lodged by the respondent discloses cognizable offence. During the investigation, since sufficient material to prosecute the petitioners was noticed, the petitioners came to be charge-sheeted.

12. It is the contention of learned APP Ms. Deshmukh, that the defence of the petitioners need not be appreciated at this stage as the case of the prosecution is to be considered as it is with looking into the defence of the petitioners.

13. The aforesaid submissions are adopted by the counsel for respondent No. 2. The counsel for respondent No. 2 would further

add that the son of the petitioner Nos. 1 and 2 is in arrears of maintenance and is enjoying his life in West Africa. According to him, the respondent No. 2 is custodian of two kids and meager maintenance is paid to the respondent that too not regularly. It is also claimed that petitioners are supporting the above act of their son till this date.

14. It is further claimed that the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure sufficiently support the case of the prosecution so as to infer the satisfaction of the necessary ingredients. That being so, the prayer is for dismissal of the petition.

15. We have appreciated the aforesaid submissions.

16. After having carefully perused the contents of the complaint dated 16 April 2018, the admitted fact as could be borne out of record is, the marriage was performed on 17 April 2005 with Jaspal Singh, who was migrated to West Africa, the son of petitioner Nos. 1 and 2.

17. Out of aforesaid marriage, the respondent No. 2 and the son of the petitioner Nos. 1 and 2 are blessed with a daughter and a son.

Since 2011, the son of the petitioner Nos. 1 and 2 is migrated to West Africa.

18. Failure of the son of the petitioner Nos. 1 and 2 to maintain his family, the respondent/complainant was prompted to initiate the proceedings under Domestic Violence Act in which the order of payment of maintenance is not complied in its entirety.

19. In the aforesaid background of admitted factual matrix, if we look into the statement of the witnesses including that of complainant, it can be easily inferred that the case of the prosecution as has been narrated in FIR and the supplementary statement dated 24 February 2019 is sufficiently supported by the statement of witnesses recorded under Section 161 of the Code of Criminal Procedure.

20. There are allegations against each of the petitioners including that of taking over the custody of the jewellery of the respondent/complainant, her ill-treatment with cruelty, physical assault by the son of the petitioner Nos. 1 and 2 during their temporary stay at West Africa etc., are sufficient enough to infer

satisfaction of ingredients.

21. The statement in the FIR and supplementary statement is duly supported by the other witnesses, namely, Anup Singh, Jagjeet Kaur, Surendar Singh, Amar Singh, Jogendar Singh, etc.

22. As far as the case as has been pleaded by the learned counsel for the petitioners is concerned, the fact remains that all the petitioners are the blood relations of the husband of the respondent/complainant. The petitioner Nos. 1 and 2 are the father-in-law and mother-in-law respectively, whereas the petitioner No. 3 is brother-in-law and petitioner No. 5 is the wife of the petitioner No. 3, whereas the petitioner No. 4 is her sister-in-law.

23. After the migration of the husband of the respondent/complainant, the respondent has stayed with the petitioners and during said period the act of cruelty and ill-treatment is continued as stated in the FIR. The fact remains that against each of the petitioners the allegations are reflected in the FIR.

24. That being so, prima facie, satisfaction of the necessary ingredients of the offence punishable under Sections 498-A r/w 34 of

the Indian Penal Code can be inferred.

25. In this background, the law laid down by the Apex Court in the judgment cited supra in the matter of *K. Subba Rao, Geeta Mehrotra* and *Kahkashan Kausar* will not be of any assistance as the petitioners are the blood relation of the husband of the respondent/ complainant.

26. In the aforesaid background, prima facie, it has to be inferred by the available material on record that the satisfaction of the ingredient of the offence alleged against the petitioners. At this stage, this Court is not required to appreciate the defence of the petitioners. That being so, no case for causing interference is made out. The petition as such fails, stands dismissed.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)