

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1188 OF 2022**

Suryabhan Singh And Anr.

... Petitioners

V/s.

The State Of Maharashtra And Anr.

... Respondents

Mr. Apoorv Vijay Singh for Petitioners.

Mrs. G. P. Mulekar, APP for Respondent No.1-State.

Mr. Unmesh A. Breed for Respondent No.2.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.****DATE : 18th JULY, 2023.****PC. :**

1) By the present Petition, under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure (*for short Cr.PC.*), Petitioners i.e. father-in-law and mother-in-law of Respondent No.2 have prayed for quashing of R.C.C. No. 1021 of 2021 pending on the file of learned Judicial Magistrate First Class, Panvel, Navi Mumbai, arising out of C.R. No. 199 of 2021 dated 4th June, 2021 registered with Kharghar Police Station, Navi Mumbai, under Sections 498A, 323, 354, 354-B, 377, 406, 504, 506 read with Section 34 of the Indian Penal Code.

2) Heard Mr. Apurv Singh, learned Advocate for Petitioners, Mrs. Mulekar, learned APP for Respondent No.1-State and Mr. Unmesh Breed,

learned Advocate for Respondent No.2. Perused entire record produce before us.

3) At the outset, it is necessary to place on record the following facts :-

3.1) At the inception of arguments, we pointed out to the learned Advocate for Petitioners that, Petitioners are having substantive alternate statutory remedy as contemplated under the provisions of Cr.P.C. and they may avail the same. It was also pointed out that, the defence of Petitioners can not be tested in a Writ Petition under Article 226 of the Constitution of India and/or in an Application under Section 482 of the Cr.P.C. Despite the said settled legal position, he on instructions submitted that, this Court may adjudicate the merits involved in the Petition.

3.2) We pointed out to the learned Advocate for the Petitioners, the recent decision of the Hon'ble Supreme Court in the case of Central Bureau of Investigation V/s. Aryan Singh, dated 10th April, 2023 passed in *Criminal Appeal No.1025-1026 of 2023 (@ SLP (CRL.) NOS. 12794-12795 of 2022)*. In the said decision the Hon'ble Supreme Court has held that, while deciding an Application under Section 482 of Cr.P.C., the High Court can not conduct a mini trial. That, as per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of Cr.P.C., the Court is not required to conduct a mini trial.

3.3) It is to be further noted that, despite there being authoritative pronouncement by the Hon'ble Supreme Court in the said case, learned Advocate for Petitioners on instructions from Petitioner No.1 who is personally present in the Court persistently insisted this Court to decide the Petition on merits.

3.4) We repeatedly asked learned Advocate for Petitioners as to whether there is any authority or precedent of the Hon'ble Supreme Court which permits the High Court to test the defence of Petitioners in a Petition under Article 226 of the Constitution of India and/or in an Application under Section 482 of the Cr.PC., which ordinarily required to be tested before the trial Court, in a probable trial, he fairly conceded that, there is no such decision. He submitted that, as the Petitioners are insisting him to argue the matter on merits, he is bound by their instructions.

3.5) In this admitted premise we have heard learned Advocates for the parties at length.

4) Record indicates that, Respondent No.2 has lodged FIR on 4th June, 2021 under the aforestated Sections. As noted earlier, after completion of investigation the police have filed charge-sheet in the trial Court.

5) Learned Advocate for Petitioners submitted that, prior to lodgment of present crime, the Petitioners had filed a complaint dated 15th April, 2021 with Kharghar Police Station. In para No.11 thereof, they had brought to the notice of the concerned Police that, the Respondent No.2 by

using duplicate key had entered into their premise. The Petitioners had also lodged a non-cognizable complaint against Respondents.

It clearly appears to us that, the said complaint dated 15th April, 2021 was lodged by the Petitioners in an anticipation of lodgement of present FIR by Respondent No.2 against them. Undoubtedly, it is the defence of the Petitioners which is being put forth for the consideration of this Court in a petition under Article 226 of the Constitution of India, which is legally not teneble.

6) Perusal of FIR reveals that, apart from numerous instances of demand of dowry and gifts by the Petitioners from Respondent No.2, a specific allegation of demand of dowry and gold alongwith money has been alleged in internal page No.5 of the FIR. It is alleged that, after purchase of new house, the Petitioners demanded certain amount from the Respondent No.2 and when Respondent No.2 refused to submit to their demand, they abused her in filthy language and also threatened her. It is further alleged that, when Respondent No.2 informed the fact of her sexual abuse by the principal accused, i.e. her husband, alleging the act as contemplated under Section 377 of the I.P.C., Petitioner No.2 instead of counselling her son, not to indulge into such offences, threatened Respondent No.2. Petitioner No.2 also threatened Respondent No.2 that, if she discloses the said act as contemplated under Section 377 of the I.P.C. committed by her husband, she will be driven out of her house and left in lurch.

As far as Petitioner No.1 i.e. father-in-law is concerned, the Respondent No.2 has made very serious allegations against him of stalking and outraging her modesty when she was alone in the house, which according to us clearly attracts Section 354 and 354-B of the IPC. It is also alleged that, when Respondent No.2 requested Petitioner No.2 to restrain Petitioner No.1 from committing the said assault on 25th May, 2021 at about 11.45 p.m., the Petitioner No.2 instead of restraining Petitioner No.1 instigated him and threatened Respondent No.2 that she will be driven away from her house.

7) It is the settled position of law that, the statement of victim in an offence of sexual abuse can not be treated casually. The Hon'ble Supreme Court in the case of *State of Punjab V/s. Ramdev Singh, reported in (2004) 1 SCC 421* has held that, Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on woman, particularly of tender age and children. That, it is a crime against basic human rights and it is violative of victim's fundamental right under Article 21, so Courts should deal with cases of sexual offence sternly and severely.

8) In the present case, offence alleged against Petitioner No.1 of sexual assault, had occurred within the four walls of the matrimonial house of Respondent No.2. The FIR lodged by Respondent No.2 is a very elaborate document and in detail it mentions about various instances and the

offences committed by Petitioners against Respondent No.2 at the matrimonial house and otherwise.

There are statements of other witnesses which corroborates the basic ingredients of an offence under Section 498A of the Cr.P.C.

9) After taking into consideration the aforesaid facts we are of the considered view that, a strong *prima-facie* case against the Petitioners is made out by the prosecution.

It is not a fit case to quash the charge-sheet and in fact according to us it is a fit case for framing of charge against the Petitioners.

10) In view of the above, Petition is dismissed.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)

CHAITANYA
ASHOK
JADHAV

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by CHAITANYA
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