

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1310 OF 2009

1. Anantrao Shankarrao Jagtap
Age about 56 years, Occ: Legal Practitioner,
R/o. Chhatrapati Co-operative
Housing Society, Opp. To Durga Udyan,
Nashik Road, Tal & Dist. Nashik.

2. Nima Anantrao Jagtap
Age about 51 years, Occ: Consultant
Both residing at Chhatrapati Sai Palace,
M. G. Road, Nashik Road, Nashik

.. Petitioners
(Org. Accused)

Vs.

1. Sau. Ranjana Bhagwan Patil-Bornare,
Age: about 38 years, Occ: Household,
Residing at Samangaon, Guothar, Tal. & Dist. Nashik.
And also at Nisargadatta Society,
Jagtap Mala, Nashik Road,
Taluka and District Nashik.

2. The State of Maharashtra,
Through the Police Inspector,
Nashik Road Police Station,
Nashik.

.. Respondents
(Org. Complainant)

Mr. Harshad M. Inamdar, i/b Ashok S. Pandire for the Petitioners.
Ms. Mahalakshmi Ganpathy, APP, for the Respondent No.2-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 30th OCTOBER, 2023.

PRONOUNCED ON : 30th NOVEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) By this Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'the Cr.PC.'*, for short), the Petitioners are seeking quashing and setting aside of the Order dated 1st April, 2009, passed below Exhibit '1', in Regular Criminal Case No.72 of 2009, by the learned Judicial Magistrate, First Class, Nashik Road, District Nashik, whereby the learned Magistrate invoking the powers under Section 156(3) Cr.P.C., directed to send the said complaint for registration of a crime and investigation by Police Inspector, Nashik Road and to submit the Report thereof as per Chapter XII of Cr.P.C., against the Petitioners.

2) Heard learned Counsel for Petitioners and learned APP for Respondent No.2-State.

3) By an order dated 11th June, 2009, this Court directed that no coercive action shall be taken against the Petitioner on the basis of the impugned Order. Then Rule was granted on 15.03.2010 and the interim relief was continued.

Despite due service, none appears for Respondent No.1 nor Affidavit-in-Reply is filed on her behalf. We have, therefore, with the able assistance of learned APP perused the entire record.

4) Respondent No.1 has filed the said Reg. Cril. Case No.72/2009

(*the complaint, for short*) containing following accusations.

4.1) That, Petitioner No.1 was running an 'Old Age Home'. Respondent No.1 and her husband were working there. Besides that, Respondent No.1 was working as a domestic help at Petitioner No.1. But for certain reasons, Respondent No.1 gave up to work at him.

4.2) It is alleged that, earlier Petitioner No.2 was married with a *Muslim* boy and got two children from him. Similarly, earlier Petitioner No.1 was married with one girl namely Gavade. But Petitioner No.1 divorced her and started living with one Sharayu Yattan, from whom he got a girl child. However, without getting divorce from said Sharaya Yattan, Petitioner No.1 claims that, Petitioner No.2 is his legally wedded wife. It is alleged that, even though Petitioner No.2 was married with one Anilkumar Singh and said marriage is in existence, Petitioner No.2 claimed that, she is a legally wedded wife of Petitioner No.1.

4.3) It is alleged that, Petitioner No.2 has submitted a false Affidavit at the time of *Zilla Parishad* Election in 1987 and Nashik Cooperative Election in 2007. It is alleged that, in the year 1997, Petitioner No.2 had filed an Application for *Zilla Parishad* membership by mentioning her false name. It is alleged that Petitioner No.2 has obtained a false PAN Card by suppressing her earlier name '*Nasim Ahmed Baig or Nima Ahmed Singh*'. Petitioner No.2 has obtained a Passport by giving her false information.

4.4) It is alleged that, even though Petitioner No.2 is not a '*Kunbi*', she has obtained a false Cast Certificate of the social status '*Kunbi*' with the help of Petitioner No.1, by suppressing the fact that, she is a '*Muslim*' and she has been using that Certificate as genuine.

4.5) It is alleged that, when Respondent No.1 was working at Petitioner No.2, the later was forcing her to see obscene videos and on refusal, she was threatening her.

4.6) It is alleged that, on 12.02.2009 when Respondent No.1 was present at *Dwarka*, the Petitioner threatened her. The same act was repeated on 13th February, 2009 at 11.00 a.m. It is alleged that, once Respondent No.1 had been to Nashik Court for personal work. At that time, Petitioner No.1 beat her and by calling Petitioner No.2 there, he threatened her. Thereafter, Petitioner No.2 attempted to beat Respondent No.1 by sending some women. Respondent No.1 tried to lodge F.I.R. of this incident but the Police did not take any action against the Petitioners.

4.7) Thus, both the Petitioners have committed the offences punishable under Sections 171-G, 181, 193, 196, 200, 465, 468, 471, 472, 473, 474, 493, 494, 495, 497, 498, 323, 504, 506 and 34 of the Indian Penal Code. But according to the Petitioners, they are innocent, yet, they have been falsely implicated in the said complaint. Hence, this Petition.

5) Learned Advocate for the Petitioners submitted that, the

complaint filed by Respondent No.1 is silent about filing the F.I.R. under Section 154(1) of Cr.PC and sending the substance of the information under Section 154(3) of Cr.P.C. to the higher Police Officer for not taking any action on her F.I.R. under Section 154(1) of Cr.P.C. by the concerned Police. The complaint is not supported by an Affidavit of Respondent No.1. Considering the complaint as a whole, the allegations levelled against both the Petitioners are general and vague in nature. Without prejudice, the said allegations are manifestly frivolous or vexatious. Thus, the complaint was instituted with an ulterior motive for wreaking vengeance against the Petitioners. Therefore, in such cases the Court owes a duty to be more careful and conscious before directing registration of a crime and investigation, invoking the power under Section 156(3) of Cr.PC. But such care and caution has been not exercised in the case on hand before passing the impugned Order. Hence, the impugned Order is not sustainable in law and it is liable to be quashed and set aside.

6) Per contra, learned APP has submitted that, looking at the allegations leveled in the complaint, the learned Magistrate is right in passing the impugned Order. Learned APP, however, fairly submitted that, the complaint is silent about taking recourse to Sections 154(1) and 154(3) of Cr.P.C. before filing the same. Learned APP fairly conceded that the complaint is not supported by an Affidavit duly affirmed by Respondent

No.1. In this background the Court may pass an appropriate order, submits the learned APP.

7) From bare perusal of the complaint, it is apparent that, the offences alleged against the Petitioners were committed on different dates, at different time and different places. Similarly, it is evident that, some of the alleged offences were not committed by both the Petitioners either together or in furtherance of their common intention. To be clearer, Petitioner No.1 was not involved in the alleged act of Petitioner No.2 of giving false Affidavit at the time of *Zilla Parishad* Election in 1987, Nashik Cooperative Election in 2007, filing the application for Zilla Parishad membership in the year 1997 by mentioning her false name, obtaining a false PAN Card by suppressing her earlier name '*Nasim Ahmed Baig or Nima Ahmed Singh*' and obtaining a Passport by giving her false information. Nevertheless, the offences attracted in this regard have been clubbed with the other offences alleged against both the Petitioners. And yet, the learned Magistrate sent the complaint for registration of the crime, investigation and report including Petitioner No.1 for the above offences, which is certainly erroneous.

8) That apart, according to the complainant the aforesaid alleged acts of Petitioner No.2 are offences punishable under Sections 171-G, 181, 193 and 200 IPC. But as provided in Section 195(1)(a)(i) of Cr.P.C., "No Court shall take cognizance of the offence under Section 181 of Indian Penal

Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate”. The Complainant is not such a public servant. There is list of documents in the complaint. But there is no reference or copy of the false affidavits, the application submitted by Petitioner No.2 for *Zilla Parishad* Membership, PAN Card and Passport containing her false/incorrect name and information and the bogus PAN Card. Copy of the alleged ‘Cast Certificate’ is also not annexed with the complaint. These shortcomings, however, have been overlooked by the learned Magistrate before passing the impugned Order involving the above offences.

9) The offences under Sections 493, 494, 495, 497 and 498 of Indian Penal Code alleged against the Petitioners pertains to marriage, which come under Chapter XX of Cr.P.C. Section 198 of Cr.P.C. provides for Prosecution for offences against marriage. As provided in Section 198(1) of Cr.P.C., “*No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence*”. Indisputably, Respondent No.1 is/was not wife of Petitioner No.1 nor related to Petitioner No.2 in any manner.

10) As provided in proviso (c) of the said sub-Section (1) of Section 198 of Cr.P.C., where the person aggrieved by an offence punishable under

Section 494 or Section 495 of IPC is the wife, the complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister or with the leave of the Court, by any other person related to her by blood, marriage or adoption. But the Complainant is not so related to Petitioner No.2.

11) As provided in Section 198(2) of Cr.P.C., for the purposes of sub-Section (1) thereof, no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code provided that, in the absence of the husband some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf. Such is not the case of Respondent No.1.

12) Thus, it is apparent that unless an exception is made out under the provisos of said sub-Section (1) of Section 198, the complaint for the offences pertaining to the marriage of the Petitioners was not at all tenable at the instance of Respondent No.1. Yet this legal impediment has not been given a serious thought by the learned Magistrate while passing the impugned Order. Moreover, one cannot make out from the complaint as to how Petitioner No.1 deceitfully caused Petitioner No.2 to believe her that, she is lawfully married to him and to cohabit etc. with him and thus., guilty of the offence of Section 493 of Indian Penal Code. In fact, such complaint

should have been by Petitioner No.2, not by Respondent No.1. As can be gathered from the complaint, the offence under Section 494 of Indian Penal Code has been alleged against both the Petitioners. But the Petitioners are not alleging the offence of Section 494 of Indian Penal Code against each other. Moreover, as held in the case of *Swati Sachin Mahajan (Pagare) vs. State of Maharashtra*¹, the offence under Section 494 of Indian Penal Code is non-cognizable, therefore Court cannot direct investigation under Section 156(3) of Cr.P.C. Because cognizance of this offence could be taken only on the complaint made by the person aggrieved. There is nothing in the complaint to construe that the Petitioners have committed the offences of Sections 497 and 498 of Indian Penal Code, as the case may be.

13) In so far as the incident dated 12th February 2009 is concerned, the complaint simply mentions that, Petitioner/s threatened her. But the exact threat is not reproduced there. As regards the incident dated 13th February 2009, the complaint only mentions that, on that day, at about 11 a.m. Respondent No.1 was threatened but without stating name of the person who so threatened her and the exact threatening words. Therefore, we find it difficult to hold that there is reasonable material to attract the offence of threatening on account of the incident dated 12th and 13th February, 2009.

¹ 2007 (5) MhLJ 427

14) In the above context, learned APP has pointed the complaint dated 22nd February, 2009 (Exh.'C') which Respondent No.1 had filed before the Police Commissioner, at Nashik. This complaint alleges that on 12th February 2009, in noon time, Respondent No.1 was standing at *Dwarka*. At that time, Petitioner No.1 sent 4-5 unknown persons at her and said persons threatened her to take back the Criminal Case filed against Petitioner No.1, otherwise, they would kill her husband. Further, the complaint (Exh.'C') alleges that on the same day in evening, some unknown persons came at Respondent No.1 and they told her that, they have been sent by Petitioner No.2, she should take back the Criminal Case filed against Petitioner No.1, otherwise, they would disappear her. But both the above incidents are not so specifically stated in the subject complaint. In fact, the said complaint only claims that Respondent No.1 was simply threatened on those occasions. Moreover, the complaint (Exh.'C') is silent as to how Respondent No.1 knew that the Petitioners had sent unknown persons to threatened her on those occasions. That apart, Petitioner No.1 was not involved in the said incident of evening and Petitioner No.2 was not involved in the incident of morning.

15) About the incident dated 13th February 2009, the complaint (Exh.'C') mentions that on that day, at about 11 a.m., Petitioner No.1 abused and threatened the Complainant to cause her death, to compel her to take back the Criminal Case filed by her against him. But this incident is not

specifically reproduced in the main complaint. Similarly, the exact abuses are not stated in the complaint. Moreover, it is not the case that a complaint under Section 154(1) of Cr.P.C. was filed before lodging the complaint (Exh. 'C').

16) The offence under Section 323 was levelled because of the incident of alleged beating to Respondent No.1 by Petitioner No.1 at Nashik Court. But the date and time of that incident is not stated in the complaint. The exact words of threat given to Respondent No.1 on that occasion are not reproduced. Similarly, it is not described as to how Petitioner No.2 attempted to beat Respondent No.1 by sending some women. Thus, we find that there is no sufficient material in the complaint to attract the offences under Sections 323, 504, 506 and 34 of Indian Penal Code against the Petitioners.

17) As held in the case of *Dharmeshbhai Vasudevbbhai and Ors vs. State of Gujarat and Ors*², “It is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an offence is committed, a first information report can be lodged under Section 154 of the Code of Criminal Procedure (for short, ‘the Code’). A complaint petition may also be filed in terms of Section 200 thereof. However, in the event for some reasons or the other, the first information report is not

² 2009 CRI.L.J. 2969

recorded in terms of sub-section (1) of Section 156 of the Code, the magistrate is empowered under sub-Section (3) of Section 156 thereof to order an investigation into the allegations contained in the complaint petition. Thus, power to direct investigation may arise in two different situations – (1) when a first information report is refused to be lodged; or (2) when the statutory power of investigation for some reason or the other is not conducted.”.

18) On careful scrutiny, we noticed that, the complaint does not mention that prior to filing of the same, Respondent No.1 approached the Police Station concerned and lodged the F.I.R. under Section 154(1) of Cr.P.C. alleging that both the Petitioners have committed the offences under Sections 171-G, 181, 193, 196, 200, 465, 468, 471, 472, 473, 474, 493, 494, 495, 497, 498, 323, 504, 506 and 34 of Indian Penal Code. It is not the case that such a F.I.R. was lodged but its cognizance was not taken by the Police concerned, hence, Respondent No.1 send the substance of the relevant information to the superior of the police as provided under Section 154(3) of Cr.P.C. As observed in the case of *Panchabhai Popatbhai Bhutani & Ors. vs. State of Maharashtra*³, cited by Mr. Harshad Inamdar, learned Counsel, in the scheme of the Cr.P.C. it is difficult to hold that, even without approaching the Police Officer-in-charge of a Police Station, a complaint can be made to the

3 2010 All MR (Cri) 244

Court in terms of Section 156(3) of the Cr.P.C. Therefore, it is held that, “Normally a person should invoke the provisions of Section 154 of the Code before he can take recourse to the powers of the Magistrate competent to take cognizance under Section 190 of the Code, under Section 156(3). Atleast an intimation to the police of commission of a cognizable offence under Section 154(1) would be a condition precedent for invocation of powers of the Magistrate under Section 156(3) of the Code.”.

19) Similarly, in *Priyanka Srivastava and Another vs. State of Uttar Pradesh and Ors*⁴, it is held that, there has to be prior applications under Section 154(1) and 154(1) of Cr.P.C. while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed.

20) In the case in hand, there is no dispute that certain offences allegedly took place in the year 1987, 1997, 2007 and much before the complaint. Respondent No.1, however, did not lodge the F.I.R. or the said complaint immediately after she got knowledge of the said offences. It was not the case that had if Respondent No.1 lodged the F.I.R. under Section 154(1) of Cr.P.C., the police would have failed to act upon it, instantly. The facts of the case do not show that there was possibility of the evidence of commission of the said offences being destroyed and/or tampered with.

4 (2015) 6 SCC 287

Therefore, for the reason of not lodging the F.I.R. under Section 154(1) and sending the substance of the information under section 154(3) of Cr.P.C. to the superior of the Police prior to filing of the said complaint by Respondent No.1, the said complaint and the impugned Order is not sustainable in law.

21) Be that as it may, here it is pertinent to state note that as stated in the complaint, sometimes in the year 2008 Respondent No.1 stopped working at the Petitioners and demanded her salary. So, the Petitioners got annoyed and they filed false complaints against Respondent No.1 and started troubling her and her husband. From this solitary fact it seems that the relations between the parties were hostile. Therefore, Respondent No.1 alleged various illegal acts against Petitioners for the sake of the said complaint and then purposely instituted the well drafted complaint to proceed against both the Petitioners with an ulterior motive for wrecking personal vengeance. Therefore, as held in the case of *Iqbal alias Bala and others vs. State of U.P.*⁵, it was not just enough for the learned Magistrate to look into the averments made in the complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. Looking at the frivolous or vexatious nature of the proceedings, the learned Magistrate was duty-bound to look into many other attending circumstances emerging from the record of the case over

5 2023 SCC Online SC 949

and above the averments and, if need be, with due care and circumspection try to read in between the lines. Then the learned Magistrate had to bear in mind that sending the complaint for the investigation would be conducive to justice and then he could have passed the impugned Order. But this very important duty has been ignored by the learned Magistrate. The learned Magistrate even ignored that certain very old alleged illegal acts have been brought together in the complaint and instead of one both the Petitioners have been blamed for the said acts. This approach ultimately resulted in passing the impugned Order, which is erroneous. Such an approach would certainly encourage unscrupulous and unprincipled litigants like Respondent No.1 to take audacious steps with Courts to bend their opponents at will. Thus, the impugned Order is nothing but a result of an improper consideration of the matter. Hence, we are of the considered opinion that, the continuation of the present proceedings would amount to nothing but sheer abuse of the process of law.

22) In view thereof, the impugned Order dated 1st April, 2009 passed by the learned Judicial Magistrate, First Class, Nashik and Regular Criminal Case No.72 of 2009 are liable to be quashed and are accordingly quashed set aside.

23) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)