IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO.629 OF 2022

Nasir Rahim Khan ...Applicant
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr. Satish R. Soni for Applicant.
Mr. Ajay Patil, A.P.P. for the Respondent No.1-State.
Mr. Viral Rathod i/by Ms. Saima Sothe for Respondent No.2.

CORAM : A. S. GADKARI AND PRAKASH D.NAIK, JJ.

Date of Closing for Order : 28th MARCH 2023.
Date of Pronouncing the Judgment : 27th APRIL 2023.

<u>JUDGMENT :</u> (Per : Prakash D. Naik, J.)

. The Applicant has invoked the inherent powers of this Court under Section 482 of the Criminal Procedure Code (*for short 'Cr.P.C.'*) challenging the criminal proceedings in R.C.C. No.53 of 2022 pending before the Court of learned Judicial Magistrate First Class, Pen, District Raigad.

2. The First Information Report (*for short 'FIR'*) dated 02.01.2022 was registered at the instance of Respondent No.2 with Nagothane Police Station, District Raigad vide C.R. No.3 of 2022 for offences under Sections 498-A, 406, 323, 377, 504 & 506 read with Section 34 of the Indian Penal Code (*for short 'IPC'*).

3. The case of the prosecution as appears from the FIR lodged by Respondent No.2 is that, the Applicant is father-in-law of Respondent No.2.

The Accused No.1 Sajid Nasir Khan is the son of Applicant. Respondent No.2 is the wife of Accused No.1. There was love affair between Respondent No.2 and Accused No.1, Sajid Nasir Khan. There was physical relationship between them. The family members of Accused No.1 were against marriage between Respondent No.2 and Accused No.1. The Accused No.1 refused to perform marriage. Respondent No.2 lodged complaint with Nagothane Police Station on 26.06.2021 alleging that, the Accused No.1 had cheated her by giving false promise of marriage. Accused No.1 agreed to perform marriage but insisted that, she should withdraw the complaint. Respondent No.2 did not pursue her complaint. The family members of Accused No.1 agreed to perform marriage between Accused No.1 and Respondent No.2, on a condition that, they should part with gold and cash of Rs. 20 Lakhs. The mother of Respondent No.2 agreed for the same, considering the interest of her daughter. Marriage was performed. Gold ornaments were given to Respondent No.2 during her marriage. Thereafter, Respondent No.2 was ill treated by the Accused. She was abused, harassed and assaulted. There was demand of gold and money. On 25.09.2021, the Accused No.1 visited the parental home of Respondent No.2 and threatened her. Thereafter, the Respondent No.2 went to her matrimonial home. Her father-in-law who was in Saudi Arabia informed his family members that, they should not allow her the entry in the of house without money. The Respondent No.2 was assaulted. On 04.10.2022 she lodged N.C. Complaint against her husband, mother-in-law and sister-in-law. On 21.10.2021, the Respondent No.2 informed Accused No.1 that, she had lodged the complaint against him. Accused No.1 was persuading her not to file complaint. Accused No.1 subjected Respondent No.2 to unnatural sex. FIR was lodged on 02.01.2022. On completing investigation, charge-sheet was filed.

4. Learned Advocate for Applicant submitted that, the Applicant has been falsely implicated in this case. All the family members are dragged in the FIR by Respondent No.2. The complainant has stated that, the Applicant was working at Saudi Arabia. The allegations against the Applicant are vague. Admittedly, at the time of alleged incident, the applicant was not in India and did not participate in the alleged acts attributed to the other Accused. There is no evidence to substantiate the charges under Section 498-A of IPC against the Applicant. The FIR and the charge-sheet does not makes out any offence against the Applicant.

5. Learned A.P.P. submitted that, the statement of first informant and other witnesses refers to the involvement of Applicant which would amount to cruelty under Section 498-A of IPC. The grounds urged by the Applicant will have to be appreciated after recording evidence during the trial. No case is made out for quashing the FIR or charge-sheet.

6. Learned Advocate for Respondent No.2 submitted that, specific overt act has been attributed to the Applicant. The statement of

Respondent No.2, her mother and sisters corroborated each other in disclosing the involvement of Applicant in the crime. Although, the Applicant was in Saudi Arabia, on telephonic instructions he had instigated other Accused in harassing the Complainant. The charge-sheet cannot be quashed on the basis of the statements advanced by the learned Advocate for the Applicant.

7. The marriage between Respondent No.2 and Accused No.1 (son of Applicant) was performed on 02.08.2021. Prior to the marriage, Respondent No.2 had approached Police with Complaint on 26.06.2021 alleging that, the Accused No.1 has given false promise of marriage to her. As per the version of Respondent No.2, she did not pursue the said complaint on the promise of Accused No.1, that, he would perform marriage with her. It is also apparent that, non cognizable complaint was lodged by Respondent No.2 against other Accused on 04.10.2021. The alleged incident of telephonic call made by the Applicant from Saudi Arabia had occurred prior to lodging the N.C. complaint. Apparently, there was no grievance against the Applicant in the said complaint. In the FIR itself it is stated that, the Applicant is working at Saudi Arabia and he came to India a month prior to lodging the FIR. No other overt act is attributed to the Applicant. The mother and sister of Respondent No.2 has stated that, they were informed by Respondent No.2 that, the Applicant had made a call from Saudi Arabia and told the other family members not to allow entry of

the Respondent No.2 in the matrimonial home without money. According to first informant, she had visited matrimonial home after the said alleged incident. The allegations against the Applicant are vague and not sufficient to prosecute him for the alleged offence. Apparently, the Applicant has been impleaded in this case with malafide intention.

8. In the case of *State of Hariyana and Others V/s. Ch. Bhajan Lal and Others*[1], the apex Court has considered the series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code and enumerated the categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure ends of justice. It would be appropriate to quote observations made by the Apex Court in Paragraph 108 of the aforesaid decision which reads as follows :-

> *" In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, through it may not be possible to lay down any precise, clearly defined and sufficient channelised and in flexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

1 AIR 1992 Supreme Court 604.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the Accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceedings ia manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge."

9. From the aforesaid observations it is clear that, the High Court can

exercise its powers under Article 226 of the Constitution of India or Section 482 of Cr.P.C. to prevent abuse of process of law or otherwise to secure ends of justice. If the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused; where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose the cognizable offence, justifying an investigation by Police Officers under Section 156(1) of the Code; if the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused; where the allegations made in the complaint or FIR are so absurd & inherently, improbable on the basis of which no prudent person can ever reach a just conclusion that, there is sufficient ground for proceeding against the Accused, and where the criminal proceedings is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge. The Court is empowered to exercise the powers under the aforesaid provisions to prevent abuse of process of any Court or secure ends of justice such proceedings can be quashed.

10. Considering the factual matrix of the case, and the principles enunciated in the aforesaid decision as well as various other decisions of

the apex Court, the impugned proceedings initiated by Respondent No.2 qua Applicant can be quashed and set aside.

11. Hence, the following Order :-

ORDER

i) Criminal Application No. 629 of 2022 is allowed;

ii) Proceedings in R.C.C. No.53 of 2022, pending before the learned Judicial Magistrate First Class, Pen, are quashed and set aside qua the Applicant only.

(PRAKASH D. NAIK, J.) **(A.S. GADKARI, J.)**