

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3618 OF 2021

Vipin Iswarlal Bora

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Sumit Kothari, for the Petitioner.

Mr. Ajay Patil, APP for the Respondent/State.

Mr. Samir Vaidya a/w Prathamesh Sarang, Kaivalya Raut & Aaditya Tiwari, for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
RAJESH S. PATIL, JJ.**

DATE : 28th AUGUST, 2023

PC.

1. Heard.

2. The petitioner, an architect by profession was married to respondent No.2/complainant on 21st November, 1996 and blessed with a daughter named Aarya, who is aged about 20 years, who presently pursuing her studies.

3. The respondent No.2/complainant in the complaint lodged with the respondent No.1 has specifically alleged that the petitioner immediately after marriage i.e. post 1996, started ill-treating respondent No.2/complainant on comparing her appearance, living with other high class society ladies, treating her

with cruelty, having physical relationship against her wishes and at times assaulting her etc. The said complaint since discloses cognizable offence, Crime No.24 of 2021 punishable under Sections 498A, 323, 504, 294, 313 and 377 of IPC came to be registered.

4. During investigation, since sufficient material was found against the petitioner, the petitioner came to be charge-sheeted.

5. The present proceedings are taken out by the petitioner invoking provisions of Article 226 of the Constitution of India and Section 482 of the CrPC, with a prayer for quashing of the aforesaid charge-sheet.

6. Counsel for the petitioner submits that the fact as to the marriage of the petitioner with the respondent No.2/complainant on 21st November, 1996 is not in dispute, so also, the fact about issue Aarya being born out of the said marriage. According to him, perusal of the complaint would reveal that the allegations in the FIR are stale in nature, as the lodging of complaint and registration of offence is with an intention to twist the arm of the petitioner so as to force him to arrive at a settlement. Counsel for the petitioner would further urge that the proceedings which are initiated at much belated stage, cannot be sustained and has drawn support from the division bench judgment of this Court in the matter of ***Shashikant & Ors.Vs. State of Maharashtra & Ors.*** reported in ***2023 SCC OnLine Bom 613***. He would try to substantiate his case by drawing support

from the aforesaid judgment so as to claim that the criminal proceedings initiated against the petitioner amounts to abuse the process of law. Further contention of counsel for the petitioner is, both i.e. the respondent No.2/complainant and the daughter have stolen the documents from the custody of the petitioner, which has resulted into lodging of complaint with the Alankar Police Station, Pune. He would as such submit that conduct of the respondent No.2/complainant is not trustworthy.

7. By drawing support from the various contents in the FIR his contentions are, the very ingredients of offence punishable under Sections 498A, 323, 504, 294, 313 and 377 of IPC cannot be inferred.

8. Mr. Samir Vaidya, learned counsel appearing for the respondent No.2/complainant while assisting learned APP would urge that the contents of the FIR are required to be taken at its face value, as upon statements of the witnesses which were recorded under Section 161 of the CrPC, it can be *prima-facie* inferred that the petitioner is involved in the offence. According to them, whether the contents in the FIR are true or false can be looked into at an appropriate stage of the proceedings. Respective counsels for the respondents have drawn support from the various statements of the witnesses so as to infer involvement of the petitioner in serious offence.

9. We have appreciated the aforesaid submissions.

10. The FIR in categorical terms speaks of the marriage of the petitioner with respondent No.2 on 21st November, 1996 and the gold and other jewellery given in such marriage. It further speaks of within eight days of the marriage, petitioner started ill-treating the complainant. It also speaks of the abortion carried out by the petitioner against the wishes of the respondent No.2/complainant, the obscene conduct of the petitioner, the various instances which amounts to practicing cruelty by the petitioner upon the respondent No.2/complainant and act of assaulting the respondent No.2/complainant, so also, daughter Aarya.

11. During the course of investigation, the prosecution story was supported by the statements of witnesses as could be noticed from the charge-sheet. The charge-sheet consists of the statements of witnesses, namely Suresh Chordia – father of the respondent No.2/complainant, Sou. Smita Akhade and Sou. Kadambari Nyamgoud – friends of the respondent No.2/complainant, with whom the respondent No.2/complainant had taken shelter after the petitioner had driven her out of house and statement of daughter – Aarya, who is eye witness to various acts of cruelty.

12. All these statements in categorical terms support the case of the prosecution in its entirety. Apart from above, it is specifically stated by the respondent No.2/complainant in the

history narrated with the doctor, who has medically examined her, when she was lastly assaulted in August, 2020.

13. The evidence collected during the investigation sufficiently establishes and supports the case of the respondent No.2/complainant as reflected in the prosecution case. Leave apart the statement of the father of the respondent No.2/complainant, the independent witness Sou. Smita Akhade has specifically stated that the petitioner was ill-treating the respondent No.2/complainant and so also, practicing cruelty. She has also stated that at times, petitioner used to physically assault not only the respondent No.2/complainant but also his daughter. Apart from above, the another independent witness Sou. Kadambari Nyamgoud has specifically stated about the fact that the respondent No.2/complainant was driven out of her house and she was required to stay with the said witness. A specific statement is made as regards the act of unnatural sex by the petitioner. All the aforesaid evidence *prima-facie* pinpoints the involvement of the petitioner in a serious offence.

14. As far as the contention of counsel for the petitioner that the complaint is lodged at much belated stage is concerned, the fact remains that the offence punishable under Section 498A of the IPC is said to be continuing offence. The narration in the FIR specifically speaks of the various events so as to infer that there is continuity in the commission of offence by the petitioner.

15. Apart from above, the statement that last assault by the petitioner to the respondent No.2/complainant was in August, 2020 categorically establishes that the complaint lodged by the respondent No.2/complainant is well within limitation.

16. The support drawn by the counsel for the petitioner from the judgment of *Shashikant (cited supra)* will be of hardly any assistance in view of above discussion. The evidence available on record sufficiently speaks of the satisfaction of ingredients of the offence under Sections, 498A, 323, 504, 294, 313 and 377 of the IPC.

17. In this background, support drawn by the petitioner from the judgment of this Court in the matter of *Shashikant (supra)* will be of hardly any assistance, as in the said case, only the offence was registered under Section 498A of the IPC and the evidence in the said matter was found to be stale in nature, whereas in the case in hand, the offence under Section 498A of the IPC is continuous one and the last assault by the petitioner is in August, 2020. That being so, no case for causing interference or granting prayer for quashing is made out.

18. The petition as such stands dismissed.

[RAJESH S. PATIL, J.]

[NITIN W. SAMBRE, J.]