

Amol
Diliprao
Nawale

Digitally
signed by
Amol
Diliprao
Nawale
Date:
2023.08.30
10:22:41
+0530

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

CRIMINAL APPLICATION NO. 643 OF 2021

Pravin Prabhudas Shah And Anr ...Applicants
V/s.
Madhu Parag Shah @ Sarojini Bhuyan
And Anr ... Respondents

Mr. Shailesh Kantharia for the Applicant.
Ms. M. M. Deshmukh, APP for the State.
Mr. Omar Shaikh for the Respondent No.2

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

DATED : 23rd AUGUST, 2023

P.C.:

1. Heard.
2. The prayer is for quashing of the F.I.R. in Crime No. 93 of 2021 for offences punishable under Section 498-A 406, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.
2. The genesis of the offence against the Applicant is, Complainant Madhu got married with the son of the present Applicant Nos.1 and 2 on 30th May, 2005. Subsequent thereto, it is claimed that on the very same day, the Accused persons entered into the house of the Complainant and abused her. It is also claimed in the F.I.R. that the Applicants questioned her caste and

also demanded jewellery in the form of dowry as such the offence came to be registered.

3. The submissions of the counsel for the Applicants are, apart from husband of the Complainant, who happened to be the son of Applicants Nos. 1 and 2, the brother of the Applicant No.3 and the brother in law of Applicant No.4, all the family members are impleaded as accused. According to him, apart from the fact that the F.I.R. contains vague statements and allegations, about the incident of 2005, for the first time a complaint is lodged in 2021 without there being any explanation. According to him, even if the contents in the F.I.R. are taken to be true to its face value, the satisfaction of the necessary ingredients of the offence alleged cannot be inferred.

4. The counsel would invite our attention to the contents of the F.I.R, other material available on the record so as to such substantiate its claim of non satisfaction of the ingredients of the offence alleged against the Applicants. In addition, his contentions are all the Applicants are staying away from the Complainant i.e. Respondent No.1 a fact, which can be borne out of record particularly from the contents of the F.I.R. In this background, he would urge that the F.I.R. and chargesheet against the Applicants are liable to be quashed and set aside.

5. While countering the aforesaid submissions, the counsel for the respondent No.1 while assisting learned APP would urge that this Court should not consider the F.I.R as an encyclopedia. He would claim that the F.I.R is a basic document

and there is other evidence available on record to infer the involvement of the Applicants in the offence in question. So as to substantiate his contentions, our attention is invited to the statement of the witness Sujata Krushna Satardekar recorded under Section 161 of the Code of Criminal Procedure, 1973. The counsel would urge that the contents in the F.I.R. are not required to be read in isolation but, the entire F.I.R. if read carefully, the ingredients of the offence alleged are quite satisfied. He would further urge that since the offence under Section 498-A of the Indian Penal Code, 1860 is a continuous one, limitation is not attracted in the case in hand. As such he would urge that the Application is liable to be rejected.

6. We have appreciated the submissions.

7. The admitted fact from the record are the marriage between Respondent No.1 and the son of the Applicant Nos.1 and 2, brother of Applicant No.3, took place on 30th May 2005 the date on which the Respondent No.1 was treated with cruelty. The nature of cruelty alleged is demand of jewellery and questioning the caste of Respondent No.1.

8. Subsequent thereto, Respondent No.1 continued to reside with son of Applicants Nos.1 and 2 and is blessed with a daughter. In continuation thereof, son of the Applicant Nos. 1 and 2 had left the country because of his employment and the relationship between the Respondent No.1 and Parag son of the Applicant Nos.1 and 2 continued. It is claimed that for the last time the son of the Applicant Nos. 1 and 2 i.e. husband of the

Respondent No.1 physically assaulted the Complainant in 2018 whereas the Complaint is lodged with the Police Station on 27th February, 2021. Which is not entertained by the Respondent-Complainant.

9. The fact remains that there is inordinate delay of more than three years even from last date of incident.

10. As far as the role attributed to the Applicant is concerned, same relegates back to an incident of 30th May, 2005 i.e., the date on which the Applicants entered the house of their son Parag and the Respondent No.1-Complainant and questioned the caste of the Respondent No.1, demanded jewellery. Apart from above, there is no iota of allegation in the F.I.R., more specific in nature, to infer the satisfaction of the ingredients of the offence of Sections 498-A, 323, 406, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

11. This Court is required to be sensitive to the fact that apart from the husband of Respondent No.1 namely Parag, who is son of Applicant Nos. 1 and 2, the entire family i.e., Applicant No.1-Father, Applicant No.2-Mother, Applicant No.3-Sister and Applicant No.4-Brother in law are impleaded as accused. The entire family of the husband of Respondent No.1 is dragged in criminal prosecution with an intention to create the artificial pressure to twist arms of accused.

12. The vague allegation in the F.I.R., in our opinion, does not satisfy the necessary ingredients of the offence alleged against them.

13. Apart from above, it is brought to our notice and so also, can be inferred from the contents of the investigation papers that none of the Applicants are residing with Respondent No.1. They are separate in mess and residence, both.

14. The fact remains that the Respondent No.1-Complainant also in her complaint has not claimed that the Applicants are residing with them. In this background, the contention that there is enough material to infer the involvement of the Applicants in the crime in question is under strong doubt. Apart from above, the statement of witness Sujata, which is claimed to be supporting of the case of the Respondent No.1, it read in entirety, the said statement is an exaggeration of what has been stated in the F.I.R. The said witness has narrated the occurrence of the incident, based on the contents which were in fact never mentioned or reflected in the F.I.R. and as such, the said statement prima facie appears to be contrary to what has been claimed in the F.I.R.

15. In this background, having regard to the law laid down by the Apex Court in the matter of ***State of Haryana & Ors. V/s. Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604*** particularly Paragraph No.102, it has to be inferred that the contents in the F.I.R. do not disclose a cognizable offence against the Applicants. That being so the Application stands allowed in terms of prayer clause (b) to the extent of Applicants only.

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE)