

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2318 OF 2013**

Laxmi Sudhakar Hirnaik and Anr.

...Petitioners

Versus

The State of Maharashtra and Anr.

...Respondents

Mr. Raju Yamgar a/w Bharti Lokhande for Petitioners.

Mrs. G. P. Mulekar, APP for Respondent-State.

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date: 2023.04.25
11:39:37 +0530

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

DATE : 29th MARCH 2023.

P.C.:-

1. The Petitioners have challenged the First Information Report (for short "FIR") dated 23rd November 2012 registered with Kalwa Police Station, Mumbai vide C.R. No.I-376 of 2012 for offences under Sections 498-A, 406, 506 read with 34 of the Indian Penal Code (for short "IPC").
2. The FIR was registered at the instance of Respondent No.2 alleging that, her marriage was solemnized with Petitioner No.2 on 20th December 2004. Pursuant to marriage, she was cohabiting with Petitioner No.2 at her matrimonial house. Her father-in-law, mother-in-law were also residing with them. After the marriage, her husband was insisting that, she should bring money from her parents. She was abused by Petitioner No.2. The

father-in-law and mother-in-law of Respondent No.2 were supporting her husband. The Respondent No.2 delivered child. All the accused continued to abuse and assault her. She was forced to leave matrimonial house. For a period about six months, she was at her parental home. Thereafter, there was mediation and she returned back to matrimonial home. The accused then demanded Rs.25,000/- towards deposit of rental house. The accused continued to harass Respondent No.2. Petitioner No.2 was continuously quarreling with Respondent No.2. He sent notice of divorce to her. Accused misappropriated the ornaments of Respondent No.2.

3. This petition was preferred by all the accused. During the pendency of the present petition, the original Petitioner No.1 (father-in-law of Respondent No.2) has expired and in accordance with order dated 30th August 2022 his name was deleted from the array of the Petitioners. Pursuant to amendment, the Petitioner No.1 is mother-in-law and Petitioner No.2 is the husband of Respondent No.2.

4. Learned Advocate for Petitioners submitted that, the FIR was lodged belatedly. The marriage between Petitioner No.2 and Respondent No.2 was performed on 20th December 2004. The FIR was lodged on 23rd November 2012. The Respondent No.2 left the matrimonial home in 2007 and after lapse of five years, the FIR was lodged. The cognizance of the complaint was taken beyond the period of limitation. The Respondent No.2 had filed

a Marriage Petition. Vide order dated 9th November 2012 access of the minor son was given to the Petitioner No.2. The decree of divorce was granted by Family Court, Thane vide order dated 23rd August 2017 in Petition No.A-229 of 2010 in favour of husband on the ground that, wife had caused cruelty to him. The allegations made in the FIR even if, they are taken at their face value and accepted in their entirety do not constitute any offence or make out a case against the Petitioners. The criminal proceedings are initiated with ulterior motive for wreaking vengeance on the Petitioners. The allegations are vague and general in nature. The delay is unacceptable. Learned Advocate for the Petitioner has relied upon the decision in the case of *State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.*¹

5. Learned APP submitted that, the specific overt act has been attributed to the Petitioners. The allegations in the FIR constitute the offences under Sections 498-A, 406 and 506 of the IPC. The defence of the accused cannot be considered at this stage. On the basis of decree of divorce, the FIR cannot be quashed.

6. We have perused the FIR. The contents of the FIR attributes overt act to the Petitioners. The Respondent No.2 has specifically alleged that, there was demand of money from Respondent No.2 by the accused. She was abused and assaulted. She was forced to leave matrimonial home. Even after she returned to matrimonial home, harassment continued. The

¹ AIR 1992 SC 604

ornaments of Respondent No.2 were misappropriated by the accused. The last incident referred to Respondent No.2 is dated 28th November 2012, in which the Respondent No.2 was abused by her father-in-law and mother-in-law and assaulted by her husband. She approached Kalwa Police Station and lodged the complaint. The incident relating to physical and mental cruelty constitutes an offence under Section 498-A of the IPC. The retention and misappropriation of the ornaments of the Respondent No.2 would constitute an offence under Section 406 of the IPC. The submissions of learned Advocate for the Petitioners that, there was delay in lodging the FIR, cannot be accepted. There was continuous harassment/torture. It is continuing offence. It is difficult to accept the submission that, the FIR was barred by law of limitation. The decree of divorce passed by Family Court, Thane dissolving the marriage on the ground of cruelty in favour of husband as contended by learned Advocate for Petitioners is no ground for quashing the FIR. Since on reading FIR prima facie offences are made out against the Petitioners, the decision relied upon by learned Advocate for Petitioners is of no assistance to quash the FIR.

7. Considering the nature of allegations in the FIR, we are of the opinion that, the impugned FIR cannot be quashed. *Prima facie* alleged offence are made out against Petitioners. Vide order dated 20th November 2013, this Court had directed the police not to file charge-sheet. The

Investigating Officer is at liberty to file charge-sheet on completing investigation.

ORDER

- (i) Petition is dismissed.
- (ii) Rule is discharged.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)