

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3581 OF 2022**

Mrs. Gunjan Laxman Somaya Alias  
Gunjan Shankar Punjabi

... Petitioner

**V/s.**

The State Of Maharashtra And Anr.

... Respondents

Mr. Rajesh Mirchandani for Petitioner.

Mr. S. S. Hulke, APP for Respondent No.1-State.

Mr. Aashish Satpute a/w Piyush Toshniwal & Adv. A. Nikam i/b Mr. Amit Icham for Respondent No.2.

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

**DATE : 2<sup>nd</sup> MAY, 2023.**

**PC. :**

1. Rule.

Rule made returnable forthwith and by consent of learned Advocates of respective parties taken up for hearing.

2. Heard Mr. Mirchandani, learned Advocate for Petitioner, Mr. Hulke, learned APP for Respondent No.1-State and Mr. Satpute, learned Advocate for Respondent No.2. Perused record.

3. By the present Petition, under Article 226 of the Constitution of India, Petitioner i.e. original accused No.4 as per charge-sheet has prayed for quashing of C.C. No. 1487/PW/2018 pending on the file of learned 10<sup>th</sup> Metropolitan Magistrate, Andheri, Mumbai, arising out of C.R. No.483 of

2017 dated 15<sup>th</sup> August, 2017 registered with D. N. Nagar Police Station, Mumbai, under Sections 354, 504, 506, 323 read with Section 34 of the Indian Penal Code.

4. At the outset learned Advocate appearing for Respondent No.2 submitted that, Petitioner had filed an Application for discharge under Section 239 of the Cr.P.C. before the learned 10<sup>th</sup> Metropolitan Magistrate, Andheri, Mumbai, however she has withdrawn the same and has filed present Petition.

Learned Advocate for Petitioner on instructions conceded to the said fact and submitted that, Petitioner in fact had filed an Application for discharge before the trial Court, however before filing of present Petition, she has withdrawn the same.

5. It is made clear that, Petitioner though was having alternate remedy and had infact availed it, chose not to pursue with it and has filed present Petition for quashing of the said C.C. No. 1487/PW/2018 arising out of C.R. No.483 of 2017, which is pending for final adjudication.

6. Respondent No.2 has lodged present crime on 15<sup>th</sup> August, 2017. Record indicates that, Respondent No.2 has earlier lodged a crime under Sections 498A, 506 read with Section 34 of the IPC in the year 2007 against her mother-in-law, father-in-law, uncle and aunt with D. N. Nagar Police Station, Mumbai and the same is pending for final adjudication before the trial Court. It is the prosecution case that, on 15<sup>th</sup> August, 2017 the Respondent No.2 was busy at her residence in preparation of decoration

for the Ganpati Festival. Some altercations took place between her and her father-in-law. At that time co-accused Nitin Somaiyya and Jatin Somaiyya who are cousin brothers of husband of Respondent No.2 intervene in the said bickering. It is alleged that Nitin Somaiyya i.e. co-accused No.2 committed an act as contemplated under Section 354 of the IPC against Respondent No.2. At that time, Rishi Krushnanai (Accused No.1), the brother-in-law of Respondent No.2 pulled her left hand and told her that, the house belongs to his father and leave it and then committed an act which outraged her modesty. Husband of Respondent No.2 tried to intervene however at that time co-accused Nitin Somaiyya and Jatin Somaiyya came there and abused her. Nitin Somaiyya also outraged modesty of Respondent No.2. It is the specific and precise allegation against Petitioner that, she being sister of Nitin and Jatin joined their chorus and abused Respondent No.2 in filthy language. All the three threatened Respondent No.2 to take back her complaint lodged in the year 2007, otherwise she will have to face serious consequences for the same. In this brief premise, the said crime is registered against all accused persons.

7. Learned Advocate for Petitioner submitted that, prior to lodgment of the said crime, Respondent No.2 so also accused persons in the present crime had lodged non-cognizable offences against each other and the police had issued letter of understanding to them. He submitted that, Petitioner being sister of Nitin and Jatin has been unnecessarily dragged in the litigation between Respondent No.2 and her in-laws. The Petitioner has

no role to play in the present crime. He therefore prayed that, the said C.C. No. 1487/PW/2018 arising out of C.R. No.483 of 2017 may be quashed.

8. Per contra, learned APP and learned Advocate appearing for Respondent No.2 opposed the Petition and submitted that, an offence as contemplate under Sections 504 and 506 read with Section 34 of the IPC has been clearly made out against the Petitioner.

9. Facts narrated in para No.6 above are deduced from the FIR lodged by Respondent No.2. Perusal of FIR would clearly indicate that, when the tiff between the in-laws on one side and Respondent No.2 on the other side was going on at about 3.00 p.m. of 15<sup>th</sup> August, 2017, the Petitioner being sister of co-accused Nitin and Jatin intervened, abused Respondent No.2 in filthy language and also threatened her of serious consequences. The statements of other witnesses corroborates the version of Respondent No.2. It is thus clear that, a strong *prima-facie* case against Petitioner under Sections 504 and 506 of the IPC has been made out by the Prosecution.

It is the settled position of law that, at the time of quashing of complaint/FIR under Article 226 of the Constitution of India, this Court can not conduct a mini trial to assess the evidential value of statements of witnesses and those statements are to be taken at their face value.

10. In view of the above, we find no ground to exercise our jurisdiction under Article 226 of the Constitution of India, either to quash

the charge-sheet or the FIR against Petitioner.

Petition being devoid of merits is accordingly dismissed. Rule is discharged.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)