

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2816 OF 2022**

Jaideep Sivadas Nair

...Petitioner

V/s.

State Of Maharashtra And Anr.

...Respondent

Ms. Pooja S. Agrawal for Petitioner.

Mrs. G. P. Mulekar, A.P.P. for the Respondent No.1-State.

Mr. Sudeep Pasbola i/by Mr. Omprakash Dubey for Respondent No.2.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****DATE : 23rd MARCH, 2023****P.C.:-**

. By the present Petition, under Article 226 of the Constitution of India, Petitioner-husband has prayed for quashing of C.C. No.1521/PW/2022 arising out of C.R. No.781 of 2021 registered with Kurar Police Station, Mumbai dated 26.07.2021 for offences under Sections 498-A, 504, 323 & 500 of Indian Penal Code (*for short 'IPC'*).

2. Heard Ms. Agrawal, learned Advocate for Petitioner at great length and Mr. Pasbola, learned counsel for Respondent No.2. Perused entire charge-sheet.

3. The First Information Report (for short 'FIR') dated 26.07.2021 is lodged by Respondent No.2- wife against the Petitioner. A bare perusal of

FIR would indicate that, various instances of demand of gold weighing 32 Tolas have been stated therein. It is also stated that, on 1st December 2020, the Petitioner after demanding the said gold, assaulted Respondent No.2 and therefore she had to take medical treatment for the same. It is categorically averred that, the Petitioner did not permit Respondent No.2 to disclose true and correct facts to the concerned Doctor to avoid to face a police case in that behalf. That, the Petitioner thereafter also continued to cause mental and physical harassment to Respondent No.2 on various occasions. It is alleged that, the father of Respondent No.2 tried to explain and mediate in the matter and when he had been to the house of Petitioner, the Petitioner abused him in filthy language and assaulted him. It is further alleged that, the Petitioner deserted Respondent No.2 and went to his native place.

Record indicates that, after completion of investigation, police have submitted charge-sheet in the Court of Additional Chief Metropolitan Magistrate 67th Court, Borivali, Mumbai on 06.04.2022 and the same has now been numbered as C.C. No.1521/PW/2022.

4. Learned Advocate for Petitioner drew our attention to various statements of the witnesses annexed to the charge-sheet and contended that, the defence of Petitioner be tested in a proceeding under Article 226 of the Constitution of India. She drew our attention to two statements of

neighbour and friend of Petitioner and contended that, it is the Respondent No.2, who in fact was aggressive on various occasions and assaulted Petitioner and not vice-versa. She submitted that, due to the present case, the Petitioner is out of job and therefore the present case arising out of the said crime be quashed and set aside. She submitted that, Petitioner never demanded any amount/gold from Respondent No.2 and/or from her parents and it is the false allegation made against Petitioner. That, on 19.03.2021, Respondent No.2 had lodged one N.C. Complaint dated 02.07.2021 against Petitioner and his mother for assault on her with the Nerul Police Station, Navi Mumbai. However, at that relevant time, the Petitioner was not at Nerul but was at some difference place. It is her contention that, on the basis of said N.C. Complaint, the present crime is registered belatedly on 26.07.2021. The said contention is recorded here only for its rejection at the threshold, as it is contrary to the settled position in criminal jurisprudence. She therefore submitted that, present C.C. No.1521/PW/2022 arising out of C.R. No.781 of 2021 registered with Kurar Police Station, Mumbai be quashed and set aside.

5. The facts recorded in brief in Paragraph Nos.3 above are deduced from the FIR lodged by Respondent No.2. It is the settled position of law that, the defence of accused cannot be tested in a petition filed under Article 226 of the Constitution of India, as it involves disputed questions of

facts. Perusal of entire record would indicate that, the prosecution has made out a strong prima facie case for not to quash the proceedings against the Petitioner in the present case. This being a Petition under Article 226 of the Constitution of India, we are refraining ourselves from commenting upon the veracity of the statements of witnesses and we reserve the right of Petitioner to cross examine those witnesses at the time of trial, if so advised and as per the provisions of law.

6. In view of the above, we find no merits in the Petition.

Petition is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)