

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

CRIMINAL WRIT PETITION NO. 3974 OF 2022

1. Vasanti Shriram Mainkar
2. Shriram Bhaskar Mainkar
3. Mandar Shriram Mainkar
4. Aditi Ashutosh Godbole ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Balasaheb R. Deshmukh for Petitioners.
Smt. M. M. Deshpande, A.P.P. for Respondent-State.
Mr. Sandip Pathak i/b. Adv. Rushikesh Barge for Respondent No.2.

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

DATED : 05th SEPTEMBER, 2023

P.C. (NITIN W. SAMBRE, J):

1. Heard the respective Counsels.
2. The prayer is for quashing of the FIR in Crime No. 120 of 2019 punishable u/s 498, 313, 323 r/w. 34 of IPC and consequential charge-sheet and prosecution.
3. The facts necessary for deciding the Writ Petition are as under.
4. The Petitioner No. 3 got married with the Respondent No. 2/Complainant on 09/07/2012.

5. The Petitioner No. 1 is the Mother-in-law, the Petitioner No. 2 is the Father-in-law, the Petitioner No. 3 is the husband and the Petitioner No. 4 is the Sister-in-Law of the Respondent No. 2/Complainant.

6. It is the case of the Respondent No. 2/Complainant that after her marriage initially she was treated well for three months subsequent to which the Petitioner Nos. 1, 2 and 4 started complaining the Petitioner No. 3-husband about the misconduct of the Respondent No. 2/Complainant. It is further alleged that the Respondent No. 2/Complainant was orally administered certain medicines by the Petitioner Nos. 1, 3 and 4, which led to her abortion against her wish.

7. It is also alleged that the Petitioner No. 3-husband time and again cruelly treated the Respondent No. 2/Complainant. The Petitioner No. 3-husband thereafter started residing independently with the Respondent No. 2/Complainant. However without notice parted the company of the Respondent No. 2 and her child before she was driven out of the earlier house. The aforesaid allegation led to the registration of the offence and filing of the charge-sheet.

8. Mr. Deshmukh, learned Counsel for the Petitioners would urge that general allegations are made by the Respondent No.

2/Complainant in FIR which cannot led to draw inference of the offence punishable u/s 498A of the IPC. According to him, in absence of specific instances with appropriate details are narrated offence punishable u/s 498A of the IPC cannot be invoked.

9. In addition, his contentions are evidence collected during the course of the investigation does not satisfy the ingredients of offence u/s. 313 of IPC viz causing miscarriage without woman's consent. He would urge that the miscarriage was under the medical compulsion as could be inferred from the medical papers. Mr. Deshmukh would further urge that the allegations u/s. 323 of the IPC against the Petitioner Nos. 1, 3 and 4 are at all not substantiated.

10. According to him, in absence of material on record to infer the involvement of the Petitioner No. 2 - Father-in-Law in any of the offence, the offence is liable to be quashed.

11. As such, according to him, the Petition is liable to be allowed.

12. So as to substantiate the contentions Mr. Deshimukh, learned Counsel for the Petitioners has drawn support from the Apex Court judgment in the matter of **Manoj Kumar Sharma & Ors. vs. State of Chhattisgarh & Anr.** reported in **(2016) 7 S.C.R. 154**. According to him, paragraph nos. 18, 20 and 22 of

the said judgment, which reads thus:

18. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent No. 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent No. 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following decision of this Court in *Jai Prakash Singh vs. State of Bihar & Anr.* (2012) 4 SCC 379 wherein it was held as under:-

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the firsthand account of what has actually happened, and who was responsible for the offence in question.”

20. In the above backdrop, it is also imperative to discuss the scope of inherent power of the High Court under Section

482 of the Code. The appellants before us filed a petition under Section 482 of the Code for quashing of the FIR on the ground that the FIR was filed after a delay of 5 (five) years and is barred by territorial jurisdiction. The High Court, on the other hand, after taking note of the fact that the investigation is in the final stage in the matter and a charge sheet is ready to be filed before the Judicial Magistrate First Class, ordered for its continuance without taking into consideration that it is barred by law. The court at Durg did not take notice of the fact that there is a legal bar engrafted in the matter for its continuance and the proceedings have been maliciously instituted after a delay of five years with an ulterior motive for wreaking vengeance on the appellants. This point has been more clarified in *State of Haryana and Others vs. Bhajan Lal and Others* (1992) Supp (1) SCC 335, wherein this Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power under Section 482 of the Code for quashing of the FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; where there is an expressed legal bar engrafted in any of the provisions of the Code; and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR

or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. In para 102 of the judgment, it was held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

22. In view of the above discussion, we are of the considered opinion that the allegations made in the FIR are inherently improbable and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the appellants herein. Further, to invoke inherent jurisdiction under Section 482 of the Code, the High Court must be fully satisfied that the material produced on record is based on sound, justifiable and reasonable facts. In the case on hand, malicious prosecution was instituted by the brother of the deceased after a period of five years that too on the basis of anonymous letters. There was no accusation against the appellants before filing of the FIR. The allegations are vague and do not warrant continuation of criminal proceedings against the appellants. Also, the court at Durg has no territorial jurisdiction because cause of action, if any, has arisen in Ambala. The criminal proceeding is grossly delayed and a result of belated afterthought. The High Court failed to apply the test whether the uncontroverted allegations as made prima facie, establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. The

High Court did not apply its mind judiciously and on an incorrect appreciation of record, ordered for continuance of the investigation on a petition under Section 482 of the Code. This power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results.

which supports the case of the Petitioners and as such, this Court should order quashing of the prosecution.

13. While countering the aforesaid submissions, learned APP and Counsel appearing of the Respondent No. 2/Complainant would oppose the prayer. According to them Petitioners are already charge-sheeted as there is enough evidence on record to infer *prima facie* involvement in the offence in question.

14. Our attention is invited to the contents of complaint dated 10/05/2019 wherein it is specifically alleged about the offence u/s. 498A of the IPC against the husband and his family members but also about the offence u/s. 313 of the IPC. Reliance is placed on the medical evidence and other material.

15. We have appreciated the aforesaid submissions.

16. The perusal of the complaint preferred by the Respondent No. 2/Complainant in specific terms implicates not only the Petitioner No. 3-husband but also the specific allegations are made against the Petitioner No. 1-Mother-in-Law, Petitioner No 4 -

Sister-in-Law

17. We have tried to mediate. However, the Petitioners particularly the Petitioner No. 3-Husband was not in favour of having settlement on the reasonable grounds. Be that as it may.

18. A specific case as pleaded in the FIR by the Respondent No. 2/Complainant is that of not only assault by the Petitioner No. 3 husband but also administration of certain medicines by the Petitioner No. 1-Mother-in-law, Petitioner No. 4-Sister-in-Law. The fact remains that there are hardly any allegations against the Petitioner No. 2-Father-in-Law so as to infer his involvement in offence in question. Against him but for general allegations there is no iota of evidence to infer the involvement in the offence in question.

19. The medical papers placed on record in clear terms speaks of the Respondent No. 2/Complainant having suffered the miscarriage for which Complainant made specific allegations against the Petitioner Nos. 1, 3 and 4. It is specifically claimed that she suffered heavy bleeding which led to decision of the abortion after she was administered certain medicines against her wish by the Petitioners.

20. Above material in our opinion is sufficient at this stage to

record satisfaction of ingredients of satisfaction of offence punishable u/s 313 of the IPC. Whether there was medical necessity for abortion, can be an issue to be dealt with at the stage of Trial as same requires the appreciation of the defence of the Petitioners.

21. The instance narrated in the FIR in categorical terms speaks of Petitioner No. 3-husband, his mother Petitioner No. 1 and Sister Petitioner No. 4 has inflicted cruelty and subjected the Respondent No. 2 to ill-treatment.

22. In this background, *prima facie* satisfaction of the ingredients for the offence punishable u/s. 498 and 323 of the IPC can be inferred.

23. As far as the Petitioner No. 2-father-in-law is concerned but for vague and general allegations, there is hardly any material to infer his involvement in the offence.

24. So as to substantiate the prosecution case against the Father-in-law i.e. Petitioner No. 2, available material cannot be said to be sufficient. Vague, general, non-specific allegations are not sufficient to sustain prosecution against the Petitioner No. 2.

25. Reliance can be placed on the judgment of the Apex Court in the matter of ***Kahkashan Kausar Alis Sonam and Others vs.***

State of Bihar and Others reported in **(2022) 6 SCC 599** so as to substantiate the findings against the Petitioner No. 2.

26. That being so, prayer for quashing can be allowed to the extend of Petitioner No. 2-Father-in-Law viz. Shriram Bhaskar Mainkar.

27. As far as the prayer for quashing is concerned *qua* the Petitioner Nos. 1, 3 and 4, same stand rejected.

28. The Petition stands partly allowed in terms of prayer clause (a) to the extend of Petitioner No. 2.

(RAJESH S. PATIL, J)

(NITIN W. SAMBRE, J.)