

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3175 OF 2018**

Pravin Prabhu Narayan Thakur
@ Pravin Kumar Thakur & Anr.

.....Petitioners

Vs.

The State Of Maharashtra

.....Respondent

Dr. G.R. Sharma a/w Mr. Gulab Yadav i/by Mr. Vaibhav Gaikwad for the
Petitioners.

Mr. S.S. Hulke APP, for the Respondent-State.

Mr. Keshav Nana Dinde, API, CBD Police Station, Navi Mumbai present.

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

DATE : 3rd APRIL, 2023.

P.C.:-

1) By the present Petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, (for short, "*the Cr.PC.*") the Petitioners, original accused, in CR No.32 of 2018 dated 13th February, 2018 registered with CBD Belapur Police Station, Navi Mumbai under Sections 498-A, 377, 323, 504 and 506 read with Section 34 of the Indian Penal Code (for short, "*the IPC*") have prayed for quashing of the said crime.

2) Record indicates that, during the pendency of the present Petition, the police have completed investigation and submitted charge-sheet in the Court of Judicial Magistrate First Class, Belapur, Navi Mumbai

and the same has been numbered as R.C.C. No.1077 of 2018.

3) Respondent No.2 is the wife of Petitioner No.1. Petitioner No.2 is the younger sister of Petitioner No.1 i.e. sister-in-law of Respondent No.2.

The first information report is lodged by Respondent No.2 on 13th February, 2018. It is stated therein that, on 5th March, 2017, the marriage between Petitioner No.1 and the Respondent No.2 was solemnized. Respondent No.2 thereafter started cohabiting with Petitioner No.1 at Belapur, Navi Mumbai. The Petitioner No.1 subsequently started demanding dowry of Rs.75 lakhs and on various occasions assaulted Respondent No.2. It is alleged that, Petitioner No.1 committed an act as contemplated under Section 377 of the IPC against the Respondent No.2. Petitioner No.2 used to instigate the Petitioner No.1 in causing cruelty to Respondent No.2. The Petitioner No.1 on various occasions assaulted Respondent No.2 with fist, kick blows and a base ball stick. It is stated that, on 12th February, 2018 the father of Respondent No.2 lodged N.C. Complaint No.135 of 2018 under Sections 323 and 504 of IPC with CBD Police Station, Navi Mumbai. That, the Petitioner No.2 was residing with the Petitioner No.1 and Respondent No.2 in the same premises and also caused harassment and cruelty to Respondent No.2 on some occasions. In this brief premise, the present crime is registered.

4) Dr. Sharma, learned counsel for the Petitioners submitted that, the investigation of the present crime i.e. C.R.No.32 of 2018 is bad in law

as the police were not having powers to investigate the same. That, the father of Respondent No.2 initially i.e. on 12th February, 2018 had lodged N.C. Case No.135 of 2018 with the same police station under Sections 323 and 504 of the IPC as the said two offences were non-cognizable in nature and thereafter immediately on the next day the present crime is registered. That, without taking permission from the learned Magistrate to investigate the said N.C. as contemplated under Section 155(2) of Cr.P.C., the police ought not have proceeded to investigate the present crime. He pointed out certain documents in defence of the Petitioners and called upon this Court to adjudicate the disputed questions involved herein. In support of his contention, Dr. Sharma relied upon the two decisions of the Hon'ble Supreme Court namely *Keshav Lal Thakur Vs. State of Bihar reported in (1996) 11 SCC 557* and *Gangadhar Narayan Nayak alias Gangadhar Hiregutti Vs. State of Karnataka & Ors. reported in 2022 SCC OnLine SC 337*. He submitted that, as the Investigating Agency has committed breach of Section 155(2) of the Cr.P.C, the present proceedings may be quashed by allowing the present Petition.

5) At the outset, it is to be noted here that, the said N.C. No.135 of 2018 dated 12th February, 2018 under Sections 323 and 504 of the IPC was lodged by the father of the Respondent No.2 regarding the assault on the Respondent No.2. Admittedly, as per the record, the police have not investigated the said NC complaint. The said N.C. Complaint is an

independent and separate cause of action than the present crime in question.

The present crime is registered under Sections 498A, 377 and other related sections of the IPC on the basis of the report lodged by the Respondent No.2. The facts mentioned in the FIR have been briefly stated in paragraph No.3 hereinabove. Perusal of FIR would indicate that, a strong *prima facie* case for lodgment of the said crime by applying said sections has been made out by the Respondent No.2. There cannot be any second opinion about the law enunciated by the Hon'ble Supreme Court in the aforestated two cases relied upon by the learned counsel for Petitioners. However, the facts involved in the said two cases totally differ from the facts in the case in hand.

6) As noted earlier, in the present case, though the N.C. Case No.135 of 2018 precedes lodgement of crime No.32 of 2018. The present crime has been registered and has been rightly registered by the police after the narration of facts by the Respondent No.2 to them, disclosing commission of cognizable offence, attracting Sections 498-A, 377, 323, 504 and 506 read with Section 34 of the IPC.

7) Sections 154 and 155 of the Code of Criminal Procedure operate in two distinct spheres. Section 154 deals with information in cognizable cases relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station or information received by

the police of commission of a cognizable offence and the procedure to be followed thereafter. Section 155 deals with information as to non-cognizable cases and investigation of such cases. Section 155(2) states that, no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or to commit the case for trial.

In the present case, the police have not investigated the said N.C. No.135 Of 2018 lodged by the father of the Respondent No.2 but in fact have investigated C.R. No.32 of 2018 registered on a separate and distinct cause of action reported by the Respondent No.2.

According to us, the contention of the learned counsel for the Petitioners is fallacious and de hors of merits for quashing the present crime in question along with the proceedings which have culminated into R.C.C. No.1077 of 2018.

8) It is the settled position of law that, disputed questions of facts and also the defence of an accused cannot be adjudicated in a Petition under Article 226 of the Constitution of India.

It is the settled position of law by a catena of decisions of the Hon'ble Supreme Court that, for the purpose of exercising its power under Section 482 of Cr.P.C. to quash a F.I.R. or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. If the allegations in the

complaint taken at their face value disclose a criminal offence, complaint cannot be quashed, merely because it relates to commercial transaction of breach of contract for which civil remedy is available or has been availed. It is further held that, the High Court is not supposed to embark upon the enquiry whether the allegations in the FIR/complaint are reliable or not and thereupon to render a definite finding about the truthfulness or veracity of the allegations. It is also settled that the High Court can exercise such power in exceptional cases and when the defence of the accused can be accepted on the basis of documents as contemplated under the Evidence Act. It is also held that the power under Section 482 of Cr.P.C. should be exercised sparingly and only in exceptional cases only to save the abuse of process of Court or to secure the ends of justice. It is further held by the Supreme Court that, it is of course open to accused at the trial too take whatever defence that is open to him, but High Court need not deal with the merits of the case at the stage of quashing of proceedings.

9) The Hon'ble Supreme Court in the case of *Smt. Chand Dhawan Vs Jawahar Lal And Ors.*, reported in (1992) 3 SCC 317 while considering the powers and scope of Section 482 of Cr.P.C. has held that, it should not be exercised where allegations *prima facie* constitute the offence alleged in the complaint. That, it should be exercised only to save abuse of process of Court or to secure the ends of justice.

In the case of *CBI Vs. K. M. Sharan*, reported in (2008) 4 SCC

471, the Hon'ble Supreme Court has held that, while exercising powers under Section 482 of Cr.P.C., the High Court should have limited its consideration to "whether allegations made in the FIR and in the charge-sheet taken at their face value and accepted in their entirety would prima facie constitute an offence or make out a case against the accused." It is further held that, at this stage, the High Court in its jurisdiction under Section 482 of Cr.P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations.

10) In the case of *Vinod Raghuvanshi Vs. Ajay Arora and Ors.*, reported in (2013) 10 SCC 581, the Hon'ble Supreme Court while considering the powers of High Court for quashment under Section 482 of Cr.P.C. has held that, if the *prima facie* case to proceed against the accused is made out, then complaint should not be quashed.

11) In view of the above and after applying the principles laid down by the Hon'ble Supreme Court in the aforestated decisions, we find that, there are no merits in the Petition.

Petition is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

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