

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1171 OF 2023**

1. Rishit S. Kapadia
 2. Madhuben S. Kapadia
- ...Applicants

Versus

The State of Maharashtra & Anr. ...Respondents

Mr. Shailesh S. Kharat for the Applicants.
Ms. M.M. Deshmukh, Addl. P.P. for the Respondent/State.
Mr.Omprakash Jha i/b The Law Point for Respondent No.2.
API Rupali Patil, Malbar Hill Police Station present.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.
DATE : 1.12.2023.**

PC:-

1. The applicants are charge-sheeted for the offences punishable under Sections 354, 509, 323 and 504 of the Indian Penal Code (IPC). The First Information Report (FIR) was registered at the instance of respondent No.2/complainant on 31.3.2023 with Malbar Hill Police Station vide Crime No. 66 of 2023.

2. The complainant has alleged that her marriage was performed with applicant No.1 on 15.1.2018. On account of ill-treatment meted out to her by her husband, mother-in-law and father-in-law, she has initiated the proceedings under the Protection of Women from Domestic Violence Act before the

Metropolitan Magistrate, 40th Court Girgaon, Mumbai. On 30.3.2023, at about 8:45 p.m. respondent No.2 was having conversation on cell phone with her father's Doctor as her father had suffered brain stroke. Her father-in-law shouted at her by saying that she cannot enter the balcony of the premises as there is no such order of court. The complainant informed him that for want of range to her cell phone in her room she was required to come to balcony to talk on cell phone. He abused her in filthy language. At that time, her mother-in-law and husband came there. They abused her and quarrelled with her. Her father-in-law suddenly touched her chest. He caught her shirt and pulled her towards him. Mother-in-law of respondent No.2 slapped her. The husband of respondent No.2 abused her and stated that she sleeps with other persons. He told her to leave the house. The complainant then approached the police and lodged the FIR. On completing investigation, charge-sheet was filed.

3. The learned counsel for the applicants submitted that the allegations with regard to outraging the modesty, for which Section 354 of the IPC has been invoked were attributed to the father-in-law of respondent No.2. No offence is made out against the applicants. The applicants are husband and mother-in-law of respondent No.2. The FIR has been registered with *mala fide* intentions. The offences under Sections 323 and 504 of the IPC are non-cognizable nature. No offence under Section 509 of IPC is made out. Respondent No.2 had initiated the proceedings under the Domestic Violence Act. The learned

Magistrate passed the order with regard to the residence of respondent No.2 with certain restrictions. The FIR has been registered with a view to falsely implicate the applicants. The respondent No.2 has also initiated proceedings for annulment of marriage before the Family Court.

4. The learned counsel for the applicants has relied upon the following decisions:

- (i) ***State of Haryana & ors vs. Bhajan Lal & ors.*¹;**
- (ii) ***Chintan P. Jhaveri vs. The State of Maharashtra*²; &**
- (iii) ***Sumit Kr. Gupta vs. State of West Bengal*³**

5. Learned APP submitted that the respondent No.2 has lodged the FIR which constitute the offences for which it has been registered. The FIR refers to allegations of outraging the modesty attributed to the father-in-law of respondent No.2. During the course of investigation, the statement of servant has been recorded on 23.4.2022 who has referred to quarrel ensued between the accused and the complainant. On completing the investigation, the charge-sheet has been filed.

6. Learned counsel for the respondent No.2 submitted that the FIR spells out the offences against the applicants. The role of assault has been attributed to applicant No.2. The applicant No.1 had abused the first informant in filthy language, which attracts Section 509 of the IPC. The factual matrix also indicates that Section 504 of the IPC is attracted in the present

¹ 1992 Supp (1) SCC 335

² Criminal Writ Petition No. 2657 of 2014 decided on 7.2.2017

³ CRR No. 3236 of 2014 decided on 22.4.2014

case. The contention of the applicants that the FIR has been registered with *mala fide* intention is devoid of merits as the respondent No.2 has not initiated any proceedings under Section 498-A of the IPC against the accused. The charge-sheet *prima facie* makes out the offences which are invoked in the present proceedings. Charge-sheet cannot be quashed. Hence, the application may be dismissed.

7. Respondent No.2 is the wife of applicant No.1. The applicant No.2 is the senior citizen, aged about 76 years old. She is the mother-in-law of respondent No.2. There is matrimonial discord between the parties. Respondent No.2 has initiated the proceedings under the Protection of Women from Domestic Violence Act (hereinafter referred to as "D.V.Act"). The respondent No.2 has also initiated proceedings before Family Court. The marriage between applicant No.1 and respondent No.2 was solemnized in 2018. Family Court has restrained the accused from dispossessing the respondent No.2 from residential flat. The proceedings under D.V. Act are pending before the court of learned Metropolitan Magistrate, Girgaon, Mumbai. The learned Magistrate vide order dated 23.10.2019 prohibited respondents therein from committing, aiding or abetting in the commission of acts of domestic violence against respondent No.2 in residential flat. The husband has been directed to pay interim maintenance of Rs.30,000/- to respondent No.2. Injunction is granted against alienation of residential flat until existence of order by Family Court. It was further directed that respondent No.2 is entitled

to the necessary facilities of bedroom. From the tenor of FIR, it appears that there is dispute between the parties on account of residential premises being used by respondent No.2. The alleged incident had occurred on 30.3.2023 when the first informant had entered the balcony of the premises which was allegedly objected by the father-in-law of the respondent No.2. It is alleged that in the midst of quarrel, the father-in-law had touched the chest of the complainant. The allegation of outraging the modesty has been attributed to the father-in-law of respondent No.2 is not before this Court.

8. In the case of *State of Haryana & Ors vs. Bhajanlal (supra)*, the Apex Court has considered several decisions with regard to quashing of FIR and criminal proceedings. In paragraph 102 of the said decision, the Court has provided categories of cases by way of illustration wherein powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code could be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. The categories reads as follows :

(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 cognisable 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."*

9. The relationship between the parties is strained. The offences under Sections 323 and 504 of IPC are non-cognizable offence. Considering the factual matrix of the case, the relationship between the parties, the nature of dispute and the proceedings pending against the applicants in the concerned Court is difficult to accept that the applicants were involved in the commission of offence as alleged by respondent No.2. There is lack of evidence to constitute the offences under

Sections 504 and 509 of IPC. The incident had occurred in the house. The relation between the complainant and the applicants is not cordial. The statement of servant Gopal Jadhav mentions that there was quarrel and scuffle between accused and complainant. Applicant No.2 who is a senior citizen has been implicated by exaggerated allegations. The FIR smacks *mala fide*. Considering the nature of allegations against applicants and factors referred to above, the FIR and charge-sheet against the applicants has to be quashed.

ORDER

- (i) Criminal Application is allowed.
- (ii) The proceedings in C.C.No. 389/PW/2022 pending on the file of Metropolitan Magistrate, 40th Court, Girgaon, Mumbai arising out of C.R. No. 66 of 20 23 dated 31 March 2023 registered with Malbar Hill Police Station for the offences punishable under Sections 354, 509, 504 and 323 of the IPC *qua* the applicants are quashed.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)