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

**WRIT PETITION NO. 4148 OF 2014
WITH
CRIMINAL APPLICATION NO. 402 OF 2016
IN
WRIT PETITION NO. 4148 OF 2014**

Suresh Anant Khatav & Ors. ...Petitioners
v/s.
State of Maharashtra & Anr. ... Respondents

Adv. Lokesh Zade a/w. Adv. Rohan Nahar for petitioners.
Mr. A. R. Kapadniz, APP for the respondent-state.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 24th FEBRUARY, 2023

P.C.:

1. Heard.
2. The prayer in the petition is for quashing of the red corner notice issued in criminal case no. 181/PW/2005. As far as the said criminal case is concerned, it is worth to mention that the said Criminal Case came to be disposed of by recording acquittal of one of the accused no. 4 vide judgment and order dated 06/02/2012. The petitioners also prayed for quashing and setting aside the investigation *qua* the FIR in crime no. 172 of 2004 punishable u/s. 498A, 420, 406 r/w. 34 of IPC.

3. The case of the prosecution against the petitioners is, respondent no. 2 got married with petitioner no. 3-Abhijit, son of the petitioner nos. 1 & 2. Out of the matrimonial discord, it is claimed in the complaint dated 21/05/2004 that the petitioner no. 3-husband started suspecting the character of the complainant-wife with whom he got married on 05/12/2003. It is further alleged that respondent no. 2/complainant was treated cruelly and there was also a demand of dowry.

4. After the investigation since enough material was available against the petitioners, they came to be charge-sheeted. At the time, the charge-sheet was filed, it appears that the petitioners were not available, a prayer for issuance of non-bailable warrant came to be moved before the Court of Metropolitan Magistrate, which was allowed and as a sequel of which red corner notice was issued against the petitioners as petitioners have shifted outside India.

5. This Court has issued notice to the respondent no. 2-complainant. In the cause title, the address on which the notice was sought to be served is occupied by her maternal uncle viz. Rajgopal Mallya. When the police authorities tried to serve the notice to the respondent no. 2/complainant, it appears that since

the respondent no. 2/complainant got divorce from petitioner no. 3 and was remarried, has refused to respond to the notice though same was acknowledged. The police authorities pursuant to the directions of this Court has tried to find out whereabouts of the complainant. However, the maternal uncle of the respondent no. 2/complainant so also the respondent no. 2/ complainant refused to appear before this Court to contest or extend co-operation in the aforesaid proceedings.

6. As such, this Court again directed learned counsel for the petitioners to take fresh steps to serve the respondent no. 2 on the address of her maternal uncle, which is mentioned in the cause title. In response to the said attempt, respondent no. 2 has given a hand written letter with covering letter by her maternal uncle - Rajgopal Mallya stating that after divorce, she got remarried about 9 years back and was blessed with a girl child. It is specifically stated in the statement, copy of which is made available through post that respondent no. 2 is not interested in contesting the aforesaid proceedings. Such communication can be noticed in B-file of the case papers.

7. Since the said statement was not available in original with the Registry of this Court as only photocopy appears to have been

placed on record, through learned APP we directed the officer of the Borivali police station to visit at the address of respondent no. 2 i.e. maternal uncle of the complainant - Rajgopal Mallya and was also directed to record his statement confirming the aforesaid factual developments. The police officer has recorded the statement of Rajgopal Mallya, maternal uncle of the respondent no. 2/complainant. He has specifically stated that the respondent no. 2/complainant is his niece and after lawful divorce from the petitioner no. 3 about 11 years back she has performed second marriage. It is further stated in the statement that she is not interested in contesting the present proceedings. Similar statement in hand writing of the said maternal uncle is also enclosed with the statement recorded by the police officer, which is taken on record marked as "X" and "Y" for identification.

8. It appears that respondent no. 2 - complainant having been married for the second time and being blessed with a daughter, she appears to be not keen in divulging her identity in present proceeding or getting herself involved in any manner, as could be inferred from the statement of her maternal uncle.

9. In the aforesaid background, we have proceeded to analyse the claim put forth by the petitioners in the petition wherein the

grounds for quashing of proceedings are sought to be substantiated. The fact remains that the respondent no. 2/complainant who was married to petitioner no. 3 has moved before Court of Civil Judge, Senior Division, Kolhapur vide Hindu Marriage Petition No. 277 of 2006 under the provisions of section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955. The said Court vide its judgment and order dated 07/12/2009 has declared the marriage between the petitioner no. 3 and respondent 2 as dissolved. The decree for dissolution is based on the findings of the cruelty and desertion.

10. Be that as it may be, it appears that pursuant to the charge-sheet, the prosecution was set in motion vide Criminal Case No. 181/PW/2005 against the accused persons. The Petitioners were arraigned as accused nos. 1 to 3 to the aforesaid criminal proceedings whereas accused no. 4, the paternal aunt of the petitioner no. 3 viz. Vaishali has faced the prosecution before the aforesaid Court in the Criminal Case No. 181/PW/2005 referred above.

11. The Court of the Magistrate after having appreciated the evidence in the backdrop of the charge framed, has proceeded to acquit the accused no. 4 vide judgment and order dated

06/02/2012. The said acquittal is based on the testimony of the P.W. No. 1/complainant i.e. wife of the petitioner no. 3 wherein she has deposed that the complaint was lodged having regard to the dispute in between the informant and accused persons. The witnesses who were examined in support of the case of the prosecution were not able to establish the case of the prosecution beyond reasonable doubt. Rather an admission was given that they have settled the dispute amicably.

12. In the aforesaid background, what can be noticed is the respondent/complainant is not willing to support the case of the prosecution, even in case of prayer for quashing moved by the petitioners. The order of acquittal recorded by the Magistrate in relation to accused no. 4 on 06/02/2012 thereby acquitting the accused can rightly be relied on so as to infer that the prayer of the petitioners for quashing can be accepted. The order of acquittal of accused no. 4 is not questioned by the respondent no. 2/complainant and as such accepted the same.

13. In the aforesaid background, particularly having regard to the order of the acquittal of accused no. 4 vide judgment and order dated 06/02/2012 delivered by the 26th Court of Metropolitan Magistrate, Borivali, Mumbai, the testimony of witnesses viz.

complainant and independent witness recorded in the said proceedings, the statement of the maternal uncle of respondent no. 2/complainant viz. Rajgopal Mallya which is already placed on record as "X" and "Y" and the fact that respondent no. 2 is not willing to contest the claim for quashing the case for grant of relief is made out.

14. Pursuant to the provision of section 157 of Cr.P.C as the cognizable offence was disclosed, the investigating officer carried out investigation and charge-sheeted the applicants and accused no. 4. The accused no. 4 was acquitted on merit particularly having regard to the fact that the complainant and other witnesses have not supported the case of the prosecution.

15. As such, even if the allegations made in the complaint on the statement recorded u/s 161 of Cr.P.c are not proved by the concerned witnesses, as regards trial against respondent no. 4, the complainant herself is not willing to support the case of the prosecution as can be inferred from her conduct as noticed hereinabove.

16. In that view of the matter, the Court of Magistrate cannot reach to the conclusion that there is sufficient ground for asking the petitioners to face the trial. The continuation of the

proceedings against the petitioners is not likely to result in achieving conviction. As such, the prosecution initiated against the petitioners cannot be taken to its logical end. The support can be drawn from the judgment of the Apex Court in the matter of ***State of Haryana and others vs. Ch. Bhajan Lal and other*** reported in ***1992 AIR SCW 327***.

17. In the aforesaid background, the proceedings initiated against the petitioners vide CC No. 181/PW/2005 pending on the file of Metropolitan Magistrate, 26th Court, Borivali for the offence punishable u/s. 498-A, 420, 406 r/w. 34 of IPC vide CR No. 172 of 2004 is hereby quashed and set aside.

18. As a sequel of above, red corer notice issued against the petitioners also stands quashed and is set aside.

19. In response to the Court's query learned counsel for the petitioners on instructions from the petitioners assures that an amount of Rs.1,00,000/- shall be deposited with the Maharashtra State Legal Service Authority under the head of victim compensation within a period of eight weeks from today. Since the statement is made on instructions, the same is accepted as an undertaking.

20. The Court of Metropolitan Magistrate as such shall act on the

judgment of this Court only after the petitioners produces the copy of the payment of compensation.

21. Pending applications also stands disposed of.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)