

GRM

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

CRIMINAL WRIT PETITION NO. 4717 OF 2019

WITH

CRIMINAL WRIT PETITION NO. 4718 OF 2019

Anupama Sharma Jagtiani ... Petitioner

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Niteen Pradhan a/w Ms. Ameeta Kuttikrishnan i/b Ms. Shubhada D. Khot, Adv. for the Petitioner.

Mr. R. M. Pethe, APP for the State/Respondent No. 1.

Mr. Mohammad Shine, Mr. Waseem Pangarkar and Mrs. Drishti Singh i/b MZM Legal, Adv. for Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 27, 2023

P.C. :

Both these writ petitions, under Article 227 of Constitution of India, are being decided by this common order since common questions of fact and law arise therein. Moreover, the parties to both these petitions are same.

2. The challenge in Criminal Writ Petition No. 4717/2019 is to the judgment and order dated 17/06/2019 passed by the Court of Additional Sessions Judge in Criminal Revision Application No. 814/2017. Vide impugned judgment and order, the learned Additional Sessions Judge discharged the respondent/accused-Shobha Sanjeev Jagtiani herein from Criminal Case No. 329/PS/2016 arising out of C.R. No. 93/2015 registered with

Malabar Hill Police Station, Mumbai for the offence punishable under Sections 337 & 504 of the Indian Penal Code, 1860 (for short “**IPC**”).

3. The challenge in Criminal Writ Petition No. 4718/2019 is to the judgment and order dated 24/07/2019 passed by the Court of Additional Sessions Judge in Criminal Revision Application No. 815/2017. Vide impugned judgment and order, the learned Additional Sessions Judge discharged the respondent/accused Shobha Sanjeev Jagtiani herein from Criminal Case No. 330/PS/2016 arising out of C.R. No. 113/2015 registered with Malabar Hill Police Station, Mumbai for the offence punishable under Section 341 of IPC.

4. The facts, in brief, giving rise to both these petitions are as follows :-

a. Respondent no. 2/original accused in both the petitions (for the sake of brevity hereinafter referred to as “respondent”), is the sister-in-law of the petitioner/original complainant (sister of the husband of petitioner). The petitioner married Vikram Jagtiani in October 2008. The petitioner started residing along with her husband in her matrimonial home situated at Flat No. 31/32 in Mount Blanc, 67-A, Nepean Sea Road, Malabar Hill, Mumbai. After few days stay therein, both the petitioner and her husband-Vikram left for New York. The couple is blessed with a daughter, Nikita. Vikram was jobless in New York. He was alcoholic. He has extra-marital relationship with his maid.

b. It is further her case that Sanjeev Jagtiani is the husband of respondent. The petitioner's father-in-law had two flats bearing nos. 31 & 32, conjoint as one unit in Mount Blanc Building. Father-in-law was ageing. The respondent and her husband-Sanjeev under the pretext of taking care of father-in-law, started residing in one of the flats. The father-in-law was coerced by the respondent to nominate her flat no. 31. The other flat was inherited to Vikram from his grandfather. The petitioner, her husband and their daughter came down to Mumbai and started residing in one of the two flats. Vikram executed Leave and Licence Agreement of his flat in favour of the respondent. Since the flat was inherited from the grand-father, daughter Nikita has a share therein by birth.

c. All was not well between the petitioner and her husband. Matrimonial discord aggravated. The respondent and even her husband started harassing and ill-treating the petitioner and her daughter. Vikram too ill-treated the petitioner. The petitioner had to lodge police complaints against the respondent and her husband as well. Vikram however thereafter left for USA. The petitioner continued to stay in her matrimonial home. The respondent and her husband with a view to evict the petitioner from the flat, continued to harass the petitioner and her daughter by one or the other way.

5. Criminal Writ Petition No. 4717/2019 is concerned with the order passed in Criminal Revision Application No. 814/2017. The said revision application in turn pertain to C. R. No. 93/2015 (C.C.

No. 329/PS/2016), registered at the instance of petitioner herein for the offence punishable under Sections 324 & 504 of IPC. On investigation of the said crime, the charge-sheet was filed for the offence punishable under Sections 337 & 504 of IPC. The said crime pertain to the incident dated 25/04/2015. It is the case of petitioner/complainant that on the given date i.e. on 25/04/2015, she had prepared a tea for herself. She was holding a cup of hot tea. The respondent picked up quarrel with the petitioner and intentionally manhandled the petitioner. The act of respondent was with an intention to ensure hot tea spill on the petitioner's person so as to cause her burns. As a result of this incident, the petitioner suffered burns. She took treatment at Sir J.J. Hospital. On investigation of the crime, the charge-sheet came to be filed against the respondent herein.

6. Criminal Writ Petition No. 4718/2019 pertain to the incident dated 09/09/2015. It is the case of petitioner that when she returned to the flat by 7.45 p.m., she found the entrance door of flat was locked and order passed by the Court of Metropolitan Magistrate was pasted on the door. There was a security guard deputed at entrance door of the flat. This was so done by the respondent only with a view to prevent the petitioner entering the flat. As such, it was an offence of wrongful restrain. The petitioner therefore lodged FIR vide C. R. No. 113/2015 (C.C. No. 330/PS/2016). Crime thus came to be registered for the offence punishable under Section 341 of IPC. On investigation of the same, a charge-sheet was filed against the respondent.

7. In both the Criminal Cases bearing C.C. Nos. 330/PS/2016 & 329/PS/2016, the respondent herein moved the applications for her discharge. Learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai rejected both the applications mainly on the ground that both were summons cases. There appear reasonable grounds to record plea of the accused and proceed with the trial of case. Therefore, there were no grounds either to discharge the accused of the offences or to stop the proceeding.

8. The respondent therefore filed two separate revision applications taking exception to the respective order refusing to grant her discharge.

a. The Revisional Court allowed both the criminal revision applications. The Revisional Court held that the petitioner/complainant did not have right of access to the house. There was therefore no question of offence of wrongful restrain to have been committed. In relation to the charge-sheet filed for the offence punishable under Sections 337 & 504 of IPC is concerned, the Revisional Court held that when the offence was reported, it was registered as a 'non-cognizable case'. Four months thereafter, FIR came to be registered. Without obtaining permission of the Magistrate, it was investigated and the charge-sheet was laid.

9. Learned Advocate for the petitioner/original complainant would submit that the scope of power of Revisional Court under Section 397 of Cr.P.C. is very limited. By granting discharge to the accused, it has travelled beyond its powers under Section 397 of

Cr.P.C. The Trial Court infact did not have jurisdiction to review its own order and therefore, rightly rejected the applications moved by the accused (respondent) for discharge. According to the learned Advocate for petitioner, the accused has remedy under Section 397 of Cr.P.C. He may avail the same.

a. Learned Advocate relied on the judgment of Hon'ble Apex Court in the case of **Dhariwal Tobacco Products Limited And Others vs. State of Maharashtra And Another** reported in (2009)2 Supreme Court Cases 370.

10. Learned Advocate for the respondent/original accused would on the other hand submit that the Trial Court has every jurisdiction to stop proceedings, in exercise of the jurisdiction in Section 258 of Cr.P.C. The facts and circumstances of both the cases would undoubtedly suggest that the Magistrate ought to have stopped both the proceedings granting the respondent discharge. Since the same has not been done, the Revisional Court was well within its jurisdiction to grant the same relief.

a. Learned Advocate relied on a host of authorities in support of its contentions. The same are as follows :-

- **Deva S/o. Prem Maste vs. State of Maharashtra** reported in 2015 SCC OnLine Bom 3104;
- **M. Subramanyam vs. State of Karnataka** reported in **Indian Law Reports 1988 Karnataka 210**;

- **Munirathna vs. State of Karnataka and Others** reported in MANU/KA/0415/2020;
- **Keshav Lal Thakur vs. State of Bihar** reported in (1996)11 Supreme Court Cases 557;
- **Avinash Madhukar Mukhedkar vs. The State of Maharashtra** reported in MANU/MH/0012/1983;
- **Ravikumar vs. State of Karnataka** reported in MANU/KA/1425/2014;
- **Waman Punaji Shilarkar vs. State of Maharashtra and Another** reported in 2001(4) Mh.L.J. 94;
- **Jarnail Singh vs. State of Rajasthan** reported in 1991 SCC OnLine Raj 319;
- **P Shinu vs. P Perumal** reported in 2012(2) MWN (Cr.) (DCC) 13 (Mad.);
- **Bhushan Kumar and Another vs. State (NCT of Delhi) and Another** reported in (2012)5 Supreme Court Cases 424;
- **Krishna Kumar Variar vs. Share Shoppe** reported in (2010)12 Supreme Court Cases 485;
- **Urrshila Kerkar vs. Make My Trip (India) Private Limited** reported in 2013 SCC OnLine Del 4563;
- **N. Mani vs. Sangeetha Theatre and Others** reported in (2004)12 Supreme Court Cases 278;
- **Collector of Central Excise, Calcutta vs. Pradyumna Steel Limited** reported in (2003)9 Supreme Court Cases 234;
- **Pruthvirajsinh Nodhubha Jadeja (Dead) by Legal**

Representatives vs. Jayeshkumar Chhakaddas Shah and Others reported in (2019)9 Supreme Court Cases 533;

- **Chittoor District Co-operative Marketing Society Ltd. vs. Sri Jyothi Trading Co. and Ors.** reported in MANU/AP/0087/1997;
- **Mohanlal Nandlal Sharma and Ors. vs. State** reported in MANU/GJ/0063/1962;
- **State of Maharashtra vs. Ram S/o. Pandharinath Chidrawar** reported in 2006 SCC OnLine Bom 491;
- **Bhajan Singh and Ors. vs. State of Haryana** reported in MANU/SC/0710/2011;
- **Rajendra Kumar Sitaram Pande and Ors. vs. Uttam and Ors.** reported in MANU/SC/0093/1999;
- **Veeda Menezes vs. Yusuf Khan and Ors.** reported in MANU/SC/0085/1966;
- **Vijay Kumari Magee (Ms) vs. S.M. Rao (Smt) and Ors.** reported in (1996)7 Supreme Court Cases 148;
- **Noor Mohamed alias Mohd. and Ors. vs. Nadirshah Ismailshah Patel and Another** reported in 2003 SCC OnLine Bom 1233 and
- **Bai Samrath vs. Emperor** reported in 1917 SCC OnLine Bom 97.

11. Considered the submissions advanced. Perused the orders impugned herein.

12. The Court is conscious of scope of 'Raising Powers' under Section 397 of Cr.P.C. It is also true that a Magistrate in case of an offence triable as summons case, has no power to review or recall its order of issuance of process. The facts and circumstances of both the cases are very peculiar. The record indicates the petitioner/complainant to have initiated/lodged many criminal cases against the respondent/accused.

13. Less said the better about merits thereof. In case of the alleged wrongful restrain is concerned, admittedly the complainant was found to have been residing at some other place. The Court seized of Domestic Violence Proceedings, therefore did not grant order in favour of the petitioner/complainant. The petitioner/complainant was unsuccessful in her appeal thereagainst.

14. It is also informed that she did not get any relief from the High Court as well. On the question of offence under Sections 324 & 504 of IPC is concerned, it is to be noted that initially based on the report pertaining to the very incident, a non-cognizable case was registered. Four months thereafter Section 337 of IPC came to be invoked, making a case pertaining to cognizable offence and on investigation, charge-sheet was laid for the offence punishable under Sections 337 & 504 of IPC. When the non-cognizable offence was registered for its investigation, the Police Officer did not obtain permission under Section 155 of Cr.P.C. of a Magistrate to make investigation of a non-cognizable case. Be that as it may.

15. The Revisional Court might have travelled beyond the scope of the powers under Section 397 of Cr.P.C. In the peculiar facts and circumstances of both the cases, this Court in exercise of discretionary jurisdiction under Article 227 of Constitution of India, is not inclined to interfere with the orders impugned herein. In the result, writ petitions fail. The same are therefore dismissed and disposed of accordingly.

(R. G. AVACHAT, J.)