

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1682 OF 2019

Kalpana Bharat Kalyani & Anr. .. Applicants
Versus
The State of Maharashtra & Anr. .. Respondents

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Mr.Rishi Bhuta with Mr.Vivek Pandey i/b CORPSLEGAL for the Applicant.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

Mr.Nityanand Yadav for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.
DATED : 08th SEPTEMBER, 2023

P.C:-

1. The two Applicants in the Application are original Accused Nos.3 and 2 respectively, who came to be arraigned as Accused in a complaint lodged by Respondent No.2 with Bandra Police Station on 18/07/2016, which has resulted in invocation of Sections 498-A, 377, 406, 313, 504 and 506 of the Indian Penal Code (for short, "**the IPC**").

The Applicants are aggrieved by an order rejecting their application for discharge on 12/07/2018 and framing of charge by the Additional Sessions Judge, Greater Mumbai on 14/08/2018 and the submission advanced is, this is done, despite no material in the charge-sheet involving them.

2. Heard the learned counsel Mr.Rishi Bhuta alongwith Mr.Vivek Pandey for the Applicants. Respondent No.2 is represented by the learned counsel Mr.Nityanand Yadav, whereas the State is represented by Mr.S.R.Agarkar, the learned A.P.P.

The complaint filed by Respondent No.2 allege that she was in relationship with Accused No.1 and, since, she conceived on account of the physical relationship, her marriage was solemnized with Accused No.1 in the year 2008 and pursuant thereto, they cohabited in Versova at her mother's house and, thereafter, they shifted to Bandra, where she continued to reside with Accused No.1 for seven years.

The Complainant made several accusations against her husband, as according to her, he was not happy with the fact that he was constrained to perform marriage with her and he used to physically assault her and even perform unnatural sex.

3. The complaint has levelled several accusations against the husband, but as far as Applicant No.2-brother-in-law is concerned, the Complainant has alleged that in the month of August 2008, when she had visited his house, her brother-in-law did not permit her to enter and told her to leave or else threatened her to be thrown out of the house, which constrained her to leave. It is the narration of the Complainant that this caused stress to her and, therefore, she prematurely delivered the child and the expenses of the delivery were borne by her mother, by obtaining loan.

As far as Applicant No.1, mother-in-law is concerned, the accusation against her is, in the year 2009, she arrived in Mumbai. She alongwith her husband went to pay regards and she told them that as and when her son will be permitted an entry in Dubai, she would take all of them there, but till that time, the Complainant was asked to reside at her mother's place.

A specific accusation is levelled against Applicant No.1 in the complaint, when it is alleged that on 07/02/2016, when she approached her mother-in-law to remind her of her assurance, at that time, she is alleged to have said that she and her husband are free to do whatever they want and that she is not bothered about it. She is also alleged to have stated that the Complainant will not be given any money or house.

Upon such utterances, when the Complainant pleaded before her that from her son, she have two children, she verbally abused her and asked her to leave or else threatened that she would cause harm.

Apart from the aforesaid, there are no other accusations against the two Applicants, which prompted them to seek discharge in the subject C.R. and their application is rejected.

4. Perusal of the material compiled in the charge-sheet, it is evident that the accusations under Sections 377, 313 and 406 of IPC are specifically levllled against the husband, Romy. In order to establish an offence under Section 498-A of IPC, it is necessary to establish cruelty and the cruelty contemplated should be in form of a willful conduct, which is of such a nature

as would likely drive the woman to commit suicide or cause grave injury or danger to her life, limb or health or it is the harassment of the woman with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

The charge-sheet does not make out any such case.

5. As far as Section 504, which prescribe punishment for an intentional insult and provocation, it must be of such a grave nature, as it is intended to breach of public peace or to commit any other offence. Even the ingredients of the aforesaid section are not made out against the present Applicants.

As far as the offence of criminal intimidation, as defined in Section 503 is concerned, it contemplates threat given to another, contemplating any injury to his person, reputation or property or to the person or reputation to any one in whom the person is interested, with an intent to cause alarm, to that person or cause him to do any act, which he is not legally bound to do or omit to do such act, which the person is legally entitled to do, as the means of avoiding the execution of such threat.

Criminal intimidation, which is particularly defined in Section 503, is punishable under Section 506, but merely uttering that the person should leave the place, which is the accusation faced by the brother-in-law and merely saying that the Complainant shall not be entitled for money or property, would definitely not attract the offence of criminal

intimidation. A vague reference to the abuses by Applicant No.1 and the threat given, cannot be said to be of such nature, which would fall within the ambit of Section 503 and, hence, in absence of the ingredients of the aforesaid Section being made out against the two Applicants, I see no reason why they should be made to face the trial.

The complaint lodged is vague against the two Applicants and without reference to the context, when a general statement is made that Applicant No.1 has abused and threatened her, without the offence of criminal intimidation having been attracted, the learned Additional Sessions Judge has committed a grave error in rejecting the discharge application. The charge framed against the Applicants collectively is of common intention in committing criminal intimidation by threatening injury to the Complainant, which is not made out.

In the wake of the above, the impugned order deserves to be set aside, as continuation of the trial against the present Applicant would be an abuse of process of law, since the material in the charge-sheet is not sufficient to attract the offence, of which they are accused.

The decision relied upon by the learned counsel for Respondent No.2 is of no succor to him, since it is the power of the Court under Section 227 to sift and weigh the evidence for the limited purpose of finding out, whether or not, prima facie case has been made out against the Accused and it is only when the material placed before the Court disclose grave suspicion, which has not been properly explained, then the Court would be fully justified in framing the charge.

However, since in the present case, material in charge-sheet is not sufficient for sustaining a charge under Sections 498-A, 504 an 506 of IPC against the two Applicants and, hence, they deserve discharge.

For the above, the impugned order is quashed and set aside and the Applicants are discharged from the charges levelled against them.

Application is allowed.

(SMT. BHARATI DANGRE, J.)