

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 911/2022.

1.Nitin s/o Dadaji Badkhal,
Aged about 36 years, Occupation -
Private Job, resident of Wanoja,
Charur Khati, Tahsil Warora,
District Chandrapur.

2.Smt. Saraswati wd/o Dadaji Badkhal,
Aged 59 years, Occupation -
Household, resident of Wanoja,
Charur Khati, Tahsil Warora,
District Chandrapur.

3.Sachin s/o Dadaji Badkhal,
Aged about 39 years, Occupation -
Service, resident of Wanoja,
Charur Khati, Tahsil Warora,
District Chandrapur.

4.Mrs. Apoorva Sachin Badkhal,
Aged about 34 years, Occupation -
Housewife, resident of Wanoja,
Charur Khati, Tahsil Warora,
District Chandrapur.

5.Mrs. Swati w/o Amol Matte,
Aged 37 years, Occupation -
Housewife, resident of Deshpande
Wadi, Rajura, District Chandrapur.

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APPLICANTS.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Warora, District Chandrapur.

2.Mrs. Minakshi alias Shewta w/o
Nitin Badkhal, aged about 31 years,
Occupation – Housewife, resident of
c/o. Shri Madhukar Dhoke, Rajiv Gandhi
Ward, Warora, District Chandrapur.

... **NON-APPLICANTS.**

Mr. P.R. Puri, Advocate for Applicants.
Mr.N.R. Rode, A.P.P. for Non-applicant No.1/State.
Ms. D. Sapkal, Advocate [Appointed] for Non-applicant No.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**

DATE : APRIL 26, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Considering the controversy involved in the matter and by
consent of the learned Counsel appearing for the parties, the
Criminal Application is taken up for final disposal at the stage of
admission.

Rgd.

Admit.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure, seeking quashing of the first information report bearing Crime No.899/2019 registered with Warora Police Station, District Chandrapur for the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code and related charge-sheet in Regular Criminal Case No.22/2020 pending on the file of the Judicial Magistrate, First Class, Warora.

3. It is the contention of applicants that the criminal proceeding is manifestly tainted with malafide, and the proceeding is maliciously instituted with ulterior motive to pressurize the husband. According to applicants, reading of police papers does not disclose commission of any offence and contentions raised therein are false and exaggerated one.

4. The State, as well as the learned Counsel [appointed] for

the non-applicant/wife have resisted this application by contending that after investigation, the police found that there is substance in allegations leveled by the non-applicant/wife, and therefore, investigation culminated into filing of charge-sheet. The informant/lady has specifically stated about the atrocities committed by applicants and, therefore, this is not a fit case for quashing of the criminal prosecution. According to the non-applicant, evidence is needed and at this stage worthiness of statements cannot be assessed, since it is a matter of trial.

5. At the instance of a report lodged by the informant lady on 23.07.2019, the aforesaid crime came to be registered. Applicant no.1 - Nitin is husband, Applicant no.2 - Saraswatibai is mother-in-law, Applicant no.3 - Sachin is brother of husband, Applicant no.4 - Apoorva is wife of Sachin, while Applicant No.5 - Swati is sister of husband. It is informant's case that on 26.05.2016 she got married with applicant no.1 Nitin. After marriage she resumed co-habitation at her matrimonial house at Wanoja. She was living with all applicants, except Swati. After few days she started to reside with

her husband in a rented premises at Awarpur, where her husband got a job. After 6 months, husband Nitin left the company of the informant and returned to his parents house. It is contended by the informant that though they were residing in a rented premises, however, rest of the applicants used to harass her by insisting for monetary demand. Applicant Sachin used to visit her house in absence of applicant Nitin and was trying to make advances. It is alleged that all applicants have insisted her to comply with the monetary demand of Rs.5 lakhs from her father. Husband and mother-in-law used to abuse and physically assault the informant at the instance of demand. She has stated that on 20.09.2018, while she was staying in the rented premises, her husband and mother-in-law came there, physically assaulted her and by repeating monetary demand took all the belongings and therefore, she was required to stay with her parents.

6. The learned Counsel appearing for applicants would submit that since the informant lady was not behaving properly, initially the husband has filed an application with the Womens' Cell

on 02.01.2019. It was followed by wife filing an application to the Tanta Mukti Kendra on 01.04.2019. It is submitted that in the proceedings before the Womens Cell, the wife never remained present, however, perusal of the report indicates that though on first date wife did not remain present, however, later on she remained present, but, the differences were not worked out. It is argued that in wife's application dated 01.04.2019, she never made allegation about monetary demand and physical harassment.

7. We have examined the said report which was particularly filed with Tanta Mukti Kendra. We find there is no reference that the applicants were insisting to comply with the monetary demand. Moreover, this application was filed to Tanta Mukti Kendra for resolving the dispute, therefore, it is not proper to expect that all the allegations leveled in the first information report to be stated therein.

8. It is argued that the wife left husband's place on 22.09.2018, whilst the first information report has been lodged on 23.07.2019, meaning thereby there is delay of 9 months in lodging

7

the report. In matrimonial dispute always women are in hope of re-union, and therefore, the matter is to be looked with a different angle and certainly not like the first information report relating to bodily offence. It is a matter of appreciation during trial whether there is inordinate delay or it has been properly explained by the informant.

9. It is argued that the wife never remained present in the trial Court nor appeared in this proceeding despite service of notice. We do not think that the same is one of the parameter for considering or assessing the prima facie case made out in police papers. If she does not remain present before the trial Court, the Magistrate is well empowered to take appropriate steps in that regard and in accordance with law. The informant is a deserted lady, staying separately. There may be variety of reasons for the informant to remain absent, but, the same cannot be used for granting benefit to husband for quashing of the first information report. It is argued that the husband has received a call from his employer – Western Coalfields Limited, but, pendency of this

proceeding may attract disqualification. We may say that the same cannot be the criteria for assessing the case from the angle of quashing of the criminal prosecution.

10. The learned Counsel for applicants has relied on the decision of Supreme Court in case of **Shakson Belthissor .vrs. State of Kerala and another – [2009] 14 SCC 466** with specific reference to paragraph no.30 of the said decision. In said case the Supreme Court has quashed the proceeding on the ground that the material adduced does not mandate a case falling under Clause [b] of Section 498-A of the Indian Penal Code. We are unable to find any legal proposition in said quoted paragraph, as the decision was restricted to the facts of the said case.

Applicants have also relied on the decision of Supreme Court in case of **Swapnil and others .vrs. State of Madhya Pradesh – 2014 [6] Scale 590**, with reference to paragraph nos. 10 and 11 of the said decision. In said case on given facts, the proceeding was quashed. Needless to mention that there cannot be identical criminal cases, as the fate of each case differs from the facts of

another case.

11. Perusal of the first information report and the related police papers indicate that there are specific allegations against husband, mother-in-law and brother-in-law. There are consistent statements of witnesses supporting prima facie allegations leveled by the informant/wife. As regards applicant no.4 – Mrs. Apoorva Sachin Badkhal (brother's wife) and applicant no.5 – Mrs. Swati Amol Matte (sister of husband), besides general statement that they also participated in raising demand, we are unable to find any thing against them. The tendency of involving maximum family members in criminal prosecution is a natural phenomena in like cases. Certainly while examining the matter we have to take care that there shall not be unnecessary harassment of any family member who is/are not concerned with the matrimonial dispute. Moreover, it reveals that applicant no.5 – Swati is the married sister of husband residing separately from the couple.

12. It is well settled proposition in catena of decisions that

while examining a case for quashing, the Court is not expected to embark upon the exercise to find out the evidentiary value of the statements nor marshal the material on record. The first information report coupled with police papers prima facie makes out a case against applicant nos. 1 to 3. It cannot be said that the proceeding against them is filed with malafide or malicious intention. It is a matter of trial to assess the worth of material adduced against them. In view of that we deem it appropriate to allow this application to the extent of applicant nos. 4 and 5 only. Hence, the following order.

ORDER

- [i] Criminal Application is partly allowed.
- [ii] The first information report bearing Crime No.899/2019 registered with Warora Police Station, District Chandrapur for the offence punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code and related charge-sheet in Regular Criminal Case No.22/2020 pending on the file of the Judicial Magistrate, First Class, Warora is hereby quashed and set aside, as regards to .applicant no.4 –

Mrs. Apoorva Sachin Badkhal and applicant no.5 –
Mrs.Swati Amol Matte only.

- [iii] The prayer for quashing of the criminal prosecution as regards applicant nos. 1 to 3 stands rejected.
- [iv] The trial Court shall proceed with the trial expeditiously.
- [v] Fees of the appointed Advocate for non-applicant no.2 be paid as per Rules.
- [vi] Pending applications if any, also stands disposed of.

JUDGE

JUDGE