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CRAPLN 678.22-1.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 678 OF 2022

1. Macchindra S/o. Sajan Garje,
Age 50 years, Occ. Agril.
R/o. Babhalgaon, Tal. Shevgaon,
Dist. Ahmednagar.
2. Sharda W/o. Macchindra Garje,
Age 43 yeas, Occ. Household,
R/o. Babhalgaon, Tal. Shevgaon,
Dist. Ahmednagar.
3. Pallavi D/o. Macchindra Garje,
Age 20 years, Occ. Agril.
R/o. Babhalgaon, Tal. Shevgaon,
Dist. Ahmednagar.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra,
through – Investigation Officer,
Crime No. 0156 dated 22.3.2021,
Pathardi Police Station, Ahmednagar.
Tq. And Dist. Ahmednagar
2. Ashrabai W/o. Sayaji Nagargoje,
Age 71 years, Occ. Housewife,
R/o. Akola, Tq. Pathardi,
Dist. Ahmednagar.

.. RESPONDENTS.

Mr. P.A. Bharat, Advocate for the applicants.
Mr. V.K. Kotecha, APP for respondent State.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 12th SEPTEMBER, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J] :-

1. The applicants have approached this court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the FIR No. 156 of 2021, dated 22.3.2021, registered with Police Station, Pathardi, Dist. Ahmednagar for the offence under Section 380 of I.P.C. as well as charge sheet No. 219 of 2022 dated 21.3.2022 and consequential criminal proceeding pending before the JMFC at Pathardi.

2. Respondent No.2 lodged report dated 22.3.2021 alleging that she resides at Akola, Taluka Pathardi, alongwith her son Ankush, Daughter in law Thakubai, grandsons Popat and Malhari, grand daughter in law Rohini etc. On account of trifle reason differences arose between grand daughter in law Rohini and her husband Popat. Since then Rohini resides at Babhalgaon at her maternal home alongwith her son. On 27.1.2021, at about 3.00 p.m., while informant was alone at home, family members of Rohini i.e. parents, namely, Machindra and Sharda Garje, her sister Pallavi and Ghanshyam Munje arrived at home with a goods carriage vehicle (Chota Hatti) and asked her that they want to take back gifts articles given at the marriage of Rohini. Thereafter, they entered in the house and despite her opposition took away Sofa Set, Cupboard, T.V. Set, racks, suit cases, gas cylinder, mixer and other household articles. They also took away Nose Ring worth Rs.9,000/- and Cash amount of Rs. 2000/-.

It is accordingly alleged that aforesaid accused persons have

committed theft of cash and articles worth Rs. 15,800/-. On the basis of aforesaid complaint, Crime No. 156 of 2021 has been registered with Police station, Pathardi, Dist. Ahmednagar under Section 380 of IPC against in all 3 accused persons – applicants. On completion of investigation, charge sheet has been filed in the Court of JMFC at Pathardi. Consequently, RCC No. 216 of 2022 is pending trial.

3. Mr. P.A. Bharat learned advocate for the applicants submits that the applicants have been falsely implicated in aforesaid crime on account of matrimonial dispute between Rohini and Popat i.e. grand daughter in law and grand-son of respondent No.2. He would submit that on 14.3.2021 crime No. 121 of 2021 has been registered with police station, Shevgaon on the basis of complaint given by Rohini i.e. daughter of applicants No. 1 and 2 and sister of applicant No.3.

4. By way of counter blast, present compliant has been lodged, thereby implicating all family members of Rohini. He would further submit that even taking contents of FIR as it is, no offence can be made out against applicants as the gifts of marriage given to Rohini were taken back. He would further point out that alleged incident is dated 27.1.2021. The FIR is lodged on 22.3.2021. There is delay of almost of 2 months in lodging the FIR. In the intervening period, crime No. 121 of 2021 has been registered on complaint given by Rohini against her in-laws. He would therefore urge to quash and set aside impugned FIR and criminal proceeding.

5. Per contra, learned APP and the learned advocate appearing for respondent No.2 vehemently opposes the prayers, contending that the stipulations in the FIR are sufficient to make out offence under Section

380 of IPC. The contents of the FIR are supported by statement of the witnesses cited in the charge sheet. Consequently, there is triable material against the applicants.

6. We have carefully considered the submissions advanced by learned advocates appearing for respective parties alongwith documents tendered into service. Apparently, it is a case of matrimonial dispute and consequential complaints against each other. Initially, Rohini Popat Nagargoje filed FIR in crime No. 121 of 2021 dated 4.3.2021 alleging offence under Section 498-A, 323, 504, 506 r/w. 34 of IPC against her husband Popat, father in law - Ankush, mother in law Thakubai and brother in law Machindra. The impugned FIR is filed by Ashrabai Sayaji Nagargoje – grandmother in law of Rohini against her family members. It appears that Rohini married with Popat in the year 2012. Out of the matrimonial relationship, she has two children. The matrimonial dispute started some time in the year 2019. The impugned FIR has been lodged on 22.3.2021 pertaining to incident dated 27.1.2021. There is no explanation for delay of more than 2 months in lodging the FIR. Obviously, there is reason to believe that on registration of Crime No. 121 of 2021 on 4.3.2021 at instance of Rohini, the impugned FIR has been instituted through grandmother in law of Rohini to implicate her family members. The deeper scrutiny of FIR would suggest that allegation is that of taking away married articles presented at the time of marriage of Rohini and Popat. Admittedly, now Rohini is residing alongwith her parents. They took away gift articles kept at her matrimonial home. Rohini appears to be the possessor of those articles while she was residing in the matrimonial home.

7. In this background, it is necessary to examine whether there

a case of theft in dwelling house can be made out, which is punishable under Section 380 of IPC. Section 378 of IPC defines “Theft”. To constitute “theft”, movable property must be dishonestly taken away from the possession of the person without his consent. In the facts of the present case, it would be difficult to hold that the property was in possession of respondent No.2-informant. Rohini had every right to take away gift articles received at marriage from her parents. Pertinently, no complaint was made as regards to incident for a period of about two months from the date of incident, particularly, till Rohini lodged report against her in-laws for offence under Section 498-A.

8. At this stage, it would be apposite to refer to the guidelines laid down in the case of ***State of Haryana vs. Ch. Bhajanlal and others***” reported in ***AIR 1992 S.C. 604***, as to exercise of jurisdiction under Section 482 of Cr.P.”C. particularly, in para. 108, which reads thus :-

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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 F.I.R. do not constitute a cognizable 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.*

. Clause No.7 of the aforesaid guidelines refers that where criminal proceeding is manifestly attended with malafide 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, the power under Section 226 of the Constitution of India and inherent powers under Section 482 of the Code can be invoked.

9. Applying the aforesaid principles of law espoused by the Supreme Court, if allegations in the FIR and material in the charge sheet is scanned, it can be gathered that there is serious matrimonial dispute between the family of the applicants and respondent No.2. Initially Rohini instituted complaint against husband and in-laws and to counter blast the said complaint, the belated FIR has been instituted thorough the respondent No.2 against the applicants. Even assuming the contents of the FIR to be true and correct, the ingredients of Section 378 of IPC to constitute theft cannot be made out against applicants, since articles gifted in the marriage to Rohini by the applicants were taken away from her matrimonial home. The respondent No.2 or her family members can not claim independent ownership and possession in respect of those articles.

10. We therefore hold that the impugned FIR is merely a counter blast against the FIR lodged by Rohini against husband and in-laws. Therefore, it becomes necessary for this Court to check the frivolous complaints or allegations and prevent the abuse of process of law and procedure. In the result, we deem it appropriate to exercise our inherent powers to secure the ends of justice. Hence, we pass the following

order :-

O R D E R

[I] Criminal application is allowed;

[ii] FIR No. 156 of 2021 dated 22.3.2021 registered with Police Station, Pathardi, Dist. Ahmednagar for the offence under Section 380 of I.P.C. as well as charge sheet No. 219 of 2022 dated 21.3.2022 and consequential criminal proceeding pending before the JMFC at Pathardi. is hereby quashed and set aside to the extent of applicants herein.

[iii] The application stands disposed of.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-