



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1605 OF 2021

- 1) Amey S/o Arun Jadhav
- 2) Anjali W/o Arun Jadhav
- 3) Shivanand S/o Sangram ButterPatil .. Applicants

Versus

- 1] The State of Maharashtra
Through Ramanand Nagar Police Station,
Jalgaon, Vide C.R. No. 0387 of 2020
- 2] Swapna W/o Amey Jadhav .. Respondents

**WITH
CRIMINAL WRIT PETITION NO. 542 OF 2021**

- 1] Mrs. Sneha Buttepatil
- 2] Mr. Mahesh Krishnarao Khedkar
- 3] Mrs. Madhuri Mahesh Khedkar .. Petitioners

Versus

- 1] The State of Maharashtra
Through Ramanand Police Station
- 2] Mrs. Swapna Amey Jadhav .. Respondents

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Advocate for applicant / petitioner : Mr. Amit A. Yadkikar

APP for the respondent – State : Mr. V.K. Kotecha

Advocate for the respondent no. 2 in both matters : Mr. Atmaram J. Patil

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 05 APRIL 2024
PRONOUNCED ON : 15 APRIL 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

These are Criminal Application and Criminal Writ Petition
filed under section 482 of the Code of Criminal Procedure and Article
226 of the Constitution of India, by the husband of respondent no. 2

and his relatives seeking quashment of crime no. 387 of 2020 registered with Ramanand Nagar Police Station, Jalgaon for the offences punishable under section 498-A, 354, 323, 504, 506 read with section 34 of the Indian Penal Code and the consequent chargesheet bearing no. 218 of 2023 and Regular Criminal Case no. 162 of 2023 pending in the Court of Chief Judicial Magistrate, Nandurbar and Regular Criminal Case no. 422 of 2021 pending in the Court of Chief Judicial Magistrate, Jalgaon.

2. We have heard both the sides finally at the stage of admission, on their request.

3. In order to avoid rigmarole, both the matters are being disposed of by this common judgment.

4. Criminal Application has been filed by the husband, his mother and the husband of his real sister, whereas the writ petition has been filed by the married sister and the husband's maternal uncle and his wife.

5. The sum and substance of the allegations, as can be discerned from the chargesheet, is to the effect that respondent no. 2 and applicant no. 1 - Amey solemnized marriage on 03-12-2019. Both were divorcees. After marriage, she started cohabiting with him in his house together with his mother Anjali at Aundh, Pune. Her sister in law

- petitioner - Sneha and her husband - applicant Shivanand were also residing at Aundh in the vicinity of her matrimonial home. While her husband was out for work throughout the day, Sneha used to stay in the matrimonial home of respondent no. 2. Even the maternal uncle of the husband and his wife also have been staying in Aundh area and used to frequent to the matrimonial home. It is then alleged that when respondent no. 2 was to come back to her parental home according to the custom soon after the marriage and her brother had come to take her, the mother-in-law told her brother that she was his only sister, her in-laws should have been offered gold ornaments at the time of marriage and demanded dowry in the form of gold. On 27-12-2019, when her husband had been to her parental home to take her back, even at that time there was an insistence that he should have been gifted with a gold ornament. It is thus alleged that since inception there was direct demand of dowry and she was subjected to physical and mental harassment on that count.

6. It is then alleged that on 01-01-2020, when she was asleep in the midnight, applicant - Shivanand entered into her bedroom, pressed her breasts and was about to kiss her but she woke up and when she was about to raise alarm, he smothered her with hand and threatened not to disclose the incident to anybody else he would defame her and would make her life miserable. He also declared that

he would not hesitate in killing her and also said that in similar way he had not allowed the first wife of husband Amey to cohabit as she was not listening to him. He then took her downstairs where her husband Amey and her mother were present with her sister in law - Sneha. In their presence, Shivanand told all of them that the respondent no. 2 should not be allowed to sleep unless he reached home. Such episode shook her mental condition. Apprehending the consequences, she did not disclose the incident as already every one was against her.

7. The FIR then alleges that husband - Amey, sister-in-law - Sneha and Shivanand were compelling her to dress inappropriately. When she questioned about such insistence to her mother-in-law - Anjali, the latter declared that she will have to live up to the expectations of her son-in-law and no one would go against his wish. The mother-in-law used to repeat the demand of dowry in the form of gold. When she declared that it was impossible for her father to concede to the demands, the maternal uncle of the husband and his wife suggested her to have an employment. When she refused, they told her that it was her second marriage and, thereafter, there would be no such opportunity again and if she did not mend her ways according to their expectations, she will have to return to the parental home and thus, she was subjected to mental torture even by them.

8. The FIR then alleges that her husband used to beat her on account of the demand for gold and money. Since it was her second marriage, she was afraid of informing her parents about such ill-treatment. The mother-in-law and sister-in-law - Sneha used to instigate the husband in doing so.

9. It is then alleged that on 27-01-2020, under some false pretext, her in-laws called her parents to her matrimonial home. When her parents asked as to what had happened, all the applicants and the petitioners expressly demanded an amount of Rs.10 Lakh. When her father expressed his inability, they declared that they would allow her to continue to cohabit only if the money was paid else insisted for giving the divorce. Shivanand said that her husband - Amey could have a live-in relationship. He himself was a chartered accountant and is knowing the laws and would not be afraid of anybody. He would see to it that the evidence would be concocted and he would not allow her to continue the matrimonial life and drove away her parents, brother and even her. She had to leave the matrimonial home leaving behind her Streedhan. Since she and her parents were of the view that somehow she should continue to lead the matrimonial life, no immediate steps were taken to lodge any complaint. They tried to engage in deliberations with the applicants and the petitioners but it yielded no fruits. On the contrary, husband - Amey sent her a notice on

14-02-2020. By reply notice she asked him to take her for cohabitation. Even in that reply, with the hope that the prospect of resuming matrimonial life should not be affected, nothing was mentioned about the insistence of demand of dowry or even the molestation. Ultimately, she had to approach the Women's Grievance Cell and lodged a compliant on 25-09-2020. The applicants and the petitioners did not respond to the notice served by that cell.

10. It is alleged that on 16-11-2020, her husband, mother-in-law, sister-in-law and her husband Shivanand came to her parental home and started questioning her as to why she had caused a notice to be sent to them by the Police and declaring that they were not afraid of such notices and even the Police, said that either the money be paid or should agree for divorce. When her father and she herself declared that she was willing to resume cohabitation, they insisted that they would allow her to do so only if they were paid Rs.10 Lakhs. However, they did not turn up to the Women's Grievance Cell and ultimately, the FIR was lodged on 23-12-2020.

11. Mr. Yadkikar, learned advocate for the applicants and the petitioners would take us through the chargesheet and would narrate the afore-mentioned sequence of events and would try to impress upon us as to how there is every room to believe that the FIR is a figment of concoction. Attempt has been made to rope in relatives of the

husband. Some serious allegations regarding demand of money and the molestation are afterthought. Respondent no. 2 had many occasions to raise the issue at some earlier point of time. There is no plausible explanation coming forth even in respect of the serious allegations against applicant - Shivanand about he having molested her were never raked up earlier. He would also advert our attention to the photographs annexed to the application to demonstrate as to how on that basis, taking into account the date and timing of the photographs taken, it is evident that respondent no. 2 was leading happy marital life.

12. He would then submit that since inception, the behaviour and conduct of the respondent no. 2 at the matrimonial home was whimsical. She started throwing tantrums even for petty reasons. She was unnecessarily being inquisitive. She made every attempt to trace by examining the mobile phone of the husband as to whom he had called or from whom he had received the calls. Even she used to make enquiry about it. She was arrogant and used to insult his mother due to which she developed blood pressure. She used to engage in some telephonic conversation daily for long duration and used to delete it.

13. She was never required to perform domestic chores as there was a maid. When he searched from her facebook account in her phone, some unknown person was seen asking her if her husband was romantic. When the message was opened, he realized that there was danger to his life. He managed to transmit a message from her phone to his own phone which he had immediately deleted from her phone. He realized that she was looking up to some black magic to be used against him and his mother and she was being assured of success. There was hardly any marital life led by the couple peacefully. All such grievance was made by the husband by lodging a complaint with the Commissioner of Police on 30-01-2020.

14. Mr. Yadkikar would also demonstrate as to how the allegations in the FIR and the one made in the reply notice dated 25-02-2020 and the complaint lodged by the respondent no. 2 under the provisions of the Protection of Women From Domestic Violence Act, are not compatible; rather there is material variance which is sufficient to disbelieve the entire narration of the prosecution. It would be abuse of the process of law to make the applicants and the petitioners face the charges. The matter is squarely covered by catena of judgments and the crime and the criminal cases are liable to be quashed as it fits in the parameters laid down in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.***

15. The learned APP and the learned advocate for the respondent no. 2 would oppose the proceedings. They would at the outset remind us of the limitations on the powers of this Court under Article 226 of the Constitution and section 482 of the Code of Criminal Procedure, in the matter of quashment of crime. They would insist that a threadbare scanning of the material cannot be undertaken. Opportunity deserves to be extended to the prosecution to substantiate the charge at a full-fledged trial. It is not a matter of false implication. Even accepting the husband's stand in the notice and the complaint lodged by him with the Police insinuates that all was not well in the matrimonial life, the version may be different. Precise and specific allegations have been made against each of the applicants and the petitioners to demonstrate as to how they were acting in concert. The trial cannot be closed at the threshold. The applicants and the petitioners would get every opportunity to defend the charges and both the proceedings be dismissed.

16. Having considered the rival submissions and having perused the papers, one indeed has to bear in mind the inherent limitations in exercising the powers under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure while entertaining a request for quashment of a crime. It is trite that no mini trial can be held by resorting to scrutiny of the material collected during

the investigation. The whole exercise is restricted in ascertaining as to if ingredients of the offence can be deduced from the allegations and the material collected by the Investigating Officer. The ultimate success or failure of the prosecution is not germane to the enquiry, as has been laid down in the matter of ***D.K. Ganesh Babu V. State of Tamil Nadu; 2010(2) SCALE 698.***

17. Bearing in mind these settled principles, if one adverts to the chargesheet, in our considered view, it does not seem to be a matter of concoction or false implication. The allegations in the FIR together with the statements of the witnesses would clearly make out the ingredients for constituting the crime and the specific charges attributed to each of the applicants.

18. True it is that the allegation regarding the incident of demand of dowry and molestation were not disclosed by the respondent no. 2 at an earlier point of time, however, her explanation in the reply to the notice served to her by the husband and in the FIR and the statements of her parents, make an attempt to explain it by saying that since she was hoping to continue the marital life, the allegation being serious, was not raked up at earlier point of time. At this stage, the explanation seems to be plausible and would reveal the complicity of applicant - Shivanand apart from several other allegations in the FIR and the statements of the witnesses.

19. Similar is the case with respect to sister-in-law - Sneha and the maternal uncle of the husband and his wife who allegedly insisted the respondent no. 2 to search for a job. There are allegations about the maternal uncle and his wife having warned her that if she refused to undertake a job, this being her second marriage, she would not have any further opportunity and will have to permanently stay at the parental home. This does not seem to be a mere suggestion but undesirable insistence laced with insinuations, which according to us, can easily be appreciated as an act committed with an intention to harass her mentally.

20. One cannot lose sight of the fact that the sister-in-law and her husband and the maternal uncle of the husband and his wife have all been residing in the vicinity of matrimonial home and at this juncture, there is nothing to dis-believe that they all were frequenting to the matrimonial home. So far as the attempt of the applicants and the petitioners to belie respondent no. 2 specifically adverting our attention to the photographs annexed with the application, in our considered view, this piece of evidence in the form of photographs, cannot be treated at this juncture as a material of impeccable nature or sterling character, which can be resorted to, while entertaining a request for quashment of the crime.

21. Variance between the FIR, the reply to the notice and the complaint lodged by the respondent no. 2 under the Domestic Violence Act also cannot be resorted to, much less to reach a conclusion that the allegations in the FIR are an afterthought, more so in the light of the fact that an attempt has been made even in the FIR and the statements of the witnesses to demonstrate and come out with an explanation for absence of allegations regarding demand and the incident of molestation at any earlier point of time.

22. We are of the firm view that this is not a fit case covered by the settled decision in the matters of ***Preeti Gupta and Anr. V. State of Jharkhand and anr.; AIR 2010 SC 3363, Geeta Mehrotra and Anr. V. State of U.P. And another; AIR 2013 SC 181*** and ***Kahkashan Kausar @ Sonam and Ors. Vs. State of Bihar and Ors.(Criminal Appeal No.195/2022 decided on 08.02.2022); (2022) 6 SCC 599*** and there is no ground as contemplated in the matter of ***Bhajan Lal*** (supra) to quash the crime and the criminal case.

23. The Criminal Application and the Criminal Writ Petition are dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/