

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 950 OF 2018

Farhad Yakub Patka

...Applicant

Versus

1. Prosecutrix X (Ambar Abdul Majid Patel)

2. The State of Maharashtra

...Respondents

....

Mr. Subhash Jha a/w Ms. Praveena Venkatraman, Priti Singh, Ritesh Kesarwani and Kunal Jadhav i/by Law Global Advocate for the Applicant.

Mrs. M. M. Deshmukh, Addl.PP for Respondent-State.

Mr. Firoz Usman a/w Umair Irshad, Advocate for Respondent.

Mr. Amol Solunke, PSI, Agripada Police Station is present.

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**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 10th APRIL 2024

P.C.:-

1. The applicant has invoked inherent powers under Section 482 of Cr.P.C. challenging the proceedings in CC No. 46000357/PW/2018 pending in the Court of Learned Metropolitan Magistrate, 46th Court, Mazgaon (Sewri), Mumbai, arising out of FIR dated 22nd July 2016 registered with Agripada Police Station, Mumbai vide C.R. No. 215 of 2016 for offences punishable under Sections 376, 377, 323, 504, 506(2) of Indian Penal Code, 1860.

2. The case of the complainant in brief is as follows:-

(i) The complainant is residing with her divorced husband (applicant), her son Abdulla aged around 13 years and three daughters aged around 11, 9 and 6 years.

(ii) The marriage of complainant was solemnized with accused /applicant on 12th May 1991 as per Muslim Rites. After marriage, the complainant started residing with the applicant, father-in-law, mother-in-law, brothers-in-law and their wives, sisters-in-law and their children.

(iii) Few days after the marriage, her husband treated her well. Thereafter, he continued to abuse the complainant and his relations. The accused subjected the complainant to sexual relationship without her consent. He indulged in unnatural sex. On protest, she was assaulted and intimidated. Due to his terror, she did not lodge complaint. She was pregnant. Even during pregnancy, she was subjected to physical relationship. She did not complaint to anyone. In 1992, the complainant delivered baby boy.

(iv) In 1995, second child was born. In 2003, 2004 and 2006 the complainant delivered one son and two daughters.

(v) In 2008, the relatives of the accused told the complainant and accused to stay separately. They shifted to another place. The complainant continued to stay with her husband till 2016. In 2010, she delivered child girl. In 2011 and 2013 marriages of their daughter and son were

performed.

(vi) The accused continued to subject the complainant to unnatural sexual relationship.

(vii) In 2014, the complainant decided to seek divorce from her husband. She approached the Kazi for obtaining divorce. The Kazi sent notices. The accused did not reply to the notices.

(viii) The complainant repeatedly requested the accused to dissolve the marriage. The complainant was admitted to hospital. Under the garb that her mental state is disturbed. She was given treatment. She was discharged from hospital.

(ix) In October 2015, the complainant informed about the cruelty meted out to her by the accused to her brothers. They tried to convince the accused not to ill-treat her. The accused promised that he would maintain cordial relationship with the complainant and would not subject her to unnatural acts.

(x) In June 2016, both of them went to Umrah, Saudi Arabia. They returned to India. The complainant consulted the religious Mufti to know whether she has been divorced as per Sharyat Law. She was informed that marriage has been dissolved. The accused told her that, they should obtain legal divorce and perform marriage again. The complainant was taken to the Court. Notaries documents was prepared and she was legally divorce on 18th July 2016. Thereafter, the complainant refused to stay with the

accused.

(xi) The accused forced her to stay with him. Although, divorce was obtained, the accused subjected the complainant to natural and unnatural sex from 19th July 2016 to 22nd July 2016. She approached the police for lodging complaint and provided the video recordings about the sexual acts of the accused.

(xii) The supplementary statement of the complainant was recorded on 4th August 2016, wherein, she stated that, she had recorded the sexual acts committed by accused with her in her cell phone which was converted into pen-drive and handed over to police. On completing investigation, charge-sheet is filed.

3. Learned Advocate for the applicant submitted that, FIR is false. It is based on concocted version of complainant. It is lodged out of vendetta. The complainant was married to the applicant. They stayed together for several years. Out of wedlock, 6 children were born. The relationship was consensual in nature. No offence under Section 376 of IPC is made out, it would be an abuse of process of law to continue the proceedings against the applicant. Affidavit of consent was not fabricated.

4. Learned Advocate for applicant has relied upon the following decisions:-

- (i) Rajiv Thapar and Ors. Vs. Madan Lal Kapoor¹;
- (ii) Mohd. Shamim and Ors. Vs. Nahid Begum (Smt.) and Anr.²;
- (iii) Prashant Bharti Vs. State (NCT of Delhi)³;
- (iv) Vineet Kumar and Ors. Vs. State of Uttar Pradesh and Anr.⁴

5. Learned APP submitted that, the allegations in the FIR are sufficient to constitute the offences alleged against the accused. On completing investigation, charge-sheet is filed. There is no ground to quash the charge-sheet. The grounds urged by the accused are required to be tested during trial.

6. Learned Advocate for Respondent No.1 submitted that, proceedings cannot be quashed at this stage as the prima facie case is made out against the applicant. Khula proposal was given by wife for divorce. Khulanama is acceptance of divorce by husband. Divorce was granted on 18th July 2016. The incident of sexual relationship had occurred after the divorce. The applicant had relied upon the purported affidavit giving consent to the FIR being quashed. The said consent affidavit was not signed by respondent No.1. It was false document. There are no documents to show that the applicant or his Advocate have approached the respondent No.1 and/or any affidavit have never been approved by respondent No.1 nor signature of respondent No.1 or thumb impression has obtained on any affidavit. The

1 (2013) 3 SCC 330

2 (2005) 3 SCC 302

3 (2013) 9 SCC 293

4 (2017) 13 SCC 369

affidavit was not relied upon. The affidavit filed along with application is not signed by respondent No.1. It is fabricated document. The respondent No.1 has not signed on the register of notary as is falsely shown in the affidavit. It does not contain any identification nor any proof of any photo identification or nor any documents confirming her identity. The respondent No.1 is desirous for pursuing the proceedings as she has not settled with applicant in any manner. The applicant had preferred an application for return of passport for the purpose of renewal before the Court of Sessions. It was contended that, the accused had surrendered his passport by depositing the same before the Court of Metropolitan Magistrate in pursuance of order dated 2nd May 2018 passed in MA No.88 of 2018. That as the accused may require to travel abroad in future after seeking permission of the Court and hence, it was necessary to renew the passport. The Court of Sessions vide order dated 14th November 2018 observed that, the application is for return of passport on the ground that it is required for renewal. However, copy of the passport reveals that, period of its validity is ten years i.e. from 22nd April 2015 to 21st April 2025. Passport is not required to be renewed on the ground of expiry of validity period within near future. The application does not reveal any other ground for renewal of passport. As such, the prayer for returning the passport of the accused. As such the prayer for returning the passport for specific purpose of getting the passport renewed appears to be misleading.

Hence, the application was rejected. Defence of the accused cannot be considered at this stage. The accused has been avoiding the proceedings before the lower Court. The conduct of the applicant is required to be considered. FIR was registered by son under influence of applicant. The said FIR has been quashed.

7. Learned Advocate for Respondent No.1 has relied upon the following decisions:-

- (i) Nandlal Chaturvedi Vs. State of Maharashtra⁵;
- (ii) Gian Singh Vs. State of Punjab and Anr. delivered by Apex Court in special Leave Petition (Cri.) No. 8989 of 2010 and other connected matters decided on 24th September 2012.
- (iii) Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr. delivered by Apex Court in Appeal (cri.) 402 of 2005 decided on 11th March 2005.

8. Marriage between the applicant and respondent No.1 was solemnized on 12th May 1991. They cohabited for a long time. Out of wedlock, children were born to them. The complainant claimed that by executing notary document, the marriage was dissolved on 18th July 2016. It was alleged that, the complainant was subjected to natural and unnatural sexual acts. It is pertinent to note that, first children was born in 1992 and subsequently, in the year 2003, 2004 and 2006 three children were born

5 Criminal Writ Petition No.1327 of 2015 decided on 12.07.2018.

out of the wedlock. In 2016, they went to *Umrah*. According to complainant, divorce was executed on 18th July 2016. She was subjected to sexual intercourse from 19th July 2016 to 22nd July 2016. The FIR was registered on 22nd July 2016. Apparently, even after divorce, both of them were residing together. The relationship is apparently, consensual. The FIR was lodged out of vendetta and on account of differences. Both the parties have debated on the issue of filing affidavit of consent by complainant which affidavit according to complainant was fabricated and it was not signed by complainant. Since the complainant has preferred separate petition seeking action in respect to the complaint relating to the said affidavit, wherein we have granted liberty to respondent no.1 to file private complaint, we refrain from making any observations on the said affidavit. The contention of the applicant is that circumstances on record would indicate that the affidavit was filed by complainant giving consent for quashing the proceedings. As stated above, we are not quashing the proceedings on the basis of the affidavit. However, factual matrix of this case would indicate that, the complaint was filed out of malice. Admittedly, the applicant and respondent No.1 maintained marital relationship from 1991 till 18th July 2016. In spite of purported divorce, both the parties stayed in the same premises. The statement of son was recorded on 30th July 2016. He stated that, he is aged around 24 years. His father (applicant) is psychiatrist patient. He is taking treatment since last 8 to 10

years. His mother had stopped the treatment. His father suffering from mental pressure and there were quarrel between his parents. They were having cordial relationships since 23 years. In September 2014, his mother (complainant) stated that, she does not want to stay with applicant and she started staying in separate room in the same premises. She used to frequently talk on cell-phone and using Whats-App. The complainant told everyone that, applicant is short temper person and she does not want to stay with him. The family members set together to ascertain the reason for complainant's separation from applicant. The applicant told them that, the complainant is in illicit relationship with one person. Respondent No.1 called *Kazi* and informed that, she wants unilateral *Khula*. She was advised by family member not to pursue *Khula*. He downloaded phone recording software from her cell phone and verified the same. It was revealed that, the complainant was in illicit relationship with one person. There was obscene conversation between both of them. Recording was heard by the family members. She was confronted. It discloses that, she is relationship with the said person and she wants to separate herself from applicant. The doctor advised treatment for respondent No.1. She was taken to hospital. She was admitted in the hospital. She was taking treatment at Masina hospital. She was discharged. She approached the police and lodged N.C. complaint. The statement of daughter of applicant and respondent No.1 was recorded on 30th July 2016. She has narrated similar version.

9. From the documents on record it can be seen that, the FIR has been lodged with malafide intention to implicate the applicant in the crime. It is out of vendetta. The applicant and respondent No.1 stayed together as husband and wife for 23 years. The alleged incident had occurred while they were residing in the same premises. The proceeding suffers from malafide and deserves to be quashed.

10. In the case of ***Rajiv Thapar and Ors. Vs. Madanlal Kapoor*** (supra), the Hon'ble Supreme Court has held that, to invoke inherent jurisdiction to quash the proceedings on the basis of defence material. The High Court has to be fully satisfied that the material produced and relied upon by the accused would lead to conclude that the defence is based on sound, reasonable and indubitable facts, rule out and displace the assertions contained in charges levelled against the accused without necessity of recording any evidence, should not have been refuted or alternatively cannot be justifiably refuted, being material of sterling and impeccable quality and whether the proceedings with the trial would result in an abuse of process of Court and would not serve the end of justice.

11. In the case of ***Mohd. Shamim and Ors. Vs. Nahid Begum (Smt.) and Anr.*** (supra), the FIR was lodged by wife against the husband and his family members. After issuance of legal notice by the husband intimidating

that he had divorce the respondent/complainant. The settlement was arrived at between the parties and out of total amount payable to the wife, part amount was paid and balance amount was to be paid after no objection for quashing the FIR. The application was filed for quashing the proceedings. The quashing was objected by the complainant. It was held by High Court that, in view of the stand taken by complainant, there was no ground to interfere. The Apex Court held that, denial of execution of the deed of settlement was afterthought and cannot be accepted. In view of the fact that, the settlement was arrived at intervention of judicial officer and the settlement appears to be genuine. The proceedings were quashed as it would amount to abuse of process of Court.

12. In the case of ***Prashant Bharti Vs. State (NCT of Delhi)*** (supra), it was held that, the investigation could not find any proof in support of offences and the material relied upon by the accused in support of his plea for quashing, was sound, proceedings with the trial would result in abuse of process of Court and would not serve the ends of justice.

13. In the case of ***Vineet Kumar and Ors. Vs. State of Uttar Pradesh and Anr.*** (supra) it was held that, inherent power given to the High Court under Section 482 of Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a

person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit the prosecution to go on if the case falls in one of the categories as enumerated by this Court in the case of ***State of Haryana Vs. Bhajan Lal*** (supra). Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with *mala fide* and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding.

14. In the case of ***State of Haryana Vs. Bhajan Lal***⁶, it was observed that, where the 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, the proceedings can be quashed.

15. In the case of ***Gian Singh Vs. State of Punjab*** (supra), the Apex Court has observed that, in what cases power to quash the criminal proceedings or complaint or FIR may be exercised where the parties have settled their dispute would depend on the facts and circumstances of each case. Before exercise of such power, the High Court must have due regard

6 1992 SCC (Cri) 426

to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be quashed even though the victim or victim's family have settled the dispute.

16. In the case of ***Iqbal Singh Marwah and Anr. Vs Meenakshi Marwah and Anr.*** (supra), the Apex Court considered the issue relating to bar under Section 195 (b)(ii) of Cr.P.C. . it was held that, bar would be attracted in the event the proceedings of the Court are tampered and not to the document fabricated and submitted before the Court. In the case of ***Nandlal Chaturvedi Vs. State of Maharashtra*** (supra), this Court had refused to quash the proceedings under Section 482 of Cr.P.C. on the ground of settlement as accused were involved in serious offences under the Prevention of Corruption Act.

17. In the light of observation made hereinabove, we are of the view that continuation of impugned proceedings against applicant would be an abuse of process of law and hence, are required to be quashed.

ORDER

- (i) Criminal Application (APL) No.950 of 2018 is allowed;
- (ii) The impugned proceedings in CC No. 46000357/PW/2018 pending in the Court of Learned Metropolitan Magistrate, 46th Court, Mazgaon (Sewri), Mumbai, arising out of FIR dated 22nd July 2016 registered with

Agripada Police Station, Mumbai vide C.R. No. 215 of 2016 is quashed and set aside.

(iii) Application stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)