

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1627 OF 2019

Swapnil Sainath Varnekar And Ors.

...Applicants

Versus

The State Of Maharashtra And Anr.

...Respondents

Mr.Veerdhaval Kakade Advocate for Applicants.

Mrs. M. M. Deshmukh, APP for Respondent-State.

Mr. Abhay D. Parab Advocate for Respondent No.2.

API V. M. Dhumal, Hinjwadi Police Station is present.

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

DATE : 27th MARCH 2024

P.C.:-

1. The applicants are facing prosecution for offences under Sections 498-A, 323, 504 read with 34 of the Indian Penal Code, 1860 and Sections 3(2)(v), 3(1)(r), 3(1)(s) and Section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of the Civil Rights Protection Act. FIR was registered on 21st May 2019.

2. The marriage between complainant and the applicant No.1 was solemnized on 4th May 2018. The complainant has alleged that, accused had abused, intimidated and harassed her. She was abused on her castes. She was subjected to ill-treatment by all the accused. She was subjected to physical and mental cruelty.

3. Pursuant to registration of FIR, the investigation proceeded and charge-sheet is filed.

4. Applicant No.1 is husband, applicant No.2 is father-in-law, applicant No.3 is mother-in-law of Respondent No.2. Applicant No.4 is cousin of applicant No.1. Applicant No.5 is maternal uncle. Applicant No. 6 is maternal aunt of applicant No.1. Applicant No.7 is the uncle of Applicant No.1. He has expired during the pendency of proceedings.

5. Learned Advocate for Applicants submitted that the FIR contains omnibus and vague allegations. No specific overtact has been attributed to the applicants. The allegations are afterthought. There is delay in lodging the FIR. The alleged caste abuses had occurred in the house. Offence under the Atrocities Act is not made out as the alleged incident had not occurred within public view. Prior to registration of FIR dated 21st May 2019, the complainant had lodged the complaint with police station on 9th February 2019. The said complaint refers to the chats found in the cellphone of the husband. The said complaint does not refer to any allegations which are reflected in the FIR. The applicant Nos. 2 and 3 had initiated the proceedings under the Domestic Violence Act on 16th April 2019. Applicant No.1 has filed the proceedings for divorce on 20th March 2019. The Applicant No.1 had also filed complaint on 25th March 2019. On 21st February 2019, the applicant No.1 has filed complaint against wife and her brother. Non-cognizable complaint was filed by wife on 23rd February 2019.

Mother-in-law of complainant has also filed complaint on 19th February 2019 against Respondent No.2. Taking the allegations as it is, offence under Section 498-A of IPC and any other offences would not be attracted against applicants.

6. Learned Advocate for Applicants has relied upon the decisions of the Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand and Anr.**¹ and another decision of this Court in the case of **Bajirao Shankar Darade Vs. The State of Maharashtra and Anr.** delivered in Criminal Application No. 1952 of 2020 decided on 20th February 2023.

7. Learned APP submitted that, there is sufficient material against the applicants. The complainant was subjected to ill-treatment amounting to physical and mental cruelty. There are specific allegations against the husband and all the other accused has caused harassment to the complainant.

8. Learned Advocate for Respondent No.2 submitted that, the FIR and statement of witnesses establish that the complainant was subjected to ill-treatment. She was abused on the basis of caste. Chats found in the cellphone of the husband indicate that he was in relationship with other ladies. Prima facie case is made out against the applicants. The complainant was repeatedly harassed and abused. Statement of the complainant and other witnesses corroborate each other. Hence, petition

¹ (2020) 10 SCC 710

may be dismissed.

9. FIR was registered on 21st May 2019. The applicants have filed complaint against Respondent No.2, prior to registration of FIR. The alleged abuses on caste had occurred much prior to the registration of FIR. The complaint dated 9th February 2019 does not refer to abuses on caste. The alleged abuses had not occurred within public view. As far as Applicant Nos. 2, 4, 5 and 6 are concerned, the allegations are vague and omnibus. However, we find that there are specific allegations against the applicant No.1 (husband) and Applicant No.3 (mother-in-law). On the basis of nature of allegations attributed to the other accused, they cannot be prosecuted for alleged offences.

10. Considering the aforesaid circumstances, we pass following order:-

ORDER

(i) Criminal Application (APL) No. 1627 of 2019 is partly allowed.

(ii) The impugned proceedings in Special Case No.171 of 2020 pending before the learned Additional Sessions Judge, Pune arising out of C.R. No. 653 of 2019 registered with Hinjewadi Police Station, Pune is quashed and set aside against Applicant Nos. 2, 4, 5 and 6.

(iii) Prayer for quashing the proceedings in Special Case No.171 of 2020 pending before the learned Additional Sessions

Judge, Pune arising out of C.R. No. 653 of 2019 registered with Hinjewadi Police Station, Pune qua Applicant Nos. 1 and 3 stands rejected.

(iv) Application stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)