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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 832 OF 2024

Ibrahim Vazir Khan

..... Accused/Applicant

Versus

The State of Maharashtra & Anr.

..... Respondents

Mr. Ibrahim Vazir Khan, Applicant present in person.

Mr. J. P. Yagnik, Addl. G.P. for the State.

Mr. M. P. Mishra for the Respondent No.2.

**CORAM : RAVINDRA V. GHUGE AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 16th JANUARY, 2025

PRONOUNCED ON : 23rd JANUARY, 2025

JUDGMENT (PER - RAJESH S.PATIL, J.) :-

***Marriage is considered a journey where two different people
unite to share a life time of friendship and love.***

1. In the present case, wife/Complainant has filed 498A proceedings against the husband/Applicant herein, after 29 years of

marriage. The present Criminal Application has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the original accused person (husband) against whom offence vide FIR No. 0556 of 2023 has been registered at Amboli Police Station, Mumbai at the behest of Respondent No.2 for the offence punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code.

2. It has been submitted by the Applicant that marriage between Applicant and Respondent No.2 was solemnized on 11th December, 1994, at Mumbai. There are two children born out of the said wedlock viz. Saqlain born in the year 1997 and Sufiyan in the year 2000. After marriage on or about October 2000, the Applicant went to Saudi Arabia for employment in LG Company. During the said period, the Complainant was residing with her two sons in Mumbai.

3. The Applicant submitted that after getting a job in Saudi Arabia as a Civil Engineer he worked there from the year 2000 to 2020. During the said period between 2002-2018, he purchased six properties/flats in Mumbai which are registered in the name of his wife

i.e. Respondent No.2 herein. The said registration was done by mutual understanding between the couple, i.e. the Applicant and Respondent No.2, and that Respondent No.2 will transfer back the said properties in the name of the Applicant as and when he demands. Further, according to the Applicant, the entire consideration of the said properties are paid from his various bank accounts. The bank statement which is annexed as Exhibit-A to this Application shows the said details.

4. The Applicant submitted that during the COVID period, as he lost his job, in or about September 2020, he returned back to India permanently. After his return to India, the couple had good relations for some days, thereafter, the disputes arose between the couple due to financial discrepancies. The Applicant states that he requested Respondent No.2 to transfer back the said properties (six properties) in his name to which she did not agree. Upon such dispute, the Applicant called a joint family meeting on 18th February, 2022 in which Respondent No.2 agreed to transfer the said properties to the Applicant and further demanded Rs.2 lacs in return.

5. The Applicant further states that the Applicant on the demand of Respondent No.2, paid her Rs.2 lacs to avoid any litigation in Court. But after receiving an amount of Rs.2 lacs, Respondent No.2 further increased her demand of Rs.2 lacs per property which he denied. Consequentially, Respondent No.2 filed domestic violence application bearing No. 152/DV/2022 in the Court of Andheri Metropolitan Magistrate.

6. According to the Applicant, on 22nd May, 2022 Respondent No.2 declared herself as the owner of five properties and issued notices to all tenants/licencees and asked them to transfer the monthly rent in her bank account.

7. Being aggrieved by the conduct of Respondent No.2, the Applicant herein has filed six civil suits against Respondent No.2 in the City Civil Court at Dindoshi. Out of six civil suits, the Applicant was succeeded in obtaining injunction in his favour in three civil suits.

8. As a result of these interim reliefs in favour of the Applicant in three civil suits, Respondent No.2 filed FIR under Sections 498-A, 323, 504 and 506 of the Indian Penal Code against the Applicant on 18th August, 2023 at Amboli Police Station.

9. *Per contra*, the learned Additional Public Prosecutor and the learned Advocate for Respondent No.2 strongly opposed the Criminal Application and submitted that the perusal of the entire FIR and charge-sheet would show that there is ample evidence against the Applicant to convict him under the offence under Sections 498-A, 323, 504 and 506 of the Indian Penal Code. It is further submitted that once charge-sheet is filed, this Court should not entertain the present Writ Petition. The statement recorded of the witnesses and the fact that has come on record clearly shows that the offence is made out against the Applicant. The Applicant/accused person needs to face trial and the FIR and charge-sheet cannot be quashed, at this juncture. There is no merit in the present Criminal Application. Enough evidence has been produced to attract the provisions of Sections 498-A, 323, 504 and 506 of the Indian Penal Code. Therefore, the Criminal Application requires

to be dismissed.

10. We have heard both the parties and the learned Additional Public Prosecutor and with their assistance, we have gone through the documents on record.

11. Admittedly, the Applicant and the Complainant/Respondent No.2 are married 29 years back. Before the subject FIR was filed on 18th August, 2023 on behest of the Complainant (wife), the Complainant and the present Applicant had earlier filed Domestic Violence proceedings and FIR respectively against each other. So also, the Applicant has filed six Civil Suits pertaining to six different properties in the City Civil Court at Mumbai. On 29th April, 2023, the City Civil Court granted interim reliefs in three suits, in favour of the present Applicant thereby directing Respondent No.2 not to create any kind of third party rights in the suit flats till the disposal of the suits. It is not the case of any of the parties that an Appeal has been filed against the said interim orders passed by the City Civil Court.

12. On going through the FIR, it appears that the FIR has been lodged on the basis of a complaint filed by the wife on 18th August, 2023 i.e. after a period of 29 years of marriage, alleging therein that the Applicant (husband) has been threatening the wife that all the six flats which he had purchased from his income which are registered for convenience in the name Respondent No.2 (wife), should be transferred in the name of the Applicant (husband). He has also threatened that he will marry for the second time. It is further alleged that the Applicant (husband) is not allowing Respondent No.2 (wife) to go out of the house and repeatedly taunts the Complainant. By filing 15 Civil Suits in the City Civil Court at Dindoshi, he has been harassing the Complainant.

13. While filing the charge-sheet, the police has recorded the statements of the two sons of the Complainant who have made identical allegations which are similar in lines with that of the Complainant (their mother). The said statements are part of the charge-sheet. A photocopy of the charge-sheet was tendered in the Court while the matter was argued. It is also pertinent to note that in the complaint,

no dates are mentioned when the alleged incidents took place. It is a matter of record that as on date, the Applicant is dwelling in the flat at A/1704, Reyhaan Terraces, Jogeshwari, Mumbai along with the Complainant and their two grown up sons. Going through the entire allegations as narrated in the FIR, we find that the offence punishable under Sections 498-A, 323, 504 and 506 of the Indian Penal Code are not made out.

14. In our view, the fact narrated in the complaint and the FIR, does not *prima facie* disclose the commission of an offence by the Applicant. The allegations against the Applicant are insignificant, on the basis of which no prudent person could reach to a conclusion that there are sufficient grounds to proceed against the Applicant/Accused.

15. The Hon'ble Supreme Court in the decision of ***Abhishek vs. State of Madhya Pradesh, 2023 SCC OnLine SC 1083***, has held in paragraph Nos. 12 and 16 as under:-

“12. The contours of the power to quash criminal proceedings under Section 482 Cr. P.C. are well defined. In V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR,

invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr. P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur v. State of Punjab (AIR 1960 SC 866) and State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

16. Of more recent origin is the decision of this Court in *Mahmood Ali vs. State of U.P.*(Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”

(Emphasis supplied)

16. The ratio laid down in ***Abhishek*** (supra) will squarely apply to the present proceedings. In our view, the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* disclose the commission of any offence, and there is no material to substantiate the allegations made therein. As per the settled principles of law laid down by the Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal, AIR 1992 SC 604***, an FIR can be quashed if the allegations, even if taken at their face value, do not constitute any offence. The contents of the FIR, read in entirety, fail to meet the basic ingredients of the offences alleged. Therefore, the continuation of the criminal proceedings against the Applicant will be abuse of the process of law and warrants interference by this Court under Section 482 of the Code of Criminal Procedure, 1973.

17. We find that there is no merit in the FIR lodged and the charge-sheet filed to that effect as against the Applicant/Accused for the offence punishable under Sections 498-A, 323, 504, 506 of the Indian Penal Code. Accordingly, the **Criminal Application is allowed** in terms of prayer Clause (a), which reads as under :-

(a) That allow this application and to be quashed and set aside the proceedings of said FIR-556/2023 and its Charge Sheet C.C.No-121/PW/2024 pending in the 44th Magistrate Court of Andheri Mumbai.

[RAJESH S. PATIL, J.]

[RAVINDRA V. GHUGE , J.]