



rdg

2-apl-995-2015-J.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.995 OF 2015

1.Hemant Sambhaji Pawar
Age: 39 years, Occu: Service,

2.Sujata Sambhaji Pawar,
Age: 63 years, Occu: Nil,

3.Usha Ramesh Pawar,
Age: 62 years, Occu: Retired,

4.Kamal Shivram Pawar
Age: 75 years, Occu: Nil,

All residing at,
Shiv Niwas, Survey No.13,
Row House No.1, Lane No.2,
Omkar Colony, William Nagar,
Pimpale Gurav, Pune.

....Applicants/Accused

Vs.

1. The State Of Maharashtra
Through Officer in Charge of
Sagavi Police Station, Dist: Pune
(Notice to be served on
APP High Court, Mumbai)

2. Urmila Hemant Pawar,
Age: 38 years, Occu: Housewife,
R/o. Plot No.70, Arkshala Nagar,
Near Genda Mal Naka,
Dist. Satara-415 002.

....Respondents

Mr. Omkar Nagvekar i/by Ms Prabha U. Badadare, for the Applicants.
Mr. Vinod Chate APP, for Respondent No.1-State.

CORAM : A. S. GADKARI AND
DR NEELA GOKHALE, JJ.
RESERVED ON : 20th JUNE, 2024.
PRONOUNCED ON : 28th JUNE, 2024.

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

- 1) The Applicants seek quashing of all the proceedings in R.C.C.No. 2018 of 2013 pending before the Judicial Magistrate First Class (“J.M.F.C.”), Pimpri, Pune arising out of C.R.No. 0 of 2012 initially registered with the Satara Police Station on 9th November 2012 and subsequently transferred to the Sanghvi Police Station, Pune and renumbered as C.R.No. 396 of 2012 on 10th November 2012 filed by the Respondent No.2 (“Original complainant”) against the Petitioners herein.
- 2) The First Applicant is the husband of the complainant. The second, third and fourth Applicants are the mother and two aunts of the Applicant No.1 respectively.
- 3) This is yet another case where welfare provisions such as Section 498-A etc., of the Indian Penal Code, 1860 enacted to address dowry related harassment and other forms of cruelty, both physical and mental have been misused to harass the in-laws by roping them in a false case. Setting into motion law enforcement machinery leads to serious consequences for innocent family members. Elderly parents, siblings, and distant relatives of the accused are often implicated in the complaint

without direct involvement. This case is an example where the complainant and her family members have violated the sanctity of law enforcement agency and even made mockery of the judicial system.

4) The facts in brief reveal, registration of a F.I.R. by the complainant's father in the year 2006 in Satara registered as a zero F.I.R., later transferred to the Khadki Police Station on 15th May 2006 and re-numbered as C.R.No. 113 of 2006. Police investigated the matter, recorded statements of complainant and her family members and filed their final report. Trial was conducted by the Judicial Magistrate First Class, Khadki Pune. During the pendency of the trial, the Applicant No.1 filed a Petition for Restitution of Conjugal Rights under Section 22 of the Special Marriage Act, 1956 in the Family Court, Pune. As per procedure, the Family Court conducted counselling of the parties and the parties agreed to settle the matter. complainant resumed cohabitation with the Applicant No.1 and the case was disposed. Similarly, the complainant deposed in favor of the Applicant No.1 before the J.M.F.C., Khadki in the R.C.C.No. 100 of 2006 and made categorical statements that there was no ill-treatment meted out to her by the Applicant No.1 or his relatives. Her father also deposed that there were misunderstandings between the families leading to filing of the criminal case. Appreciating the evidence that was adduced in the matter, the J.M.F.C., Khadki, by its Judgment and Order dated 29th November 2007 acquitted the Applicants in the said criminal case and R.C.C.No. 100 of

2006 was closed. The complainant and the Applicant No.1 resided together for a period five years thereafter without any complaint.

5) Five years later, the complainant once again makes another F.I.R. against the same Applicants (except the father of the Applicant as he expired in interregnum) in the Satara Police Station registered as 0 of 2012 on 9th November 2012 subsequently transferred to Sanghvi Police Station, Pune registered as C.R.No. 396 of 2012 on 10th November 2012 under the same provisions of Sections 498-A, 323, 504 and 506 read with Section 34 of the I.P.C. The allegations are similar to those made in the earlier CR No. 113 of 2006. As discerned from the present F.I.R., complainant alleges that, the Applicants have treated her with mental and physical cruelty. They refused her medication to treat a thyroid problem that she suffers. Her husband never gave her money for household expenses and also withdrew money that her father had given her for medication by using her ATM card. She also alleged that the Applicant No.1 had converted her to Christianity and forbade her to wear *Kumkum* on her forehead and generally to follow Hindu religious and cultural customs. The Applicants used to abuse her father in filthy language. They also starved her for three days. The F.I.R. is replete with such and other allegations of similar nature. complainant also gave a supplementary statement narrating other instances of like nature depicting somewhat a bickering between incompatible spouses, endured in the normal wear and tear of married life.

6) This Court issued notice to the Respondents. Mr. Vinod Chate, learned APP appeared for the State and although notice was duly served on the complainant, she failed to put in an appearance. Mr. Omkar Nagvekar represented the Applicants. By Order dated 27th June 2016 the matter was admitted and the learned J.M.F.C. was restrained from continuing the proceedings during the pendency of the present Application for quashing the same. Even today, the complainant failed to appear.

7) We have heard the parties and perused all the documents on record.

7.1) Mr. Nagvekar naturally drew our attention to the earlier CR No. 113 of 2006 filed by the complainant and the other documents including the depositions given by the complainant herself and her father and the Judgment and Order dated 29th November 2007 in R.C.C.No. 100 of 2006 passed by the J.M.F.C., Khadki acquitting the Applicants. He stressed that the allegations in the previous complaint were similar to the present complaint. He also stated that the complainant and the Applicant No.1 were residing separately from the other Applicants since 2007 after the compromise was effected in the proceedings before the Family Court, Pune. He thus contended that the allegations against the other Applicants are untrue and made only with an object of harassing them. He thus submits that no offence was made out and urges us to allow the Application and quash the criminal proceedings against the Applicants.

7.2) Mr. Chate, learned APP failed to put up any substantial defense, save and except narrate the allegations in F.I.R. Considering the documents on record especially the earlier acquittal Order and depositions of the complainant herself, he was compelled to fairly agree with the contention of the Applicants. We do not fault him for his fairness.

8) Comparing the allegations made by complainant in the former F.I.R. with those made in the present complaint, it is clear that there is no marked difference in the same. The allegations are of similar nature. Surprisingly the latter F.I.R. indicates the alleged date of commission of offence to be 16th April 2006 onwards till date. Admittedly, in the earlier complaint the complainant and her father had resiled from their allegations while deposing before the J.F.M.C., Khadki resulting in an acquittal. The dates of commission of the offence as alleged by complainant even then was from 16th April 2006. It is clear that the complainant has repeated the allegations made earlier being an attempt to somehow increase the number of purported instances of cruelty against these Applicants. Having once deposed on oath before a jurisdictionally competent Court denying the ill-treatment, she cannot repeat the same allegations after the accused are acquitted based on her evidence. There is no doctrine of condonation nor that of revival of cause of action in criminal jurisprudence as is available in matrimonial jurisprudence.

9) Further, we find it strange that, in the present crime/case the complainant has not mentioned a single word regarding the earlier F.I.R. and the acquittal of the Applicants from earlier criminal proceedings initiated at her behest. Clearly she has concealed material facts from the police and has set the law enforcement agency in motion on her own whims. We have combed through the allegations made by her in the present C.R. and no offence is prima facie made out from the contents of the F.I.R. The similarity of the allegations contained in both complaints, especially the fact that she and her father have resiled from the same, on oath before a J.M.F.C. raises a strong doubt regarding the credibility of the statements made by the complainant. Even the supplementary statement demonstrates an attempt to refine the allegations and improve the same, to somehow or the other implicate the Applicants in a false criminal case.

10) On an enquiry made by us, Mr. Nagvekar representing the Applicants placed on record the divorce decree dated 1st April 2017 passed by the learned Ad-hoc District Judge-I, Satara in Special Marriage Petition No. 5 of 2013 filed by the complainant against the Applicant No.1 under Section 27(1)(d) of the Special Marriage Act. We have perused the Judgment and Order passed by the District Judge granting divorce based on allegations made by the complainant. The District Judge granted the divorce holding that the Applicant No.1 has not challenged the evidence of the complainant, nor has he paid any maintenance to her. Other than these

findings, there is nothing even in the said divorce decree to indicate commission of the offences as alleged in the F.I.R. by these Applicants. In any case, the degree of probability required in matrimonial proceedings is much less as compared to the evidence required in a criminal trial which needs to be beyond reasonable doubt.

11) The Supreme Court, in the case of State of A.P. v. Vangaveeti Nagaiah,¹ observed thus: -

“6..... When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of its accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to

¹ (2009) 12 SCC 466: AIR 2009 SC 2646.

secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

The illustrative categories indicated by this Court are as follows:

“(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 FIR 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 F.I.R. 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.”

(Emphasis Supplied)

12) If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the Court. The Court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.

13) In the case of *Achin Gupta Vs State of Haryana*,² the Supreme Court has observed as under:

“31.If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter....”

“32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed.”

“.....The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties,

² 2024 SCC OnLine SC 759.

their character and social status. A very technical and hypersensitive approach would prove to be disastrous for the very institution of the marriage.”

“.....However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. All cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.”

14) The facts in the present case clearly demonstrate the object of the complainant in misusing the law enforcement agencies to suit her whims. She has even gone to the extent of withdrawing her allegations while deposing before the J.M.F.C. in the earlier trial. The allegations in the second FIR are similar to those in the earlier one. Even the date of commission of alleged offence is stated to be from 16th April 2006 itself meaning thereby to include the allegations which complainant herself deposed were a misunderstanding. Most importantly, there is no averment

at all regarding the previous acquittal of the Applicants.

15) The above facts in the present matter convince us that, the act of the complainant in setting the criminal law in motion is done only with a view to rope in her husband and his relatives who did not even share residence with them and only to harass them to settle a personal grudge. Twice over, the police machinery has been misused to investigate similar allegations and burden the Court of the J.M.F.C. with vexatious proceedings. We find that the provision of 498-A I.P.C. has been totally misused by the complainant. Legislations, enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively, require to be interpreted with certain element of realism too and not merely pedantically or hyper technically. In this view of the matter we have no hesitation in holding that no cognizable offence is made out from the face of the allegations made by the complainant in C.R.No. 396 of 2012.

15.1) Consequently, proceedings in R.C.C.No. 218 of 2013 pending before the J.M.F.C., Pimpri, Pune are quashed and set aside.

16) Rule is accordingly made absolute.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)