

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.603 OF 2018

AVINASH CHANDRAKANT DESHMUKH & ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.P.G.Sarda, Advocate for the Applicants.

Mr.S.V.Gavand, APP for the Respondent – State.

Mrs.Manisha Devkar, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 28th FEBRUARY 2020

ORAL JUDGMENT :

1 By this application under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.PC. for the sake of brevity), applicants, who are original accused nos.4 to 8 in a complaint for the offence punishable under Section 498A read with 34 of the Indian Penal Code are praying for quashing the order dated 23rd March 2017 passed by the learned trial Magistrate directing issuance of process against them for the

offence punishable under Section 498A read with 34 of the Indian Penal Code.

2 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

3 Facts leading to the institution of the present application can be summarised thus :

(a) Complainant Ashwini Girish Deshmukh lodged a private criminal complaint alleging commission of offences punishable under Sections 498A, 323, 504, 506(2) read with 34 of the Indian Penal Code against eight accused persons including applicants herein, who happen to be accused nos.4 to 8 therein. Applicant no.3/accused no.4 Chandrakant Vitthal Deshmukh is cousin father-in-law, applicant no.4/accused no.5 Suvarna Chandrakant Deshmukh is cousin mother-in-law, applicant no.5/accused no.6 Sandeep Suresh Deshmukh is brother-in-law, applicant no.1/accused no.7 Avinash Chandrakant Deshmukh is cousin brother-in-law whereas

applicant no.2/accused no.8 Tejshree Chandrakant Deshmukh is cousin sister-in-law of complainant Ashwini Girish Deshmukh, who happens to be wife of accused no.1 Girish Suresh Deshmukh.

(b) Complainant Ashwini Girish Deshmukh, in the year 2016, had preferred an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Domestic Violence Act for the sake of brevity) against all accused persons in the court of the learned Judicial Magistrate First Class at Malshiras. Earlier to that, she had preferred the subject criminal case which is registered as RCC No.487/2015. After recording verification of complainant Ashwini Girish Deshmukh, by the impugned order dated 23rd March 2017, the learned trial Magistrate was pleased to issue process against accused persons only for the offence punishable under Section 498A read with 34 of the Indian Penal Code by holding that there is sufficient ground to proceed further for this offence only.

4 Heard the learned counsel appearing for applicants/original accused nos.4 to 8. He drew my attention to the complaint and argued that there is no material to proceed against applicant nos.1 and 2/accused nos.7 and 8. He further argued that so far as applicant no.3/accused no.4 Chandrakant Vitthal Deshmukh is concerned, only averment against him in the complaint is to the effect that he along with co-accused nos.1, 2 and 6 had asked the complainant to give divorce and then assaulted the complainant by fists and kick blows. It is further argued that similar are the accusations against applicant no.5/accused no.6 Sandeep Deshmukh, who happens to be brother of the husband. The learned counsel further drew my attention to the complaint for contending that allegations against applicant no.4/accused no.5 Suvarna Deshmukh - cousin mother-in-law are to the effect that she along with co-accused harassed the complainant with an allegation that the complainant is not cooking well and she asked the complainant not to talk to her parents on phone. She along with co-accused tried to constrict

neck of the complainant in anger. These averments, according to the learned counsel for applicants/original accused nos.4 to 8, do not constitute sufficient ground to proceed against these accused persons and such averments constitute domestic cruelty rather than legal cruelty. My attention is also drawn to evidence of the complainant in her proceedings under the Domestic Violence Act to demonstrate that applicants/original accused nos.4 to 8 were not residing with the complainant.

5 As against this, the learned counsel appearing for contesting respondent/original complainant drew my attention to paragraph 4 of the complaint and argued that accused no.1 Girish Deshmukh had demanded an amount of Rs.15 lakh from the complainant for sending applicant no.1/accused no.7 Avinash Deshmukh to Germany for higher education, and as she refused, accused no.1 Girish Deshmukh, accused no.3 Chhaya Deshmukh and accused no.5 Suvarna Deshmukh (applicant no.4) attempted to kill the complainant by constricting her neck. According to the learned counsel for the respondent /original complainant,

averments made in the complaint constitute sufficient ground for proceeding against accused persons.

6 I have considered the submissions so advanced and also perused the complaint.

7 It is a judicially recognized fact that off late a tendency has been developed for roping in all the relatives in the case for the offence punishable under Section 498A of the Indian Penal Code in order to browbeat and pressurize the husband. In the matter of **Geeta Mehrotra and Another vs. State of Uttar Pradesh and Another**¹, the Hon'ble Apex Court has examined this issue, so also earlier judgments and in paragraphs 18, 21, 22 and 25 of the said report it has held thus :

“18 Their Lordships of the Supreme Court in **Ramesh Vs. State of T. N., (2005) 3 SCC 507**, had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as

¹ (2012) 10 Supreme Court Cases 741

possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.”

“21 It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G. V. Rao Vs. L.H.V. Prasad, reported in (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all

family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that **(SCC p. 698, para 12)** :

“12 There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose

their “young” days in chasing their 'cases' in different courts.”

The view taken by the judges in this matter was that the courts would not encourage such disputes.”

“22 In yet another case reported in **B. S. Joshi Vs. State of Haryana reported in (2003) 4 SCC 675**, it was observed that (**SCC p. 682, para 14**) :

“14 There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to [punish the] husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry.”

But if the proceedings are initiated by the wife under Section 498-A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent

woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.PC. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.”

“25 However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the

main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

8 Keeping in mind this position of law enunciated by the Hon'ble Apex Court, let us now examine the case in hand. At the cost of repetition, it needs to be mentioned here that the learned trial court has found the complaint case as a fit case for

proceeding ahead for the offence punishable under Section 498A of the Indian Penal Code alone. What constitutes “cruelty” for making it punishable under Section 498A of the Indian Penal Code can be found in the definition of the term “cruelty” recorded in the explanation to Section 498A of the Indian Penal Code, which reads thus :

“Explanation - For the purpose of this section ‘cruelty’ means -

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

9 Bare perusal of the definition of the term “cruelty” makes it clear that the term “cruelty” implies harsh and harmful conduct with certain intensity and persistence. It covers acts

causing both physical and mental agony and torture. In order to hold that the acts amount to cruelty, it must be shown that such acts amount to unbearable, continuous, repeated acts of brutality. Section 498A of the Indian Penal Code does not come into play in every case of harassment and/or cruelty to a married woman. What is required to be shown is willful conduct of such a nature as is likely to drive or propel or compel a married woman to commit suicide or to cause grave injury or danger to her life, limb or health. It must be shown that acts were of such a nature, as were sufficient for causing a married woman to lose her normal frame of mind.

10 Averments in the subject complaint will have to be read in order to ascertain whether those are reflecting willful conduct of required intensity and persistence on the part of applicants/original accused nos.4 to 8. So far as accused nos.7 and 8 i.e. applicant nos.1 and 2 are concerned, there is no averment against them to attribute any act of brutality on the complainant by them. So far as accused no.4/applicant no.3

Chandrakant Deshmukh is concerned, it is averred in the complaint that on 14th September 2015, he along with applicant no.5/accused no.6 asked the complainant to give divorce and assaulted her with fists and kick blows. This act, even if assumed to be true, in my considered opinion, would not fall under the definition of the term “cruelty” as is found in explanation to Section 498A of the Indian Penal Code. Singular act on the part of the accused of such a nature, as alleged in the complaint, cannot constitute legal cruelty. The learned trial court has not taken cognizance of the offence punishable under Section 323 of the Indian Penal Code against these accused persons. Isolated singular act of beating does not fulfill the requirement of legal cruelty which implies harsh and harmful conduct of such a nature so as to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health.

11 So far as applicant no.4/accused no.5 Suvarna is concerned, she is cousin mother-in-law of the complainant. It is alleged against her that she harassed the complainant by saying

that she is not cooking well and she asked the complainant not to talk with her parents on phone. It is further averred that she along with accused no.1 Girish Deshmukh (husband) and accused no.3 Chhaya Deshmukh (mother-in-law) had attempted to press neck of the complainant in a fit of anger when she refused to bring the amount of Rs.15 lakh from her father for sending applicant no.1/accused no.7 Avinash for higher education. These allegations are as vague as they can be. No particulars of this incident are stated in the complaint. Which role was played by these accused persons, in such alleged acts, is not stated by the complainant. It does not stand to reason that three accused persons simultaneously would catch hold of the neck of the complainant and would constrict it to cause her death.

12 Be that as it may, the complainant was cross-examined on 17th July 2017 in the Domestic Violence Act proceedings initiated by her against all accused persons in the complaint case. This cross-examination was conducted subsequent to lodging of the complaint for the offence punishable under Section 498A of

the Indian Penal Code. Material elicited from cross-examination of the complainant in the Domestic Violence Act proceedings makes it clear that applicant no.3/accused no.4 Chandrakant Deshmukh and his wife, who happens to be applicant no.4/accused no.5 Survarna Deshmukh were residing at Pune since last thirteen years. These applicants have placed on record house allotment order issued by the Irrigation Department of the State Government on 20th April 2007 showing allotment of government quarter to applicant no.3/accused no.4 Chandrakant Deshmukh at Pune. It is further seen from cross-examination of the complainant in her Domestic Violence Act proceedings that applicant no.5/accused no.6 Sandeep along with his wife used to reside at Lanja in Ratnagiri District and prior to his marriage, he was continuously residing away from his house. It is further seen from cross-examination of the complainant that applicant no.1/accused no.7 Avinash Deshmukh and applicant no.2 /accused no.8 Tejashri Deshmukh were residing at Pune with their parents i.e. applicant no.3/accused no.4 Chandrakant Deshmukh and applicant no.4/accused no.5 Suvarna Deshmukh. This

material of sterling quality makes it clear that continuation of proceedings for the offence punishable under Section 498A of the Indian Penal Code against applicants herein/accused nos.4 to 8 would certainly amount to abuse of process of court. Infact, there were no sufficient grounds to proceed against these applicants/accused persons for the offence punishable under Section 498A of the Indian Penal Code.

13 In the result, the following order :

ORDER

The application is allowed and Rule is made absolute in terms of Prayer Clause (b).

(A. M. BADAR, J.)