HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3540 OF 2019

1) Kamlesh Ghanshyam Lohia, aged 41 years.
2) Smt. Shweta Kamlesh Lohia, aged 38 years.
(Petitioner Nos.1 and 2 abovenamed residing at 101, Mala Apts., Dadabhai Road No.1, Vile Parle (West), Mumbai – 400 056.
3) Smt. Premlata Manoj Agarwal aged 44 years.
4) Manoj Balkishan Agarwal, aged 43 years.
(Petitioner Nos.3 and 4 abovenamed residing at C-1603, Oberio Gardens, Thakur Village, Kandivali (East), Mumbai – 400 101].. Petitioners

Versus

1) The State of Maharashtra (Through the Commissioner of Police, Office of the Commissioner of Police, Crawford Market, Mumbai-400 001.
2) Smt. Priyanka Krishna Lohia, Age : 35 years, Occ : Housewife, C/o. Madan Rupchand Gupta, Bungalow No. % 58, Park Land Society, Near Bajaj Finserv, Vimannagar, Pune – 411 014
3) The Senior Inspector of Police, Juhu Mumbai-C.R. No. 509/2018.].. Respondents

Mr.Subhash Jha a/w. Ms.Sanjana Pardeshi i/b Law Global for petitioners.

Ms.Sangita Shinde, APP for State.

Shraddha Talekar PS

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HIGH COURT OF JUDICATURE AT BOMBAY

Mr.Satyavrat Joshi, respondent No.2.

CORAM : RANJIT MORE &
N.J. JAMADAR, JJ.
Reserved for Judgment on : 14TH AUGUST 2019
Judgment Pronounced on : 23RD AUGUST 2019

JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. Rule made returnable forthwith and with the consent of the counsels of the parties, heard finally.

2. By this petition under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure Code, 1963 the petitioners, the relatives of the husband of the married woman-respondent No.2 have prayed for, *inter-alia*, quashing the prosecution initiated on the strength of the first information report No.509 of 2018 registered at Juhu Police Station, Mumbai for the offences punishable under sections 498-A, 354, 377, 406 read with 34 of the Indian Penal Code, 1860 ('IPC').

3. Initially, the petition was filed by the four petitioners. The petition came to be disposed of as withdrawn qua the petitioner No.4-Shri Manoj Agrawal. The petition, thus, proceeded with in respect of petitioner Nos.1 to 3.

4. The substance to the petition can be stated in brief as under :-

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HIGH COURT OF JUDICATURE AT BOMBAY

a) The marriage of Priyanka-respondent No.2 (hereinafter referred to as 'the first informant') was solemnized with Krishna Lohiya on 11th December 2001. The petitioner No.1 Kamlesh is the brother of Krishna. The petitioner No.2-Smt. Shweta is the wife of Kamlesh. The petitioner No.3-Smt. Premlata is the sister of Krishna. Shri Manoj Agrawal, who withdrew the petition, is the husband of Smt. Premlata.

b) The petitioners assert that since inception of the marital life between the first informant and Krishna, there was matrimonial discord. The first informant used to rake up quarrels with Krishna. The widowed mother and widowed sister of Krishna were staying with Krishna and the first informant. The first informant made the lives of her husband and widowed mother-in-law and sister-in-law miserable by her quarrelsome conduct. There was certain financial transaction between Krishna and the father of the first informant, which also contributed to the disputes between the first informant and Krishna.

c) As the marital discord between the first informant and Krisha escalated resulting in institution of

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HIGH COURT OF JUDICATURE AT BOMBAY

multiple proceedings, the first informant informant has lodged the FIR on 25th October 2018 with Juhu Police Station making absolutely false, baseless and vague allegations.

d) The petitioners aver that the first informant and Krishna were residing separately since beginning of the marital life. The petitioners have been residing separately and never shared the household with the first informant. The petitioners used to occasionally visit the matrimonial home of the first informant, mostly during festivals. There was no cause or occasion for the petitioners to ill-treat and harass the first informant. The petitioners have been falsely implicated by the first informant with an oblique and ulterior motive. The continuation of the prosecution on the basis of such patently false, vague and baseless allegations amounts to abuse of the process. Hence, this petition to quash the proceedings arising out of C.R. No.509-2018 qua the petitioners.

5. We have heard Shri Subhash Jha, the learned counsel for the petitioner, Shri Satyavrat Joshi, the learned counsel for the respondent No.2-the first informant and Ms. Sangita Shinde, the learned APP for the

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HIGH COURT OF JUDICATURE AT BOMBAY

State, at some length.

6. The learned counsel for the petitioners strenuously urged that the instant prosecution of the petitioners is yet another manifestation of a clear abuse of the provisions contained in section 498-A of the Indian Penal Code, 1860 ('IPC'). Drawing our attention to the genesis of the prosecution, which is essentially rooted in the marital discord between the first informant and Krishna, the learned counsel would urge that the petitioners, who are the relatives of Krishna, are roped in to wreak vengeance and subject them to persecution, under the guise of outwardly legitimate prosecution.

7. Shri Jha took us through the allegations in the FIR and urged, with a degree of vehemence, that even if the allegations in the FIR are taken as a gospel truth, no offence can be said to have been made out as against the petitioners so as to warrant their prosecution. Having regard to the fact that the marriage between the first informant and Krishna was solemnized in the year 2009 and the first informant and Krishna have been residing separately since June 2010, coupled with indisputable position that the petitioners have not shared the household with the first informant since then, the various imaginary and bald allegations as against the petitioners do not justify their continued prosecution, urged Shri Jha.

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HIGH COURT OF JUDICATURE AT BOMBAY

8. In contrast to this, Shri Satyavrat Joshi, the learned counsel for the respondent No.2 stoutly submitted that there are specific allegations in the FIR, which implicate the petitioners. An endeavour was made to demonstrate that the tenor of the FIR as a whole is required to be considered and, if so construed, according to the learned counsel for respondent No.2, the complicity of the the petitioners also can be said to be *prima-facie* made out. In any event, the instant case cannot be said to be a fit case to exercise the extraordinary jurisdiction under Article 226 of the Constitution and section 482 of the Code of Criminal Procedure, 1963, submitted Shri Joshi, the learned counsel for the respondent No.2.

9. We have given a careful consideration to the submissions canvassed across the bar. We have minutely perused the material on record especially the FIR dated 25th October 2018. Before we advert to deal with the rival submissions, we deem it appropriate to note the broad features of the FIR, and the allegations which have a bearing upon the complicity of the petitioners.

10. (A) The first informant has alleged that her parents had incurred expenditure to the tune of Rs.7 crores for her marriage. When she joined her matrimonial home, Smt. Sulochana, the mother-in-law, Smt. Pramila, sister-in-law, Kamlesh, brother-in-law (petitioner No.1) and Smt.

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HIGH COURT OF JUDICATURE AT BOMBAY

Shweta (co-sister)-petitioner No.2, were residing therein.

(B) The first informant and Krishna went to honeymoon for about a month and expenses of about Rs.15 lakhs therefor were borne by her father. Krishna had taken a sum of Rs.75 lakhs from her father for construction/renovation of the flat at Juhu, Mumbai. Krishna demanded and accepted a further sum of Rs. 35 lakhs on the pretext that the amount of Rs.75 lakhs was expended for a different purpose. The first informant supervised the work of renovation of the flat and thereafter the first informant and Krishna shifted to the said flat at Juhu in the month of June/July 2010.

(C) The first informant has alleged that the relatives of Krishna including the petitioners used to occasionally visit her house. During those visits, they insulted her by calling her 'fat and dark'. They used to pass taunts also. The petitioner No.3-Premlata and her husband-Manoj used to stay overnight once a week.

(D) It is further alleged that in the year 2012, the first informant's mother-in-law-Sulochana and sister-in-law-Pramila shifted to the first informant's house at Juhu. The accused were demanding clothes, ornaments and money on each of the festive occasions. The father of the first informant met all the demands. The mother-in-law caused mental harassment by raking up quarrels on trifling issues. Pramila also abused the

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HIGH COURT OF JUDICATURE AT BOMBAY

first informant and humiliated her by calling her, 'infertile'. These allegations were followed by a general allegation that the mother-in-law, two sisters-in-law, brother-in-law, co-sister and the husband of the petitioner No.3 and Smt. Premlata were all calling the first informant, 'infertile' and made her to demand money from her parents.

(E) The FIR contains specific allegations against the husband-Krishna of not maintaining physical relations with the first informant, subjecting her to unnatural sexual relations against her will, and making her to undergo painful IVF and IUI treatment on multiple occasions forcibly. In addition, there are allegations of removal of ornaments from the locker by Krishna. As against Manoj, there are certain allegations in the first information report. Since, Manoj has withdrawn the petition, we do not find it appropriate to advert to those allegations.

11. From the perusal of the FIR, the gist of which we have noted above, it becomes abundantly clear that the first informant had stayed in the matrimonial home at Ville Parle, Mumbai for few days after marriage. The first informant and Krishna shifted to Juhu in June-July 2010. The mother-in-law-Sulochana and sister-in-law-Pramila allegedly joined the first informant and Krishna in the year 2012. Evidently, the petitioner No.1 Kamlesh and the petitioner No.2-Smt. Shweta shared the house with the first informant for few days, i.e., the interval between the date of marriage

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HIGH COURT OF JUDICATURE AT BOMBAY

and shifting of first informant and Krishna to Juhu in June 2010. Concededly, Smt. Premlata, the petitioner No.3 did not reside with either Kamlesh or Krishna at any point of time since the marriage of the first informant and Krishna. This leads to a legitimate inference that the petitioner Nos.1 to 3 were residing independently from the first informant and Krishna during the latter's entire marital co-habitation of about nine years.

12. The allegations against the petitioners are, therefore, required to be appraised through the aforesaid backdrop. If we take the allegations in the FIR at par, qua the petitioners, at best, the following three allegations can be attributed to the petitioners :

(i) After the first informant and Krishna shifted to Juhu in June 2012, the petitioners occasionally visited them and during those visits, insulted the first informant by calling her fat and dark complexioned.

(ii) On every festive occasion, the family members of Krishna demanded clothes, ornaments and money from her parents and those demands were met.

(iii) All the family members humiliated the first informant by calling her, “infertile” and made her to demand money from her parents.

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HIGH COURT OF JUDICATURE AT BOMBAY

13. Whether the aforesaid allegations, even if taken at par, would warrant the prosecution of the petitioners is the moot question. It is indisputable that the cruelty under section 498-A of IPC has a specific legal connotation. Ordinary quarrels, differences of views and wear and tear of life, which every home witnesses, do not fall within the mischief of cruelty which section 498-A of IPC punishes. Nor, every ill-treatment or harassment falls within its dragnet. To fall within the tentacles of section 498-A, the married woman must have been subjected to cruelty which would drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health, or with a view to coerce her or any person related to her to meet an unlawful demand of property. Mere demand of money or property, unaccompanied by any harassment, would also not fall within the mischief of section 498-A. There has to be a nexus between the demand and the consequent harassment.

14. On the anvil of the aforesaid legal position, if the allegations enumerated above, are weighed, it becomes evident that the first allegation of insulting the first informant after she shifted to Juhu in the year 2010, is of general nature. The allegation is stale as well. By no stretch of imagination, it can be stated that the alleged conduct had the propensity to drive the first informant to commit suicide or cause harm to herself.

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HIGH COURT OF JUDICATURE AT BOMBAY

15. The second allegation of all the family members of Krishna demanding money, clothes and ornaments on each of the festive occasions is also of general nature and bereft of any specific instance and authorship. The said allegations, at the highest, would indicate that on festive occasions certain articles were demanded. In the absence of the allegation that the first informant was subjected to harassment either in order to meet the unlawful demands of property or on her failure to meet such demands, the second allegation looses the incriminating tendency.

16. The third allegation of the first informant having been humiliated by all the family members by calling her "infertile", is omnibus in nature. At this juncture, the fact that the petitioners have been residing independently of the first informant and Krishna assumes critical significance. The said factor, *prima-facie,* erodes the credibility of the general allegations in the absence of the specific reference to person, time and place.

17. In the light of the aforesaid fact-situation, the crucial question which wrenches to the fore is whether the resort to the extraordinary power under section 482 of the Code would be justifiable? Indubitably, the inherent powers of the Court are preserved with the avowed object of preventing the abuse of the judicial process and securing ends of justice. In

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HIGH COURT OF JUDICATURE AT BOMBAY

a given case, the continuation of the prosecution, which is, ex-facie, actuated by a design to harass the accused and bring them to terms, would amount to abuse of the judicial process and, in that eventuality, the ends of justice would be secured by quashing such prosecution. Undoubtedly, inherent power is of wide amplitude. But, the plenary nature of the power warrants its resort sparingly and in deserving cases only.

18. The width and contours of the power of the High Court under section 482 of the Code was expounded by a three-Judge Bench of the Supreme Court in the case of ***State of Karnataka V. L. Muniswamy*** [1] as under *:*

> *"7.....In the, exercise of this. whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."*

1 (1977) 2 SCC 699

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HIGH COURT OF JUDICATURE AT BOMBAY

19. It is judicially recognized that in the wake of marital discord, the allegations are made thick and fast. There is a tendency to rope in as many persons from the family of the husband as possible, irrespective of their involvement in the alleged crime. Allowing the prosecution of the immediate relations of the first informant, when the prosecution case does not indicate their involvement even remotely, would amount to grave injustice. In exercise of the powers of under section 482 of the Code, the Court would be justified to quash any proceedings if it's continuance amounts to abuse of the process and its quashment serves the ends of justice.

20. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Priti Gupta Vs. State of Jharkhand*** [2]**,** wherein, the following observations were made :-

> *"32 It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*
>
> ……..
>
> *35 The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. <u>The tendency of implicating husband and all his immediate relations is also not uncommon.</u> At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely*

2 (2010) 7 SCC 667

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HIGH COURT OF JUDICATURE AT BOMBAY

> *careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection."*
>
> (emphasis supplied)

21. In the backdrop of the exposition of the aforesaid position, we are of the considered view that the implication of the petitioners herein for the offences punishable under section 498-A of IPC is actuated by a design to harass and humiliate the petitioners for the reason that they happen to be the relations of Krishna. The continuation of the prosecution, in the circumstances, would be an abuse of process of law. Compelling the petitioners to undergo the trial would cause grave injustice. We, therefore, deem it appropriate to quash the FIR bearing No.509/2018 and the consequent proceedings qua the petitioners.

22. For the foregoing reasons, the petition stands allowed.

The FIR No. No.509/2018 registered with Juhu Police Station, Mumbai for the offences punishable under sections 498-A, 354, 377, 406 read with 34 of the IPC and the resultant proceedings stand quashed qua the petitioner Nos.1 to 3 only.

The prosecution arising out of the aforesaid FIR, may, however,

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HIGH COURT OF JUDICATURE AT BOMBAY

proceed against the rest of the accused, in accordance with law.

23. Before parting, we must record that the aforesaid observations have been made solely for the purpose of evaluating the justifiability of continuation of the prosecution qua the petitioners only. We have not considered the merits of the prosecution as against the rest of the accused, even remotely. The Courts and the authorities under the Code shall not be influenced by any of the observations made hereinabove while determining any issue, which may arise in the proceedings and/or prosecution on the strength of FIR No. 509/2018 against rest of the accused. Nor, the observations shall be pressed into service in any collateral proceedings between the parties.

[N.J. JAMADAR, J.] **[RANJIT MORE, J.]**

Shraddha Talekar PS

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