

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 114 OF 2014

1] Shabnam Sheikh w/o. Arif Sheikh,
aged 42 years, Occ.- Service.

2] Arif Sheikh S/o. Gani Sheikh,
aged 45 years, Occ. - Service.

Both R/o. Plot No.409A,
Sai Nagar, Near Tajul Masjid, Nagpur.

3] Shama Sheikh W/o. Nazir Sheikh,
aged 40 years, Occ.- Housewife,
R/o. Karanja (Ghadge), Bazar Chowk,
Tq. Karanja, Distt. Wardha.

. . . APPLICANTS

..V E R S U S..

1. State of Maharashtra,
Though Police Station Officer,
Sakkardara Police Station,
Nagpur.

2. Dr. Kousar Fatima W/o. Shabbir Ahmad,
aged 40 years, Occ. Not known,
R/o. C/o. Mehmud Kureshi Khan,
Plot No.1106, Ashirwad Nagar,
Taj Bag, Nagpur.

. . . NON-APPLICANTS

Shri Anil S. Mardikar, Senior Advocate a/w Shri S. Joshi, Advocate for
the applicants.

Shri M. K. Pathan, A.P.P. for the non-applicant no.1 - State.

Shri M. N. Ali, Advocate for the non-applicant no.2.

CORAM :- Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATED :- 15.10.2020

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.) :-

1. This application under Section 482 of the Code of Criminal Procedure, 1973, lays a challenge to the maintainability of First Information Report No. M-3/2012 for offences punishable under Sections 498-A, 324, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 and consequent charge-sheet annexed at Annexure-P-4 of the application pending on the file of the Judicial Magistrate First Class, Nagpur. The applicants, being aggrieved by the initiation and continuation of the above proceedings, pray for quashing thereof.

2. The prefatory facts would be necessary to comprehend better, the issues involved and the rival contentions.

The applicant no.1 is the sister-in-law of the non-applicant no.2 - Complainant. The applicant no.2 is the brother-in-law of the non-applicant no.2 and the applicant no.3 is the sister-in-law of the non-applicant no.2. The applicant nos.1 and 2 are husband and wife. The marriage between non-applicant no.2 and brother of the applicant No. 2 was solemnized on 25.09.2011 and after marriage, both of them started residing separately from the applicants.

There were quarrels between the non-applicant no.2 and

her husband and, therefore, the non-applicant no.2 had filed F.I.R., with the non-applicant no.1 – Police Station, which was compromised.

3. Thereafter, the non-applicant no.2, again on 28.4.2012 lodged complaint with the Women Cell of non-applicant no.1 – Police Station. Since, there was a constant quarrel of the non-applicant no.2 and her husband, the husband of the non-applicant no.2 also filed complaint on 18.5.2012 alleging harassment caused by parents and brother of the non-applicant no.2. The non-applicant no.2 had filed another report against her husband on 28.4.2012 but, the non-applicant no.1- Police Station did not take any action and had sent N.C. report to the non-applicant no.2.

4. The non-applicant no.2, being aggrieved by N.C. report, approached the Judicial Magistrate First Class, Nagpur and filed an application under Section 156 (3) of the Code of Criminal Procedure and, then the non-applicant no.1 lodged F.I.R., on 19.09.2012 against the applicants. The said F.I.R. registered as Crime No.M-3/2012, is challenged by way of the present application.

5. This Court, on 15.09.2014 issued Rule and granted ad-interim relief directing stay of the proceedings qua the applicants herein. It was made clear that the proceedings shall continue against

the husband of the non-applicant no.2.

6. The non-applicant no.1 has filed reply on 11.03.2014 and submitted that the investigation is almost complete and, there is *prima facie* case against the applicants.

7. The non-applicant no.2 filed her reply on 17.6.2014 and contended that the applicants, alongwith her husband harassed the non-applicant no.2 for dowry and there were several complaints filed by her with the Police Station as and when harassment was caused. The non-applicant no.2 prayed that the application being devoid of merits , is liable to be dismissed.

8. Pending the present application, charge-sheet came to be filed in the Court of the Judicial Magistrate First Class, Nagpur, which is challenged by the applicants by way of amendment.

9. We have heard Shri Anil S. Mardikar, learned Senior Advocate alongwith Shri S. G. Joshi, Advocate for the applicants, Shri M.K. Pathan, learned Additional Public Prosecutor for the non-applicant no.1 - State and Shri M.N. Ali, learned Advocate for the non-applicant no.2.

10. Shri Anil S. Mardikar, learned Senior Advocate alongwith Shri S. G. Joshi, learned Advocate for the applicants with reference to the contents of F.I.R., forcefully argued that filing of the F.I.R., against the applicants is nothing but, the abuse of process of law as non-applicant no.2 has not made any allegation against the applicants stating as to how cruelty was meted out to her by the present applicants. It is only to implicate entire family, the report is lodged against the applicants. In the F.I.R., it is nowhere stated that the applicants have ever instigated commission of the offence or demanded money from the non-applicant no.2 or her parents. The non-applicant no.2 and her husband are residing separately and the applicants are no-way concerned with day-to-day affairs of non-applicant no.2. The allegations in the F.I.R., even if accepted in entirety, do not make out the ingredients of the offence alleged and continuance of criminal proceedings would be the abuse of process of law. Therefore, the interests of justice demands that the F.I.R. be quashed, at this stage.

11. In reply, Shri Pathan, learned Additional Public Prosecutor for the non-applicant no.1 – State and Shri M.N. Ali, learned Advocate for non-applicant no.2, submitted with equal force that the F.I.R., discloses commission of offences alleged against the applicants. They submitted that at this stage of the proceedings, this Court while

entertaining the prayer for quashing thereof, would not sift the materials already on record, as required at the time of trial and if the F.I.R., and the evidence of the complainant, *prima facie*, make out offences as alleged, this Court would lay its hands off and restrain itself from exercising its jurisdiction under Section 482 of the Code of Criminal Procedure. They submitted that in the facts and circumstances of the present case, initiation of criminal proceedings against the applicants cannot be faulted and, therefore, the application being without any merit is liable to be dismissed.

12. For adjudicating the issue involved effectively, it is necessary to consider Section 498-A of the Indian Penal Code, which reads as under:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

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 women 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.”

Cruelty, as defined in Section 498-A of the Indian Penal Code, must meet the following requirements:

- (i) There should be harassment of the woman;
- (ii) Harassment should be with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security; and
- (iii) Harassment may be even where there is failure by woman or any person related to her to meet any such demand earlier made.

13. The cruelty perpetuated to the woman may be physical or mental. However, saying, as alleged in the report that, we are also serving in the police and we have connections with the higher Authorities, or the husband of the non-applicant no.2 got no benefit of the education of the non-applicant no.2, cannot be stated to be cruelty to the woman.

14. Nowadays, it has become a tendency to make vague and omnibus allegations, against every member of the family of the husband, implicating everybody under Section 498-A of the Indian Penal Code. Hence, it has become necessary for the Courts to carefully scrutinize the allegations and to find out if the allegations made really constitute an offence and meet the requirements of the law at least prima facie.

15. In *G. Sagar Suri and another Vs. State of U.P. and others* reported in (2000) 2 SCC 636, the Hon'ble Supreme Court observed

that the criminal proceedings should not be allowed to be resorted to as shortcut to settle the score. Before issuing process, the Criminal Court has to exercise a great deal of caution. For the accused, it is a serious matter. Jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised to prevent abuse of the process of the Court or otherwise secure ends of justice.

In *M/s.Indian Oil Corporation Vs. M/s. NEPC India Ltd.,& others* reported in *2006 (7) Scale 286*, the Hon'ble Supreme Court deprecated the tendency of using the criminal justice system as a tool of arm twisting and to settle the score, and laid down that the High Court can intervene where the criminal justice system is used as a tool.

The Apex Court in the judgment of *Kailash Chandra Agrawal VS. State of U.P.and others* reported in *(2014)16 SCC 551* has made observations that tendency, which has been developed for roping in all relations of the in-laws by the wife in the matter of dowry deaths or such type of similar offences in an over enthusiasm and anxiety to seek conviction needs to be deprecated. The Hon'ble Apex Court in the case of *K. Subba Rao Vs. Sate of Telangana* reported in *2018 (14) SCC 452* observed that relatives of the husband should not be roped in on the basis of vague allegations unless specific instances of their involvement are set out.

16. It is true that while considering quashing of criminal

proceedings under Section 482 of the Code of Criminal Procedure, the Court should not embark upon an inquiry into the truthfulness of the allegations made by the complainant but, when the filing of F.I.R. amounts to gross misuse of the criminal justice system, it becomes the duty of the High Court to intervene in such cases, under Section 482 of the Code of Criminal Procedure so that there is no miscarriage of justice and faith of people in the judicial system remains intact . In the present case, sisters-in-law and brother-in-law have been arraigned as accused without there being specific allegations as regards the nature of cruelty, as contemplated by Section 498-A of the Indian Penal Code against them.

17. On overall reading of F.I.R. impugned and the charge-sheet, we are of the opinion that, there are no allegations against the present applicants which constitute offences alleged against the applicants. Hence, we are of the opinion that continuance of present proceedings would amount to an abuse of process of law.

18. There is no material produced by the prosecution even alongwith charge-sheet, prima facie fulfilling the ingredients of offences punishable under Sections 498-A, 324, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

19. In the above circumstances, we pass the following order:

ORDER

- (i) Criminal Application (APL) No.114/2014 is allowed.
- (ii) F.I.R. No. M-3/2012 lodged against the applicant No.1 - Shabnam Sheikh w/o Arif Sheikh, applicant No.2 – Arif Sheikh S/o Gani Sheikh and applicant No.3 – Shama Sheikh W/o Nazir Sheikh registered with the non-applicant no.1 - Sakkardara Police Station, Nagpur, for offences punishable under Sections 498-A, 324, 506 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and consequent charge-sheet annexed at Annexure-P-4 to the application and all further proceedings arising out thereof are quashed and set aside qua the applicants.

Criminal Application is allowed in the above terms.

JUDGE

JUDGE

Ambulkar