

Sumit and Others Vs. The State of Maharashtra and Another

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Court : Mumbai Aurangabad

Decided On : Jul-30-2015

Judge : S.S. Shinde & a.I.S. Cheema

Appeal No. : Criminal Writ Petition No. 444 of 2014

Appellant : Sumit and Others

Respondent : The State of Maharashtra and Another

Judgement :

S.S. Shinde, J.

1. Rule. Rule made returnable forthwith, heard with the consent of the parties.
2. The present Petition is filed praying therein appropriate writ, order or directions to quash and set-aside the Crime bearing CR No. 3/2014, registered at Ramanandnagar Police Station, Jalgaon and R.C.C. No. 404/2014, pending before the Chief Judicial Magistrate at Jalgaon.
3. So far Petitioner No.1 is concerned, Petition is already dismissed as withdrawn. Therefore, adjudication of this Petition is confined qua the Petitioner Nos.2 to 9.
4. The learned counsel appearing for the Petitioners submits that, even if the allegations in the FIR are considered in its entirety, and taken at its face value, no offence is constituted against the Petitioners. It is submitted that, omnibus

allegations are made in the FIR. There are no any specific overt acts attributed qua each of the Petitioners. The Petitioner Nos. 8 and 9 are old aged persons, and by no stretch of imagination, the allegations against said petitioners are sustainable. It is further submitted that, the Petitioner Nos.5 and 6 are residing abroad, and therefore, their involvement in the alleged offence is completely ruled out. It is submitted that, the Petitioners are from reputed family and respectable persons, and were treating to the complainant properly and nicely, but the complainant herself was not cohabiting with the Petitioner No.1. It is further submitted that, there are number of examples and events which are showing that, the complainant was not cohabiting and co-operating to the Petitioner No.1, and she was not willing to reside with the Petitioners. Even a letter dated 14th October, 2013 addressing to the father of the complainant shows that, she was not cohabiting to the petitioner No.1 as well as on 11th October, 2013, the complaint was lodged by the petitioner No.1 against the complainant with Thane Nagar Police Station for the offence under Section 504 and 506 of IP Code. It is submitted that, the allegations in the complaint are false and baseless. Only to take revenge, false allegations are made in the FIR. It is submitted that, all the family members of the Petitioner No.1 are residing separately. They are residing at separate places in their village at Deulgaon Raja. It is submitted that, Petitioner No.7 is residing separately since long. The Petitioner Nos.5 and 6 are residing out of country since long, and they are falsely implicated in the complaint. It is further submitted that, no case is made out against the Petitioners and there is no evidence in the charge-sheet which prima facie shows that, ingredients of Sections 498-A, 406, 323, 504, 506 r/w. 34 of IP Code and under Sections 3 and 4 of Dowry Prohibition Act is made out. It is submitted that, the alleged offence is committed by the accused either at Thane District or at Deulgaon Raja in Buldhana District. Therefore, the complaint registered at Ramanandnagar Police Station is not maintainable. Therefore, relying upon the pleadings / grounds in the Petition, annexure thereto, the learned counsel appearing for the Petitioners submits that, the Petition deserves to be allowed. In support of the contention that, in Crime under Section 498-A, there is a tendency to rope in the entire family as well as distant relatives. The learned counsel appearing for the petitioners pressed into service exposition of the HonTMble Supreme Court in the case of **Arnesh Kumar**

Vs. State of Bihar and another (2014] 8 SCC 273).

5. On the other hand, the learned counsel appearing for the original complainant invited our attention to the allegations in the FIR, and also affidavit-in-reply filed on behalf of the respondent No.2, it is submitted that, the Petitioner Nos. 5 and 6 initially resided for 6 months after marriage of the complainant at Thane, and the said fact has not been denied by the Petitioner Nos.5 and 6. It is submitted that, incorrect statement is made in the Petition that, the petitioner Nos.5 and 6 are residing abroad and to that effect no any document is placed on record showing that, they are residing in Canada and USA as claimed by the petitioners. It is further submitted that, there are specific allegations against all the petitioners, specific instances are quoted. It is further submitted that, so far Petitioner No.3 is concerned, she has forcibly taken golden ornaments of the complainant and kept in her locker in the Bank. It is further submitted that, the complainant has quoted specific instance dated 15.11.2013 in the complaint wherein all the petitioners are involved. It is submitted that, there was continuous harassment and cruel treatment to the complainant, and on 12.12.2013, she was driven out from the matrimonial house and was told to come back only after bringing the money to buy a flat and vehicle. Therefore, the learned counsel appearing for the complainant submits that, the Petition may be dismissed.

6. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioners, the learned counsel appearing for the respondent No.2 and the learned APP appearing for the Respondent " State. Upon perusal of the allegations in the complaint, continuous harassment and ill-treatment at the hands of the petitioners has been stated by the complainant. It is stated in the complaint that, soon after marriage, the complainant with her husband went to reside at Kandivali, Mumbai in a rented flat, at that time petitioner nos.5 and 6 resided with them for about 6 months. During said period, intentionally they used to abuse the complainant and instigate husband against the complainant. The relevant portion from the complaint, which relates to the petitioner nos.5 and 6 reads thus:

HINDI?

There are also allegations that, other petitioners used to instigate husband and husband used to abuse and assault the complainant for not bringing money for purchasing a flat in Shantidoot Apartment at Kandivali, Mumbai. There are also allegations against the husband that, he had illicit relations with some other woman. Since the Petition of the husband is dismissed as withdrawn, we do not wish to elaborate further about allegations as against the husband. So far other petitioners are concerned, apart from omnibus allegations in the complaint, specifically it is stated thus:

HINDI?

7. It is further alleged in the complaint that, during Deewali Festival of 2013, the accused Nos.1 to 9 conspired with each other, and the complainant was brought at Deulgaon Raja. The accused no.1 brought golden ornaments, and same were given to the accused No.3 and accused No.3 kept the said ornaments in her locker in the Buldhana Urban Co-operative Bank. The complainant has made specific allegations by quoting specific instance dated 15.11.2013, against all the accused persons. The relevant portion from the complaint reads thus:

HINDI?

8. Upon careful perusal of the allegations in the FIR, there are omnibus allegations against the petitioners, and also specific instances are quoted. It is not the case that, upon reading contents of the FIR, no offence is disclosed. The prosecution machinery has collected sufficient material for trial. So far incident dated 15.11.2013 is concerned, there are two witnesses namely Suhas Sahebrao Patil and Lomesh Vasant Rao Sonwane, who have deposed that, on 15.11.2013, all the accused persons came to the house of parents of the complainant and did ask for money, and insulted the parents of the respondent No.2 i.e. original complainant, so as to cause mental harassment to the complainant. Therefore, there are statements of the witnesses, which supports the allegations in the FIR, and also specific instances are quoted in the FIR. While exercising the writ jurisdiction, it is not desirable to enter into exercise of appreciation of evidence, and statements of the witnesses and then draw inferences. The HonTMble Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander and another** (2012] 8 SCC 460) observed

that, though there are no limits of the powers of the High Court under Section 482 of the Code, but the more the power, the more due care and caution is to be exercised in invoking these powers. In the said Judgment, it is further observed that, the High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. It is further observed that, the Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender. It is further observed in the said Judgment that, another very significant caution courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice. It is further observed that, it is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the Investigating agencies to find out whether it is a case of acquittal or conviction.

Recently, the HonTMble Supreme Court in the case of **Taramani Parakh Vs. State of M.P. and Ors.**(2015 [2] Bom.C.R. [Cri.] 453)held that, when there are allegations of harassing the complainant, which forced her to leave the matrimonial house, the question whether the complainant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible. Yet in another exposition of the Supreme Court, in the case of **Bhaskar Lal Sharma and another V/s Monica and others** (2014(2) Mh.L.J. (Cri.) 442)while explaining the scope of Section 498A and exercise of powers of the High Court under Section 482 of Criminal Procedure Code in paras 8, 9 and 10, it is held thus:-

8. Shri Amarendra Sharan, learned senior counsel for the appellants has urged that the statements/averments made in the complaint petition, even if taken to be correct, do not make out any offence against any of the accused appellants either under Sections 498A or 406 of the Penal Code, as alleged. Shri Sharan has laid

stress on the fact that there is no averment in the complaint petition with regard to any demand for dowry by the appellants; or of any ill-treatment of the respondent by the appellants or commission of any act in connection with any such demand which could amount to `Cruelty' within the meaning of Section 498A, Indian Penal Code. Shri Sharan has also urged that no where in the complaint petition entrustment within the meaning of Section 405 of the Penal Code has been alleged against the appellants so as to even prima facie make the appellants liable for the offence under Section 406 of the Penal Code.

9. We disagree. `Cruelty' as defined in the Explanation to Section 498A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression `Cruelty'. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.

10. The facts, as alleged, therefore will have to be proved which only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.

"9. Therefore, taking over all view of the matter, in our opinion, no relief can be granted to the Petitioners. So far the Petitioner Nos.8 and 9 are concerned, they are old aged persons, and trial Court may grant exemption from appearance, when their presence is not necessary.

10. During pendency of this Criminal Writ Petition, though the Investigating Officer was directed not to file charge sheet, the Investigating Officer proceeded to file the charge-sheet in breach of the order passed by this Court. However, we are satisfied with the explanation offered by him, by filing an affidavit on 1st September, 2014, wherein he has also tendered unconditional apology, therefore, notice issued to him stands discharged."

11. For the reasons aforesaid, Criminal Writ Petition stands dismissed. Rule stands discharged. The observations made herein before are only for the purpose of deciding the present Writ Petition, and the trial Court shall not get influenced by the said observations while conducting trial.

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