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Court : Mumbai Aurangabad

Decided On : Oct-20-2016

Judge : S.S. Shinde & Sangitrao S. Patil

Appeal No. : Criminal Writ Petition No. 438 of 2016

Appellant : Arvind and Another

Respondent : The State of Maharashtra, Through Police Station Officer and Another

Judgement :

S.S. Shinde, J.

1. This Petition is filed seeking quashment of the First Information Report bearing Crime No.217 of 2015 (for short FIR) registered with Dhule City Police Station, Dhule, for the offences punishable under Sections 498A, 406 read with Section 34 of the Indian Penal Code (for short IPC) and under Sections 3 and 4 of the Dowry Prohibition Act, to the extent it relates to the petitioners.

2. The learned counsel appearing for the petitioner submits that the allegations in the FIR are general in nature. There are no specific overt acts attributed to the petitioners. It is also not stated that on which date the incident of harassment and

mental cruelty is caused. It is further submitted that respondent no.2 left matrimonial home on 07.06.2015 and the FIR is lodged on 03.11.2015. There is inordinate delay in lodging the FIR. It is further submitted that, respondent no.2 has put it in writing on 07.06.2015 that, her husband and herself are from the medical profession, therefore, she has decided to start residing with her husband peacefully in future. The learned counsel appearing for the petitioners invites our attention to the contents of the said alleged written statement of respondent no.2 (at Exh.R3, Page 73) of the compilation of the Criminal Writ Petition, and submits that the Petition deserves to be allowed.

3. The learned counsel for the petitioners in support of his contention that, when there are no specific allegations in the FIR, such FIR deserves to be quashed, presses into service exposition of law in the cases of Neelu Chopra and Anr. Vs. Bharti (AIR 2009 SC (Supp) 2950), Preeti Gupta and Anr. Vs. State of Jharkhand and Anr. (2010 AIR SCW 4975) and Swapnil and others Vs. State of Madhya Pradesh (2014 AIR SCW 6056).

4. On the other hand, the learned counsel appearing for respondent no.2 invites our attention to the allegations in the FIR and also the averments in the affidavit-in-reply filed by respondent no.2, and submits that the allegations in the FIR will have to be read as they are and can only be tested during trial. In support of the said contention, the learned counsel appearing for respondent no.2 presses into service exposition of law in the case of Taramani Parakh Vs. State of M.P. and Ors. (2015 AIR SCW 1817). The learned counsel appearing for respondent no.2 further submits that respondent no.2 has never given statement on 07.06.2015, and therefore, the reliance placed by the learned counsel appearing for the petitioners on the said statement is totally baseless.

5. We have given careful consideration to the submissions of the learned counsel appearing for the petitioners, the learned APP appearing for the respondent State and the learned counsel appearing for respondent no.2. With their able assistance, perused the grounds taken in the petition, annexures thereto, an allegation in the FIR, the affidavit-in-reply filed by respondent no.2, the relevant provisions of the IPC and the judgments cited supra by the learned counsel appearing for the

petitioners and the learned counsel for respondent no.2. At the outset it would be apt to reproduce herein below the relevant portion from the FIR, which would spell out the ingredients of the offences alleged against the petitioners:-----

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6. On careful perusal of the allegations in the FIR, it is abundantly clear that there are specific allegations in respect of ill-treatment, harassment and demand of money from the informant and her parents. The ingredients of the offences alleged against the petitioners are, prima facie, disclosed. Whether the said allegations are true or otherwise cannot be gone into while exercising the jurisdiction under Section 482 of the Criminal Procedure Code. The contention of the learned counsel appearing for the petitioners that there is delay in lodging the FIR needs to be considered in the background stated in the FIR that the parents and relatives of respondent no.2 made serious attempts to convince the petitioners not to further ill-treat and harass respondent no.2. However, their efforts went in vain. In the case of Taramani Parakh (supra), the appellant therein left matrimonial home on 02.04.2010 and FIR was lodged on 19.05.2011 even then the Supreme Court entertained the appeal filed by the original complainant and in para no.15 held thus:

15. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant 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.

7. The reliance placed by the learned counsel for the petitioners in the case of Preeti Gupta (supra) is misplaced in the facts of the present case inasmuch as in that case the appellants therein were sister-in-law and unmarried brother-in-law of the victim / wife, who were residing at different places and did not visit the place of incident, nor did live with victim / wife and her husband. However, in the present case the petitioners are the father-in-law and mother-in-law respectively, who were

residing in matrimonial house jointly with respondent no.2 and her husband. Therefore, the facts of the present case visavis in the case of Preeti Gupta (supra) are different. In the case of Neelu Chopra (supra), the Supreme Court was considering the case of the appellants who were the aged parents of the husband. In that case the husband Rajesh had died and the main allegations were only against him. The Supreme Court found no cogent material against the other accused.

8. In the case of Swapnil and others (supra), the Court has recorded that application for restitution of conjugal right filed by husband was withdrawn as wife was not interested to live together with the husband. Allegations in the FIR were vague and the details as to place and the time of incident were not mentioned.

9. The Supreme Court in the case of Bhaskar Lal Sharma and another Vs. Monica and others (2014) 3 SCC 383) in para 11 of the judgment has held that the facts, as alleged, in the FIR will have to be proved which can be done only in the course of a regular trial. The appreciation, in a summary manner, of the averments made in the FIR would not be permissible at the stage of quashing of FIR and the facts stated will have to be accepted as they appear on the very face thereof.

10. In the light of the discussion in the foregoing paragraphs, in our opinion, there is no substance in the Criminal Writ Petition. Hence the same stands rejected. We make it clear that observations made herein before are prima facie in the nature and shall not influence further proceedings, if any.

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