

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (APL) NO. 1241 OF 2014
WITH
INTERIM APPLICATION NO.779 OF 2020

1. Samad Habib Mithani
Age : 60 Years, Occ.: Business,

2. Smt. Kulsum Samad Mithani
Age : 51 Years, Occ.: Housewife,

Nos.1 and 2 R/at : No.5, Dhobi Street,
9/10, Tawawala Building, 3rd Floor,
Mohammedalli Road, Mumbai - 400003.

3. Smt. Firdos Kasam Ali Gulroozi
Age : 33 Years, Occ.: Housewife,

4. Kassam Ali Gulroozi
Age : 34 Years, Occ.: Business,

Nos.3 and 4 R/at : 401, Mount View, 40-
A, Rebello Road, Bandra (West),
Mumbai - 400050.

.. Applicants

Versus

1. The State of Maharashtra

2. Fareen d/o Mohamed Ikbal Lakha
Age : 35 Years, Occ.: Housewife,
R/at : 7th Floor, Flat No.19, Cadel Road,
Mahim (West), Mumbai - 400016.

.. Respondents

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Mr. Misbah Solkar a/w Ms. Sejal Jain, Mr. Moh Taha, for the
Applicant.

Mr. D. J. Haldankar, A.P.P. for the State/Respondent.

Mr. Shailendra Agharkar h/f Mr. Rizwan Merchant, for the Intervenor.

Mr. N. T. More, PSI, Pydhonie Police Station, is present.

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**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 25th JULY, 2024

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. The Applicants have filed the present Criminal Application under Section 482 of the Code of Criminal Procedure (“Cr.P.C.”), with a prayer to quash and set aside the First Information Report (“F.I.R.”) dated 07.03.2014, registered at the instance of the Respondent No.2 with the Pydhonie Police Station, vide C.R. No. 86 of 2014, for the offence punishable under Sections 498-A, 376 read with Section 34 of the Indian Penal Code (“I.P.C.”), as against the Applicants.

2. The Applicants are relatives of the Respondent No.2 who is wife of Accused No.1, in the offence registered against the Applicants, alongwith their son and husband of the Respondent No.2. Though initially offence has been registered under Sections 498-A, 376 read with Section 34 of the IPC, however Section 406, 344, 347, 376, 376(b), 506 of the IPC, have been added and charge-sheet has been filed against the Applicants on 07.03.2014 itself. The present matter was filed

in this Court on 02.12.2014 and the charge-sheet has been filed on 07.03.2014. When the matter was heard by this Court on 12.07.2016, (Coram : A. S. Oka & A. A. Sayed, JJ.), notice was issued to the Respondent No.2 and by way of interim-relief, it was directed that if the charge-sheet is already filed the trial shall not proceed as against the Applicants. Therefore, so far as the present Applicants are concerned, the trial has not proceeded as against them. Thereafter, the matter was listed on various occasions and the interim relief was continued from time to time.

3. We have heard the respective parties. Applicant Nos.1 and 2 are the parents of Accused No.1 i.e. ex-husband of the Respondent No.2, Applicant No.3 is her ex-sister-in-law and the Applicant No.4 is the husband of Applicant No.3. The Respondent No.2 herein has filed FIR on 07.03.2014 against her ex-husband Danish Mithani, her father-in-law i.e. Applicant No.1, her mother-in-law i.e. Applicant No.2, her sister-in-law i.e. Applicant No.3 and the Applicant No.4 i.e. husband of her sister-in-law, alleging offences under Sections 498-A, 376 read with Section 34 of the IPC.

The Respondent No.2 has filed complaint that she was married to Accused No.1 Danish on 29.10.2000. After her marriage, she started to reside with her in-laws, her husband and sister-in-law. After her marriage, her sister-in-law was also married in the year 2001. The Respondent No.2 has given birth to her elder daughter Anam in the year 2001 and other daughter in the year 2006. After the birth of her elder daughter, the Respondent No.2 got the knowledge about her

husband's extramarital affair, when she inquired with him about his relationship with other woman, he had beaten her and thereafter he was constantly giving her ill-treatment and used to assault her. In one of such incidents, when he had beaten her, she suffered miscarriage in February, 2004. The same incident of miscarriage was again repeated, inspite of advise by the Doctor and refusal by her, for having physical relationship, due to difficult pregnancy. The accused No.1 forced her to have physical relationship, as a result she had miscarriage for the second time. It is alleged by her that though the Applicants herein had knowledge about the ill-treatment meted out by her husband, they never advised their son to behave properly. On the contrary, they had advised her that she should not disclose it to anybody. Her husband had extramarital affair with one woman named Hafisa in the year 2008. He got married with her on 02.07.2009, and divorced her on 14.07.2009.

Thereafter, her husband had resided with a lady named Aayesha, and they had a three year old son. Such was the conduct of husband of the Respondent No.2. In spite his extramarital affair, he used to force the Respondent No.2 to have sexual relationship with him and if she refused, he used to beat her and forced her to have relationship with him. Although, the Applicants were observing the conduct of their son i.e. the Accused No.1 Danish, they have never resisted him or persuaded him to improve his behaviour. According to her, though her sister-in-law was married, she used to occasionally visit their house and she was aware about the environment in their house.

4. According to the Respondent No.2 on 21.08.2013, while she was busy with the domestic work in the kitchen, her husband came there and he had abused her, there was an exchange of harsh words between them. During the said exchange of words, the husband of the Respondent No.2 brought holy Kuran in his hand and uttered the word 'Talak' thrice, in presence of her mother-in-law. Though her mother-in-law i.e. the Applicant No.2 was present there, she persuaded her not to disclose the said incident to anybody. After the said incident, she had been restrained from going out of the house so that she should not disclose it to anybody else. In fact, the Applicant No.2 has advised the Respondent No.2 if she keeps physical relationship with her husband, it would amount to nullifying the effect of Talak.

According to her, all the Applicants had advised her to have physical relationship with her husband, which was against the tenets of Islam. Even after giving her Talak, the accused-husband kept on assaulting her and kept sexual relationship with her forcibly. She further states that on 30.09.2013, she was advised by the Applicants that since the divorce was finalized, she should not reside with them as Danish had also started residing with a lady named Ayesha Merchant from 30.08.2013. Therefore, they advised her that, she should leave their house and reside with her mother. Therefore, she summoned her mother and accompanied her to her uncle's house and started residing with her mother and uncle. Thereafter, though her husband again had apologized to her and requested her to return back to their house, she did not pay any heed.

5. According to the Respondent No.2 her husband inspite of giving her 'Talak' had time and again requested her to return back and co-habit with him only with the apprehension that if their 'Talak' would be finalized, then he would have to return her 'stridhan'. Therefore, he had restrained her from meeting anybody outside their house or a third person, not belonging to their family. On this background, she has filed the FIR, alleging ill-treatment at the hands of her husband and the present Applicants. According to the Respondent No.2, they have meted out physical and mental ill-treatment to her. Hence, she has filed the present complaint.

6. From the documents annexed to the Criminal Application, it is disclosed that the Applicant No.1 was arrested on 09.03.2014 and thereafter the Applicant Nos.2 to 4 have obtained Anticipatory Bail on 12.03.2014. The Applicant No.1 could secure his bail on 18.03.2014. All the Applicants are related to the Respondent No.2 by marriage. According to the Applicants they had very good relationship with the Respondent No.2, while they were sharing the same household. When the Applicants came to know about the extramarital relationship of their son, they have disapproved it and even asked their son to leave their house. During the period they have taken care of the Respondent No.2 alongwith her children. So far as the Applicant Nos.3 and 4 are concerned, according to them they had never given ill-treatment to the Respondent No.2, infact when they had gone for a family vacation to Bangkok, they had taken the elder daughter of the Respondent No.2 alongwith them. When they

returned from Bangkok, when the Applicant No.3 came to meet her parents, the Respondent No.2 had requested the Applicant No.3 to drop her children to the residence of her mother at Mahim. An unfortunate tragedy occurred in the family of the Respondent No.2, when the building where her uncle and mother was residing, collapsed and the said incident took away her children while they were residing there. During the said period the Respondent No.2 was facing depression. The Applicants were the one who stood with the Respondent No.2 and gave her moral support as it was the loss of entire family of the Respondent No.2.

So far as the incident of 'Talak' is concerned, it is the contention of the Applicants that even the Respondent No.2 had refused to accept the said 'Talak' and she herself gave strong and cogent reason for co-habiting with her husband, on the ground that such 'Talak' is against the tenets of Islam. Even after the Talak, the Applicants and Respondent No.2 had good relations. The Respondent No.2 would join all the family celebrations and outings on their invite, like birth-day parties and celebrations of completion of Kuran recital of the daughter of the Applicant Nos.3 and 4.

7. It is contended by the Applicant that infact they were shocked and surprised to find their names in the FIR. According to the Applicants they have been falsely implicated in the present case by the Respondent No.2. There are no offences disclosed against them from the averments of the complaint which are punishable under Section 498A and 376 read with Section 34 of the IPC. The Applicants have never, in

any manner, mentally or physically ill-treated the Respondent No.2, therefore apart from oral averements, alleging the offence punishable under Section 498A of the IPC, there is nothing to support the allegations that they have committed the said offence.

8. The Respondent No.2 has filed reply in the present Application. On going through the said reply, it is nothing but the reiteration of the complaint.

In the reply affidavit filed by the Respondent No.2 she has narrated some incidents and has made allegations that, when the present Applicant Nos.3 and 4 visited their house, they informed something against the Respondent No.2 to the Applicant Nos.1 and 2 and accused No.1. Upon hearing the said information given by the Applicant Nos.3 and 4, the accused No.1 started beating the Respondent No.2, with bare hands and threatened with knife. The other allegation is that Applicant No.1 alongwith accused No.1 threatened and restrained her from leaving the house after accused No.1 had uttered the word 'Talak' thrice, which amounted to Talak. The Applicants have forced her to have physical relations with accused No.1, inspite of the 'Triple Talak'. Apart from the allegations made in the FIR, there is nothing new stated by the Respondent No.2 in her affidavit. She has prayed that the present Application may be dismissed.

9. The charge-sheet has already been filed in the present matter on 07.03.2014. On going through the said charge-sheet, the statement of witnesses recorded does not in

any way indicate towards the complicity of the present Applicants in the said offence. The tenor of the FIR as well as the statements of the witnesses recorded during the investigation supports the allegations as against accused No.1 i.e. husband of the Respondent No.2. None of the statements, support the allegations of ill-treatment and cruelty at the hands of the applicants. From the statement of the mother of the Respondent No.2 Smt. Yasmin Iqbal Lakha, the only allegations against the present Applicants seem to be that in spite of the conduct of her husband Danish, the Applicants used to take side with Danish and convince her to tolerate the conduct and treatment given by the accused No.1.

There is no incident narrated by the said witness indicating that the Applicants have given ill-treatment to the Respondent No.2. In fact, in her statement she has narrated an incident of 02.10.2013 when she had been to house of the Respondent No.2 after receiving information of finalization of Talak. While taking back the Respondent No.2 to reside with her uncle. The Respondent No.2 had taken some of her gold ornaments and clothes with her, while some of the ornaments were left behind in her matrimonial house. She does not state that the Respondent No.2 was restrained from taking away her valuables, while leaving the house, by the Applicants.

10. The other statement is that of uncle of the Respondent No.2 Mohammad Aslam Abdul Sattar, who is also near relative of the Respondent No.2. In his statement he has narrated an incident, when after one of the altercations/fight between the accused No.1 and the Respondent No.2, he had

volunteered to take the Respondent No.2 with him for some days. On which the accused No.1 had resisted and told the Respondent No.2 that if she wants to go, she may go but she should leave their son Yasin and she cannot take him with her. According to the said witness, the present Applicants have convinced the Accused No.1 that the son is too young as Respondent No.2 was still feeding the baby, he will not survive without her. This itself shows that though the accused No.1 was ill-treating the Respondent No.2, the present Applicants protected and shielded her. He has also repeated that whenever there used to be fight between the accused No.1 and Respondent No.2, the parents of the accused used to convince her that she should tolerate the behaviour of accused No.1.

Hence, from the above mentioned statements of the relatives of the Respondent No.2, it is obvious that there are no serious allegations as such against the present Applicants. These are merely omnibus allegations which are not supported by any evidence, as regards the ill-treatment and cruelty meted to the Respondent No.2. The allegations in the complaint are general and vague without specific examples of cruelty and harassment. The record and the statements do not support the allegations made against the present Applicants. The complaint against the present Applicants is not supported by any documents, letter, e-mails, message to support the allegation of cruelty and harassment.

11. It seems that alongwith the accused No.1, being his family members, the present Applicants have been dragged into litigation. Presently there is a rising tendency by the

litigants to drag the in-laws and near relatives in the offence registered under Section 498-A. This is also one of the example of its kind.

12. The Respondent No.2 has initially filed a complaint against present Applicants under Sections 498A, 376 read with Section 34 of the IPC. However, while filing the charge-sheet, Sections 376(b), 406, 344, 347 and 506 of the IPC have been added. From the complaint as well as the statements of witnesses, none of the offence have been made out by the prosecution. So far as the offence punishable under Sections 376 and 376(b) is concerned, that would not be attracted in case of present Applicants. As far as Section 498A is concerned, which reads thus :

498A. 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 purposes of this section, “cruelty” means—

(a) any wilful 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.]

In the explanation (a) and (b) meaning of the words 'cruelty' and 'harassment' have been explained. The allegations even if taken at its face value, none of the explanation in either (a) or (b) would be applicable to the facts of the present case, the complaint neither discloses cruelty or harassment.

13. Similarly, even Sections 344, 347 and 506 of the IPC can by no stretch of imagination would be attracted in the facts of the present case. In a Judgment of the Hon'ble Supreme Court reported in *2024 SCC OnLine SC 759, in case of Achin Gupta V/s. State of Haryana And Ors.*, the Hon'ble Court has requested the legislature to look into the issue of making changes in Section 498A of the IPC. It is recorded in the Judgment that inspite of the observation made in the Judgment of *Preeti Gupta And Anr. V/s. State of Jharkhand And Anr., reported in (2010) 7 SCC 667*, necessary changes have not been made in the Sections 85 and 86 of the Bhartiya Nyay Sanhita, 2023, which is the para-materia provision to the Section 498A of the IPC. The Hon'ble Court has requested the legislature to make necessary changes in Sections 85 and 86 of the Bhartiya Nyay Sanhita, 2023, before it comes into force.

14. In a recent Judgment of the Hon'ble Apex Court in case of *Mehmood Ali V/s. State of U.P., 2023 SCC OnLine SC 950*, had occasion to consider the scope of Section 482 or the extraordinary jurisdiction under Article 226 of the Constitution of India, for quashing of criminal proceedings. In

the said Judgment, the following observation has been made, which is reproduced as under :

“35. The legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to ge thte FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averements made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averements and, if need be, with due care and circumspection, to try and read between the lines.

36. For the foregoing reasons, we have reached to the conclusion that if the criminal proceedings are allowed to continue against the Appellant, the same will be nothing short of abuse of process of law & travesty of justice. This is a fit case wherein, the High Court should have exercised its inherent power under Section 482 of the Cr.P.C. for the purpose of quashing the criminal proceedings.”

In the present case, considering the prayer made by the Applicants for quashing of the FIR, it is for us to

evaluate the material which is placed on record and to come to a conclusion that whether the accusation in the FIR are proved on the basis of the material which is placed on record.

15. In the case of *R. P. Kapur V/s. State of Punjab, reported in AIR 1960 SC 866*, the Hon'ble Apex Court had summarized the categories of cases where inherent powers can and should be exercised to quash the proceedings. The three categories are reproduced here-in below :

- (i) where it manifestly appears that there is legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

16. In our opinion, the case of the present Applicants would fall under the category (ii) from the above referred three categories, where the allegations in the FIR or the complaint taken to its face value and accepted in their entirety do not constitute the offence alleged. Merely, remarks in the complaint about the supporting the accused No.1 while narrating some of the incidents would not perse amount to committing the offences which they have been alleged of. It would be unfair to continue the prosecution against the present Applicants for the conduct of the accused No.1, in which they have been unfortunately dragged. From the

various incidents which have been narrated by the Respondent No.2 as well as the witnesses, who are her near relatives, there does not appear to be complicity of the present Applicants. The continuation of present proceedings against the Applicants would cause injustice and hardship to the Applicants. Even otherwise, the material collected during the investigation does not support the charges levelled against the present Applicants. The malafide proceedings initiated against the present Applicants needs to be curbed at this stage itself, in order to prevent abuse or process of law and miscarriage of justice, since it is obvious that the allegations are not supported by any other cogent material and have been made with a view to wreak vengeance against the present Applicants.

17. Therefore, in view of the conspectus of the matter, we find that the present Application deserves to be allowed in the interest of justice. As a result the FIR dated 07.03.2014, registered at the instance of the Respondent No.2 with the Pydhonie Police Station, vide C.R. No. 86 of 2014, for the offence punishable under Sections 498-A, 376 read with Section 34 of the IPC, is quashed and set aside, only to the extent of present Applicants.

The Application stands disposed of in the above terms, as a result all the pending applications are disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

Chaitanya