
(2022) 12 BOM CK 0115

Bombay High Court (Nagpur Bench)

Case No: Criminal Application (APL) No. 1660 Of 2022

Sunita Kumari And
Others

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Dec. 22, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 161, 240, 482
- Indian Penal Code, 1860 - Section 34, 323, 498A, 524
- Dowry Prohibition Act, 1961 - Section 3, 4

Citation: (2022) 12 BOM CK 0115

Hon'ble Judges: Sunil B. Shukre, J; M. W. Chandwani, J

Bench: Division Bench

Advocate: D. V. Mahajan, S. M. Ghodeswar

Final Decision: Dismissed

Judgement

Sunil B. Shukre, J

1. Heard learned counsel for the applicants and learned APP for State, who has assisted this Court.

2. This is application filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) for quashing the First Information Report (FIR) vide Crime

No. 201/2022, registered for offences punishable under Sections 498-A, 323, 524 read with 34 of the Indian Penal Code (IPC) and under Sections 3

and 4 of Dowry Prohibition Act and also consequent charge-sheet registered as Regular Criminal Case No. 2688/2022 pending before Court of

Judicial Magistrate First Class, Nagpur.

3. We have not yet issued any notice to the non-applicants as we would like to consider as to whether or not the applicants have any case deserving

issuance of notice on merit to the non-applicants. In order to satisfy this Court on this aspect of the matter, learned counsel for the applicant has

submitted his argument and also prayed for grant of stay to the criminal proceeding initiated in pursuance of charge-sheet no. 183/2022, bearing

R.C.C. No. 2688/2022 pending before the Court of Judicial Magistrate, First Class, M. V. Court, Nagpur. We have also heard learned APP.

4. Learned counsel for the applicants submits that the husband of non-applicant no. 2 (complainant) - Akash Bhaskar has not filed this application but

the distant relatives have filed this application, seeking quashing of the criminal proceeding. He submits that there are neither any specific allegations

made against any of these applicants nor is there any material showing that any of these applicants had resided together with non-applicant no. 2 and

her husband nor any of these applicants fall within the definition of the relatives, so as to attribute to them any such cruelty as is complemented under

Section 498-A of the IPC. He further submits that even the Court of Additional Chief Judicial Magistrate has closed the Domestic Violence

proceeding against respondent no. 2 therein i.e. applicant no. 1- Sunita Kumari W/o. Ram Sevek on the ground that she never shared any household

with non-applicant no. 2 herein. He places reliance upon the case of U. Suvetha Vs. State by Inspector of Police [(2009) 6 SCC 757].

5. According to the learned APP for the State, if one reads carefully the FIR and also the statements of witnesses, one would find that there is

sufficient material, which would necessitate framing of charge against the applicants and they being put on trial as there are specific allegations made

against each of the applicants, which prima facie amount to cruelty within the meaning of Section 498-A of the IPC. He also submits that the facts of

case of U. Suvetha (supra) being different, the case is not applicable to the facts of the present case.

6. No doubt, the applicants appear to be residing at some different places than the marital residence of non-applicant no. 2 but, the allegations

contained in the FIR and also statements of witnesses do indicate that there used to be several occasions, when all these applicants or some of them

had on one or the other occasion gathered together in the house, where non-applicant no. 2 had resided and these applicants, on different occasions,

also had opportunities to talk personally or on telephone with non-applicant no. 2 and during their such encounters with non-applicant no. 2, at the

house where non-applicant no. 2 resided or on telephone, they subjected non-applicant no. 2 to humiliation, harassment and cruelty.

7. These allegations in the FIR some of which can be found in the statements of the witnesses show that these applicants, prima facie, subjected non-

applicant no. 2 to humiliation, harassment and cruelty of such a nature as is contemplated under Section 498-A of the IPC and therefore, we are of the

view that there is prima facie case made out against each of the applicants, inspite of their sometimes residing away from the place where non-

applicant no. 2 resided. One cannot forget the fact that cruelty as envisaged under Section 498-A of the IPC is not only physical, it also takes within

its fold several other forms of cruelty, including mental cruelty. The mental cruelty is an abstract concept and it is a matter of experience for a person

who is subjected to cruelty. Many a times certain taunts are made against another person but it all depends upon the manner in which the person takes

those remarks or responds to them. Sometimes, the taunts might be seen to be innocuous by one person, while they may not be necessarily so

perceived by another person. There are also certain derogatory remarks, which have been held by Supreme Court to be presumptively constituting

cruelty within the meaning of Section 498-A of the IPC, as for example consistently suspecting fidelity of wife {See A. Jayachandra Vs. Annel Kaur

[(2005) 2 SCC 22] }. Such being the nature of mental cruelty, it is not necessary that it must take place in the physical presence of persons and that it

can be handed out even from a distant place. Here, in this case, for meting out mental cruelty to non-applicant no. 2, of course, in prima facie way,

these applicants seems to have employed modern means of communication i.e. telephone etc. and on many occasions, they have also remained

present in the company of non-applicant no. 2. Therefore, this is not a case where the applicants, by virtue of their separate residence, could be

presumed to not have treated non-applicant no. 2 in a cruel manner.

8. In fact, as stated earlier, there is sufficient material present on record which is indicative of the mental cruelty handed out by each of these

applicants to non-applicant no. 2. This can be seen from the allegations made against each of the applicants in the FIR and also from the statements of

witnesses. Besides, there is a reference to influential position of Mamta Singh- applicant no. 2. She has been stated to be working in Police Force.

There is an allegation against her that she used to say to non-applicant no. 2 that she must accept the demand and obnoxious behavior of her husband-

Akash Bhaskar, failing which she would use her influence as a Police to scuttle any criminal proceeding, which might be initiated by non-applicant no.

2. If such is the nature of the allegation, which is quite serious, it is all the more reason for this Court to direct that all these applicants are put on trial,

apart from the fact that there is already sufficient material available against each of them for framing of charge in terms of Section 240 of the

Cr.P.C..

9. As regards the contention that the applicants being not relatives, no case under Section 498-A of the IPC can be made out, we find that this

contention is without any water. We also find that reliance placed by learned counsel for the applicants on the case of U. Suvetha (supra) is improper

for the reason that the facts of U. Suvetha (supra), as rightly stated by learned APP, are entirely different. In that case, the charge of cruelty was

made against the paramour of the husband and the paramour of the husband being not a relative, being another woman, having no relation whatsoever

with the husband either by blood or marriage, the Apex Court found that no case under Section 498-A of the IPC was made out. On the contrary, we

find that the case of U. Suvetha (supra) renders good assistance to the prosecution's case. In that case, the Supreme Court has observed that the

term "relative" has not been statutorily defined but, its meaning could be ascertained from the ordinary sense in which it is understood and this

could be done by making a reference to the definition of the term "relative" given in dictionary. By considering dictionary meaning of the term

"relative", the Apex Court held that the meaning of word "relative" would depend upon the nature of status of persons which would be of

those persons who are related by blood, marriage or by adoption and that by no stretch of imagination could it be said that a girl friend or a concubine

could be considered to be relative. In para no. 18, it has been observed by the Supreme Court that the word "relative" brings within its purview a

status and then it has went on to explain it as something which is conferred either by blood, marriage or adoption. Therefore, the argument that a

distant relative would be out of scope of Section 498-A of IPC cannot be accepted and it is rejected.

10. Learned counsel for the applicants submits that merely because husband of non-applicant no. 2 had illicit relation with applicant no. 5, that by itself

would not constitute any cruelty on the part of the applicant no. 5 and this is where the case of U. Suvetha (supra) supports him. Learned counsel for

the applicants is partially right when he says that insofar as concerned the other woman involved in the private life of the husband, here it is applicant

no. 5, no offence of cruelty punishable under Section 498-A of the IPC would be made out against the other woman. But, here the offence of cruelty

under Section 498-A is prima facie made out against applicant no. 5 not in the context of her status as other woman but, in her capacity as a cousin

sister of the husband of non-applicant no. 2, against whom specific allegations, prima facie constituting cruelty have been made.

11. Learned counsel for the applicant submits that in none of the statements of the witnesses, the names of any of these applicants have been taken

and even though their names are taken in the FIR, that being merely a FIR, no significance could be attached to the allegations made in the FIR.

12. As regards the contention that no significance could be attached to the allegations made in the FIR, we beg to differ with learned counsel for the

applicants. The FIR is something which sets the criminal law in motion and though usually not a substantive piece of evidence by itself, it nevertheless

forms a foundation of a criminal case. No strong edifice of a criminal case can be built unless its foundation is sound. If the FIR does not contain

allegations of cruelty, no criminal case can be built against the persons shown as accused in the FIR. But, when foundation is strong, it would give rise

to a strong criminal case, which is what seems to be the case here in a prima facie way. About the other contention, we find from the statements of

witnesses recorded under Section 161 of the Cr.P.C. that the submission of learned counsel for the applicants is completely untrue. Names of these

applicants have been taken in the Police Statements and even specific allegations are made against each of them. The witnesses are saying that

Nirmala Vyas, Mansi Vyas, Niraj Bhaskar, Sweety and other persons were involved in making active demand of dowry or money as a consideration

for continuation of marriage of non-applicant no. 2 with Akash Bhaskar. These witnesses are Sau. Sunita Goutam and Shri Shambihari Gautam.

13. As regards closure of Domestic Violence proceedings, we would say that it is something which would have to be considered on its own merit,

which would be possible only when trial is held. For the purpose of this application filed under Section 482 of the Cr.P.C., we have to go by the

principles laid down in the case of State of Haryana Vs. Bhajan Lal and others [1992 AIR SC 604], which require that nature of allegations must be

examined by taking them at their face value and when so taken, if they are found to be constituting an offence, inherent power of the High Court

under Section 482 of the Cr.P.C. to quash the FIR must not be exercised. We have already found the allegations against the applicant to be so.

14. Thus, we find no merit in the submission of learned counsel for the applicants, and also in this application. We rather find that the applicants have

abused the process of law by filing this application inspite of the fact that they are aware of the allegations made against them and which are of a

nature which require their consideration on merits. So, reasonable costs need to be imposed upon the applicants.

15. In the result, the application is dismissed with costs of 10,000/- (Rs. Ten Thousand) to be deposited by the applicants, within three weeks from the

date of order, with the High Court Bar Association, Nagpur for the purpose of development of library.

16. If the costs are not deposited within the stipulated period, same shall be recovered from the applicants by the registry, in accordance with law,

treating the costs as fine imposed by this Court.