ABC 2016 (II) 527 BOM

ACQUITTAL & BAIL CASES

a

HIGH COURT OF BOMBAY

(S.S. Shinde & Sangitrao S.Patil, JJ.)

Criminal Application No.125 of 2016

Decided on 28 September, 2016

b Aurangabad Bench

SHARAD MADHUKAR AGHAV & ORS. - Applicant(s).

Versus

STATE OF MAHARASHTRA & ANR. - Respondent(s).

c ***Law Covered:- Code of Criminal Procedure, 1973 — Section 482 — Inherent power of the Court —Indian Penal Code, 1860 — Sections 498-A, 323, 504, 506 r/w. 34 —Matrimonial Dispute —No specific allegation & instances in the FIR —FIR quashed qua applicant nos.4 to 8 only. (Para 7)***

d ***Facts:-*** *It was alleged that applicant nos. 1 to 3 ill-treated respondent no.2 and asked her to bring Rs.15 lacs from her parents. The other relatives i.e. applicant nos.4 to 8 used to instigate applicant nos.1 to 3. It was further stated that the accused persons removed ornaments of respondent no.2 given by her parents at the time of marriage and drove out of matrimonial home. Thereafter, she started residing with her parents in*

e *parental house. It was further stated that even thereafter the members of the matrimonial house came to the parents house and instigated her to sign on the blank papers. Upon refusal to sign on the blank papers, the husband and mother-in-law abused and assaulted her.*

It was observed by the High Court in the present appeal that

f *applicant nos. 4, 6 and 7 were not residing at her matrimonial home and they were residing separately at different places. It was also observed that there were no specific allegations qua applicant nos.4 to 8. However, so far applicant nos.1 to 3, it was observed that there were allegations with specific dates that they demanded `.15 lacs and also ill-treated respondent no.2 and*

g *suspected her chastity. Therefore, the FIR to the extent of applicant nos. 4 to 8 was quashed and set aside.*

Law of relief:- Casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against.

h ***Held:-*** Upon careful perusal of the contents in the FIR, there are no specific allegations qua applicant nos.4 to 8. There are general

allegations in the FIR about demand of Rs.15 lacs. It appears that the allegations are against applicant nos.1 to 3 about demand of money. In addition to that it is alleged that applicant no.1 was suspecting chastity of respondent no.2. It is vaguely stated that other relatives i.e. applicant nos.4 to 8 also instigated applicant nos.1 to 3. There is specific reference of two incidents those took place on 3rd August, 2015 and 8th September, 2015, alleging that the members, who are residing in the matrimonial home, were involved therein. Therefore, even if the allegations in the FIR are taken as they are, there are no specific allegations and instances stated in the FIR as against applicant nos.4 to 8. However, so far applicant nos.1 to 3 are concerned, there are allegations with specific dates that they demanded Rs.15 lacs and also ill-treated respondent no.2 and suspected her chastity.

Counsel:- ***For Applicant(s):*** *Mr. S.S. Thombre, Advocate.*

For Respondent(s): *Mr. S.W. Mundhe, APP & Mr. Y.B. Bolkar, Advocate.*

Cases Referred:-

1. *State of Haryana V/s Bhajanlal; AIR 1992 SC 604. (Para 4)*
2. *Geeta Mehrotra and another Vs. State of Uttar Pradesh and another; (2012) 10 SCC 741= ABC 2012 (II) 285. (Para 8)*
3. *G.V.Rao Vs.L.H.V. Prasad; (2000) 3 SCC 693. (Para 8)*

JUDGMENT

S.S. SHINDE, J.: - Heard. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This Criminal Application is filed taking exception to the First Information Report bearing Crime No.I-344/2015 registered with the Pathardi Police Station, Pathardi, District Ahmednagar on 28.10.2015 for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of the Indian Penal Code.

3. Respondent no.2, who is the informant, filed First Information Report (for short 'FIR') stating therein that her marriage was performed with applicant no.1 -Sharad on 23rd February, 2015. Initially, she was treated well, however, thereafter applicant nos. 1 to 3 started ill-treating her and asked her to bring Rs.15 lacs from her parents and maternal uncle for construction of Hospital at Ahmednagar. It is further stated that the applicants, on not fulfilling

the demand, started abusing and assaulting respondent no.2 and also suspecting her chastity. The other relatives i.e. applicant nos.4 to 8 used to instigate applicant nos.1 to 3 and telling them that unless respondent no.2 brings money from her parents, applicant no.1 should not continue matrimonial ties with her. It is further stated that on 3rd August, 2015, the members of matrimonial house have removed ornaments of respondent no.2 given by her parents at the time of marriage and drove out of matrimonial home. Thereafter, respondent no.2 started residing with her parents in parental house at Pagori Pimpalgaon, Taluka Pathardi, District Ahmednagar. It is further stated that even thereafter on 8th September, 2015 at 7.30 p.m. the members of the matrimonial house came to the parents house at Pagori Pimpalgaon and instigated her to sign on the blank papers since applicant no.1 wanted to take divorce from her. Upon refusal to signing on the blank papers, the husband and mother-in-law abused and assaulted her.

4. The learned counsel appearing for the applicants submits that the allegations in the FIR are vague and general in nature. There was no demand of money or ill-treatment as alleged in the FIR, applicant nos.4 to 8 are not residing in matrimonial house. Applicant no.4 is a Medical Practitioner, residing at Balamtakali, Taluka Shevgaon, District Ahmednagar. Applicant no.5 is in service and the allegations in the FIR against him are not sustainable. Applicant no.6 is residing at Newasa. Applicant no.7, who is senior citizen, is also residing at Sonai, Taluka Newasa, District Ahmednagar and applicant no.8 is also in service, and therefore, the allegations made in the FIR are false and FIR deserves to be quashed keeping in view the exposition of law in the case of ***State of Haryana V/s Bhajanlal; AIR 1992 SC 604.***

5. On the other hand, the learned APP appearing for the respondent - State submits that the investigation is in progress. The allegations in the FIR disclose offences those need investigation, and therefore, the application for quashing of FIR may be rejected.

6. We have considered the submissions of the learned counsel appearing for the applicants and the learned APP appearing for the respondent - State. With their able assistance, perused the averments in the application, annexures thereto, the contents of the FIR and also the copies of the documents placed on record. Respondent no.2 has not denied that applicant nos.4, 6 and 7 are not residing at her

matrimonial home and they are residing separately at different places than the places wherein the matrimonial home is situate.

7. Upon careful perusal of the contents in the FIR, there are no specific allegations qua applicant nos.4 to 8. There are general allegations in the FIR about demand of Rs.15 lacs. It appears that the allegations are against applicant nos.1 to 3 about demand of money. In addition to that it is alleged that applicant no.1 was suspecting chastity of respondent no.2. It is vaguely stated that other relatives i.e. applicant nos.4 to 8 also instigated applicant nos.1 to 3. There is specific reference of two incidents those took place on 3rd August, 2015 and 8th September, 2015, alleging that the members, who are residing in the matrimonial home, were involved therein. Therefore, even if the allegations in the FIR are taken as they are, there are no specific allegations and instances stated in the FIR as against applicant nos.4 to 8. However, so far applicant nos.1 to 3 are concerned, there are allegations with specific dates that they demanded Rs.15 lacs and also ill-treated respondent no.2 and suspected her chastity.

8. The Supreme Court in the case of ***Geeta Mehrotra and another Vs. State of Uttar Pradesh and another; (2012) 10 SCC 741= ABC 2012 (II) 285*** in the facts of that case held that casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference of the judgment of the Supreme Court in the case of ***G.V.Rao Vs.L.H.V. Prasad; (2000) 3 SCC 693*** wherein para 12 it is observed thus:

> "12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual

agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

9. In the light of discussion in the foregoing paragraphs, we are of the opinion that further continuation of the investigation as against applicant nos.4 to 8 will be exercise in futility and abuse of process of law. Therefore, the FIR to the extent of applicant nos.4 to 8 stands quashed and set aside.

10. As already observed, as against applicant nos.1 to 3 there are specific allegations and also dates are mentioned, therefore, the FIR needs further investigation qua applicant nos.1 to 3.

11. Rule is made absolute partly.

Criminal Application is disposed of accordingly.

Result:- Application allowed.

ABC 2016 (II) 531 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(V.K. Jadhav, J.)

Criminal Application No. 3093 of 2015

Decided on 27 September, 2016

Aurangabad Bench

SANTOSH UTTAMRAO GOMSALE ***- Applicant(s).***

Versus

STATE OF MAHARASHTRA & ANR. ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 323 & 324 —Code of Criminal Procedure, 1973 — Section 197&204 — Previous sanction & Issuance of process — Police excess in connection with effecting the arrest —Allegation of — Admitted fact — complainant caused injury to the applicant-accused by dangerous weapon while evading arrest — no evidence regarding beating within the premises of police station & inside the police station —— Held, the applicant was discharging his duty at the material time— conduct as alleged against the applicant is reasonably connected with the performance of his official duty — certainly entitled for the protection u/s 197 Cr.P.C.— Cognizance could not have been taken***