ABC 2016 (II) 594 BOM
ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(S.S. Shinde & Sangitrao S. Patil, JJ.)
Criminal Application No.4687 of 2016
Decided on 18 October, 2016
Aurangabad Bench

SHAISTA SHABBIR SHAIKH ***- Applicant(s).***

Versus

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

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 323, 504, 506 & 498-A — Husband of the woman having illicit relations with the applicant— Allegation of — Specific date of any incident — not mentioned in the FIR — or in the statements of the witnesses— No specific overt act is attributed so as to attract the provisions of Sections 323, 504 & 506 — Casual references — The applicant is a medical practitioner residing more than 300 kilo meters —FIR quashed — Code of Criminal Procedure, 1973 — Section 482. (Para 8 & 9)***

(B) Indian Penal Code, 1860 — Section 498-A — Scope of — the applicant is not a 'relative' of the husband of the informant — the section cannot be invoked. (Para 9)

Facts:- *In the FIR it was alleged against the applicant that the present applicant came to meet her husband and said that, she has taken divorce from her husband, and the husband of the first informant should also take divorce from her. It was further alleged that when the informant asked her husband at night about his relations with the applicant, the husband beat the informant and asked her to leave the matrimonial home and bring money and four wheeler from her parents. The FIR was lodged u/ss 323, 504 and 506 and also u/s 498-A, IPC against the applicant along with the husband of the first informant and his relatives.*

It was observed by the hon'ble High Court that the provisions of Section 498-A, IPC cannot be invoked qua the applicant, since the applicant is not a 'relative' of the husband of the informant. No specific incident or overt act was found attributed against the applicant to disclose, prima facie, the offences punishable u/ss 323, 504 and 506 of the IPC. The FIR to the extent of the applicant was quashed and set aside.

Law of relief:- ***The ground of 'illicit relationship' is not enough to array an accused as 'relative' u/s 498-A.***

Held:- We have also carefully perused the statements of the witnesses wherein it is stated that the husband of the informant viz. Shaikh Javed, has illicit relations with the applicant. No specific date of any incident has been mentioned in the FIR or in the statements of the witnesses. No specific overact is attributed so as to attract the provisions of Sections 323, 504 and 506 of the IPC against the applicant. There are casual references qua the applicant. The applicant is a medical practitioner. She is residing in Thane District, which is more than 300 kilo meters away from Beed. (Para 8)

The provisions of Section 498-A of the IPC cannot be invoked qua the applicant, since the applicant is not a 'relative' of the husband of the informant. No specific incident or overt act has been attributed against the applicant to disclose, prima facie, the offences punishable under Sections 323, 504 and 506 of the IPC. (Para 9)

Counsel:- ***For Applicant(s):*** *Mr. G.R. Syed, Advocate.*

For Respondent(s): *Mr. S.W. Mundhe, APP & Mr. C.S. Kulkarni, Advocate.*

JUDGMENT

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

2. This Application takes exception to the First Information Report bearing Crime No.174/2016 registered with Beed City Police Station, Beed, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code (for short 'IPC').

3. The applicant is arrayed as accused no.5 in the First Information Report bearing Crime No.174/2016 (for short 'FIR') registered with Beed City Police Station. In the said FIR, respondent no.2 i.e. informant, alleged against the applicant that in the month of December, 2015, when the informant was present in the Hospital of her husband viz. Javed Shaikh, the present applicant came to meet him and said that, she has taken divorce from her husband, and the husband of the informant should also take divorce from her, and thereafter, the applicant and husband of the informant can perform the marriage. When the informant asked the applicant how did she know the husband of the informant, the applicant said that, she knew him from the college days. It is further alleged in the said FIR that,

when the informant asked her husband at night about his relations with the applicant, the husband beat the informant and asked her to leave the matrimonial home and bring money and four wheeler from her parents. In the afore-stated facts, the informant lodged the FIR against the husband and other family members of the husband for the incident which had taken place on 24th December, 2015 and also 22nd May, 2016.

4. Hence, this Criminal Application for quashing of FIR bearing Crime No.174/2016 registered with Beed City Police Station, Beed.

5. The learned counsel appearing for the applicant submits that the applicant has no relation with the husband of the informant as alleged in the FIR. She is no way connected with the alleged offences. The ingredients of Section 498-A of the IPC are not attracted qua the applicant. Therefore, further investigation as against the applicant would be an abuse of process of law. The learned counsel presses into service exposition of law in the case of State of Haryana Vs. Bhajanlal1 and submits that the Criminal Application may be allowed.

6. On the other hand, the learned APP appearing for the respondent - State and the learned counsel appearing for the respondent no.2 submits that, apart from the allegations in the FIR, the statements of various witnesses have been recorded, wherein the present applicant is named and also an 1 AIR 1992 SC 604 overact is attributed against her. Therefore, they submit that the Criminal Application praying for quashing of FIR may be rejected.

7. We have carefully perused the contents of the FIR. In the context of the grounds raised in this Application, the following portion from the FIR would be relevant:

> तसेच सन 2015 च्या डिसेंबर महिन्यात मी माइया हॉस्पीटल मध्ये असंताना डॉ शाईस्ता शेख ही माइया पतीला भेटण्यासाठी तेथे आली व माइया पतीला म्हणाली की, मी माइया पतीकडून घटस्फोट घेतला असून तु पण तुइया पत्नी कडून घटस्फोट घेवून माझेशी लग्न कर असे माइया पतीशी ती बोलत असतांना त्याचे दोघांचे बोलने मी ऐकले व त्यावर त्या महिलेला मी विचारले असता तीने सांगितले की, आमचे जूणे कॉलेजपासुन पूर्वीपासून संबंध आहेत असे ती म्हणालेवरुन मी माइया पतीस विचारणा केली व माझे मुलाला येथे सोडून तु माहेरी निघून जा व जेव्हा पैसे व

चारचाकी गाड़ी घेवून येशील तेव्हाच परत ये असे म्हणून माला घराबाहेर हाताला धरून काढले व माझी कपडयाची बॅग अंगावर फेकली व परत जर घरात आलीस तर तुला जीवे मारुण टाकीन अशी धमकी दिली परंतु मी घराचे बाहेर तशीच उभी राहिले काही वेळाने माझा मुलगा जास्त रडत असल्यामुळे मला माइया पतीने घरात घेतले दुसरे दिवशी सकाळी माइया पतीने माइया आईला फोन करुन सांगितले की, तुमची मुलगी अत्ताची आत्ता येवून घेवून जा तिची मला गरज नाही व मला तिला नांदवायचे नाही.

8. We have also carefully perused the statements of the witnesses wherein it is stated that the husband of the informant viz. Shaikh Javed, has illicit relations with the applicant. No specific date of any incident has been mentioned in the FIR or in the statements of the witnesses. No specific overact is attributed so as to attract the provisions of Sections 323, 504 and 506 of the IPC against the applicant. There are casual references qua the applicant. The applicant is a medical practitioner. She is residing in Thane District, which is more than 300 kilo meters away from Beed.

9. The provisions of Section 498-A of the IPC cannot be invoked qua the applicant, since the applicant is not a 'relative' of the husband of the informant. No specific incident or overt act has been attributed against the applicant to disclose, prima facie, the offences punishable under Sections 323, 504 and 506 of the IPC.

10. In the light of the discussion in the foregoing paragraphs, we are of the considered view that continuation of the further investigation/proceedings on the basis of the First Information Report bearing Crime No.174/2016 registered with the Beed City Police Station, Beed, for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code as against the applicant will be abuse of process of law. Hence the First Information Report to the extent of the applicant stands quashed and set aside.

11. The Rule is made absolute in above terms. The Criminal Application is allowed to the above extent, and the same stands disposed of accordingly.

Result:- FIR quashed.