



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2832 OF 2014

1. Mr. Sanjay Ananda Vibhute
Age: 35 yrs, Occ.: Transport,
2. Mangal Ananda Vibhute,
Age: 65 yrs, Occ.: Household,
3. Mr. Vinayak Ananda Vibhute,
Age: 32 yrs, Occ.: Transport,
4. Mrs. Rameshwari Vinayak Vibhute,
Age: 30 yrs, Occ. Household

All Residing At. Post. Nevari,
Tal. Khanapur, Dist. Sangli

.....Petitioners

Vs.

1. State Of Maharashtra,
(Vita Police Station, District Sangli,
C.R.No.132/2013 (Copy to be served on
Public Prosecutor of High Court of
Judicature at Bombay)
2. Mrs. Ashwini Sanjay Vibhute,
Age: 26 yrs, Occ: Household,
R/o. Loni, Tq. Khatav, Dist. Satara

.....Respondents

Ms. Bhavika Shinde, i/b. Mr. Umesh Mankapure, for the Petitioners.
Smt. Anamika Malhotra, Addl.PP for the Respondent No.1-State.
Mr. Satyaram R. Gaud, for Respondent No.2.

CORAM: A. S. GADKARI AND
DR NEELA GOKHALE, JJ.

RESERVED ON: 25th JULY, 2024.
PRONOUNCED ON: 31st JULY, 2024.

JUDGMENT (Per Dr. Neela Gokhale, J) :-

- 1) The Petitioners seek quashing of C.R.No.132/2013 dated 8th

August 2013 registered at Vita Police Station, Sangli for offences punishable under Sections 498-A, 313, 494, 323, 504, 506 read with Section 34 of the Indian Penal Code and the subsequent Final Report dated 11th November 2014 filed by the Investigating Officer in the Court of the Judicial Magistrate First Class at Vita.

2) The Petitioner No.1 herein is the husband of the Respondent No.2 (original complainant). Petitioners No.2 and 3 are the mother and brother of Petitioner No.1 respectively, whereas Petitioner No.4 is the wife of Petitioner No. 3.

3) The FIR reveals that, the Petitioner No.1 and the complainant were married on 1st December 2002 according to Hindu rites and rituals. The complainant states that, she resided with her husband, brother of her husband, his wife and mother-in-law. After the birth of their minor son in 2004, the Petitioners started ill-treating her. Complainant has narrated the instances of cruelty in detail in the FIR. Some of the instances are as under:–

- i) She was accused of suffering from TB since her brother had TB and on this ground, she was repeatedly beaten up.
- ii) The Petitioner No. 1 husband lost his job. Hence the Petitioners demanded that, she bring an amount of Rs.25 Lacs from her parents to help her husband start a business. When she showed her inability to do so, she was beaten up and was not given meals. She was starved

and was refused food until she met their financial demands.

- iii) The Petitioners refused medical aid to the complainant at times when she was unwell.
 - iv) She was forced to undergo abortions three times after the birth of their minor son on the basis that they did not want her to bear any child from their family. She has specifically made these allegations against all the Petitioners jointly and individually. The role of each Petitioner is specified in the complaint.
 - v) The Petitioner No. 2 gave her burns with a hot iron rod when the complainant tried to resist undergoing abortion.
 - vi) The Petitioner husband always gave threats of dire consequences if she divulged her reluctance to undergo abortion to the doctors.
 - vii) They quarreled with her on trivial issues and arguments always ended in the complainant being beaten and abused.
 - viii) They drove her out of the house and refused to take her back in the matrimonial home.
 - ix) The Petitioner husband has married another woman without taking divorce from the complainant and he is residing with her, and a minor daughter born of the lady's earlier marriage.
- 4) By an Order dated 22nd February, 2023, Rule was issued and further proceedings in the case were stayed.
- 5) Heard the counsels for both the parties. Ms. Bhavika Shinde

learned counsel appeared for the Petitioner. Mr. Satyaram Gaud learned counsel appeared for Respondent No.2 and Ms. Anamika Malhotra learned APP appeared for the State.

6) Ms. Shinde submitted that, the FIR was filed only after the Domestic Violence Petition was decreed in favor of the complainant and she intended to further harass the Petitioners. She raises the issue of limitation by contending that, the last incident of ill treatment, even as per the complainant, was on 14th November 2009 and thereafter there is no allegation of cruelty. The FIR thus, filed three years after the cause of action is time barred is the contention of Ms. Shinde. She further says that, the FIR is merely a counterblast to the Divorce Petition filed by the Petitioner No.1 against the complainant. She further says that, the complainant is only intended to extort money from the Petitioners.

6.1) Ms. Shinde also drew our attention to the statements of witnesses annexed to the final report of the Police, more pertinently the report of the Radiologist dated 13th September 2009, stating that, the fetal movements and cardiac activity are absent. Ms. Shinde thus defends the Petitioners by saying that, the abortion was done since the fetal movement was absent and under medical advice. She thus exhorts the Petitioners as against the allegation of forcing abortions on the complainant. Another statement read by Ms. Shinde was that of Sou. Gitanjali Sanjay Vibhute, the second wife of the Petitioner No.1. Sou. Gitanjali stated she married Sanjay

as he told her that, he was divorced from the complainant, and it is only when the police came calling that she learnt about the allegations made by the complainant against the Petitioners. It is thus her contention that, no cognizable offence is made out from the contents of the FIR and in these circumstances, the FIR and the charge sheet deserve to be quashed and set aside.

7) Per contra, Mr. Gaud draws our attention to all the instances of mental and physical cruelty inflicted by the Petitioners against the complainant as narrated by her in the FIR. He further argues that, the complainant already filed a Petition under the Protection of Women from Domestic Violence Act, 2005 ('D.V.Act') which was allowed by an Order 5th January 2012 passed by the Judicial Magistrate First Class at Wadus. Pursuant to examining the evidence adduced by the parties, the Magistrate concluded that, the Petitioners caused domestic violence to the complainant. Similarly, the complainant has also filed a Petition for restitution of conjugal rights against the Petitioner No. 1 and the same is also decreed by a Court of competent jurisdiction. In that view of the matter, Mr. Gaud argues that, from the Order passed by the Courts in the matrimonial proceedings, it is obvious and cannot be denied that, the complainant suffered cruelty and violence at the hands of the Petitioners.

7.1) Mr. Gaud also drew our attention to the statements recorded by the police of the parents of the complainant and other doctors who

administered treatment to the complainant pertaining to alleged abortions.

With these arguments, Mr. Gaud prays that the Petition be dismissed.

8) Ms. Malhotra for State opposed the Petition and supported the case of the complainant.

9) Having perused the Judgment and Order passed by the Judicial Magistrate First Class, Vadus allowing the D.V. Act proceedings filed by the complainant, it is quite apparent that, there is sufficient material to believe the story of the complainant. Moreover, even the Petition for restitution of conjugal rights is allowed which clearly indicates that, there is substance in the narration of the complainant. Even on the basis of these Orders, prima facie the story of the complainant cannot be disbelieved at this threshold.

10) We noted the statements of the witnesses, especially the report of the medical practitioner namely Dr. Patankar. She corroborates the story of the complainant and says that, whenever she had visited her clinic, she had confided her grievances about ill treatment meted out to her by the Petitioners. Furthermore, the Medical Officer of the Rural Hospital at Vita has certified that, the complainant's arm bears a hyper-pigmented circular patch of 4 cm in diameter supporting the complainants allegation of heat burns given by hot iron rod by the Petitioner No. 2.

11) Turning to the explanation of Ms. Shinde regarding the Radiologist's report regarding absence of fetal movement as a reason for abortion, in fact supports the complainant's allegation that, she was forced

to take abortion pills prescribed by some doctor. It is highly probable that, fetal movement may have stopped after taking the said pills. Without going into evidence in this regard, it is not possible to arrive at a safe conclusion one way or the other. But the seriousness of the allegation cannot be ignored at this stage.

12) It is admitted by both counsels that, there is a second wife. In fact, we are surprised that, it is the Petitioners who brazenly rely on the statement of the second wife. It is nobody's case that, the parties have divorced. The Petitioner No. 1 himself admits that, the Petition for divorce as filed by him is pending. In these circumstances, the Petitioner No. 1 has even committed the offence of Bigamy, which besides inviting separate prosecution, is also cruelty to the complainant.

13) Having perused the contents of the FIR carefully, we find specific and categoric allegations against the Petitioner No.1 and 2, husband and mother-in-law respectively. However, no specific role is attributed to the Petitioners No. 3 and 4. We find that, the allegations against the Petitioners No. 3 and 4 are quite general and vague. Allowing prosecution against the Petitioners No. 3 and 4 in the absence of clear allegations against them would simply result in an abuse of the process of law. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if these Petitioners are forced to go through the tribulations of a trial,

i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court as well as the Apex Court in varied instances that, a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged. At the same time, allegations against the husband and mother-in-law are specific and believable. The contents of the FIR prima facie disclose commission of the offences as alleged against the Petitioners No.1 and 2 but not against Petitioners No. 3 and 4.

14) The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by the Supreme Court in the case of *State of Haryana v. Bhajan Lal*.¹ A note of caution was, however, added that, the power should be exercised sparingly and that too in rarest of rare cases.

14.1) The illustrative categories indicated by the Supreme Court are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against

1 1922 Supp.(1) SCC 335.

the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an Order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended

with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15) Considering the facts in the present case and the settled legal position we are of the view that, the contents of the FIR prima facie constitute a cognizable offence in so far as the Petitioners No.1 and 2 are concerned. At the same time, allegations against the Petitioners No. 3 and 4 are general, vague, and omnibus.

15.1) In this view of the matter, we are not inclined to exercise jurisdiction under Article 226 of the Constitution of India to quash proceedings against the Petitioners No. 1 and 2.

15.2) However, C.R.No.132/2013 dated 8th August 2013 registered at Vita Police Station, Sangli and the subsequent final report dated 11th November 2014 filed by the Investigating Officer in the Court of the Judicial Magistrate First Class at Vita as against the Petitioners No.3 and 4 are quashed and set aside.

15.3) The Petition is partly allowed in the above terms.

16) Accordingly, Rule is partly made absolute.

(DR NEELA GOKHALE, J.)

(A.S. GADKARI, J.)