

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.435 OF 2006

IN

CRIMINAL APPLICATION NO.3448 OF 2004

Madhukar Waman Kangane & Ors. .. Applicants
Versus
State of Maharashtra & Ors. .. Respondents

Mr.M.S.Karnik for petitioners
Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th September 2006.

P.C.

. For the reasons set out in the application, order dismissing Application No.3448 of 2006 in default, is set aside. Application No.3448 of 2006 is restored to file and heard forthwith.

(S.C.Dharmadhikari, J)

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. I have perused this application which is instituted for quashing of a complaint being Criminal Complaint No.104 of 2002 instituted by the second respondent in the Court of Judicial Magistrate, First Class Dindori.

2. Upon perusal of the complaint and the verification statement, the Judicial Magistrate, First Class has issued process summoning the applicant as also others who are arrayed as accused to answer the charge.

3. Applicants who are accused Nos. 3, 4, 5 and 6 applied for deleting their names from the array of accused, mainly on the ground that some of the applicants are permanently residing at Mumbai and, therefore, cannot have any connection with the offence alleged to have been committed.

4. Such application was dismissed by the trial court. Apart from holding that the application is preferred at the stage when process was issued, the learned trial Judge has rightly observed that the code does not permit any application to be preferred for deleting the accused from the complaint. That apart, he has observed that the complaint, prima facie, discloses an offence. There are clear allegations against all accused about ill-treatment. The trial court has observed that there are enough materials at the prima facie stage to issue process against the accused and

summoned them to answer the charge under section 498A I.P.C.

5. Revision application was preferred against the decision of the trial court and by the impugned order delivered on 6th August 2004, the learned Additional Sessions Judge has dismissed the criminal revision application, preferred by the applicants before me, being Criminal Revision Application No.103 of 2003.

6. Additional Sessions Judge, after hearing parties and perusing materials produced, has agreed with the prima facie conclusion of the learned trial Judge. The learned Additional Sessions Judge has rightly observed that it is not for the Court at this stage to go into the aspects as to whether by residing away from second respondent - wife and her husband as also immediate in laws, they have not in any manner made any demand or issued threats as alleged by

the complainant. Merely because they are staying away, it does not mean that at this prima facie stage, no process can be issued against them.

7. Mr.Karnik has been unable to point out any such provision which enables him to urge that offence punishable under section 498A is not committed, merely because some of the in-laws are residing away from the complainant.

8. I find no error apparent on the face of record nor any perversity so as to call for interference in my inherent jurisdiction. Application dismissed. However, disposal of this application shall not prevent applicant from raising all pleas and producing necessary materials during the course of trial. The trial Judge to take them into account and pass appropriate orders in accordance with law, uninfluenced by prima facie observations. Ad-interim order stands vacated.

(S.C.Dharmadhikari, J)