**M.Cr.C.No.11386/2014**
**(Subhash Chandra Sharma & Ors. v. State of M.P. & Ano.)**

**21/02/2017**

Applicants no. 1, 2 and 3 present in person with Shri R.K. Sharma, Advocate.

Shri R.S. Yadav, Public Prosecutor for the respondent no.1/State.

Respondent no. 2 present in person with Shri M.P.S. Raghuvanshi, Advocate.

With the consent of the parties, heard finally.

This application under Section 482 of CrPC has been filed for quashing the charge sheet filed for offences under Sections 498-A, 294, 323, 506-B, 34 of IPC.

At the outset, the Counsel for the applicants seek permission of this Court to withdraw the application filed on behalf of the applicants no. 1 and 2 with liberty to raise all possible defences which may be available to them at appropriate stages. With aforesaid liberty, the application filed on behalf of applicants no. 1 and 2 is dismissed as withdrawn.

Considered the application filed on behalf of applicants no. 3 to 6.

The applicant no. 3 is the younger brother-in-law (देवर), applicant no. 4 is the wife of applicant no. 4 (देवरानी), applicant no. 5 is sister-in-law (ननद) and applicant no. 6 is husband of sister-in-law (ननदोई) of respondent no. 2.

The following are the important dates:

1. Applicant no. 2 and respondent no. 2 got married

on 9.2.2010.

2. Applicant no. 3 and applicant no. 4 got married on 10.12.2013.
3. Applicant no. 5 and applicant no. 6 got married on 16.2.2010.
4. Respondent no.2 gave birth to child on 17.12.2012.

The above dates are admitted by the respondent no.2 who is present in the Court.

The necessary facts for the disposal of the present application in short are that on 13-8-2014, the respondent no.2 lodged a F.I.R. against the applicants alleging that She was married to Ashish (applicant No.2) on 9-2-2010. At the time of marriage, her father had given Rs. 7 lacs in cash, gold and silver ornaments worth Rs. 5 lacs and had also spent near about 1 lacs on catering etc. For few months after the marriage, her in-laws had kept her properly but when She got pregnant, then the applicants (including applicants no.1 and 2) started demanding Swift car in dowry and started saying that She should ask her father to sell his house situated at Gwalior and money should be given so that Ashish can invest the same in his business. When the respondent no. 2 refused to do so, all of them started abusing and beating her. When She fell ill because of beating, her father brought her back to Gwalior where She was treated and gave birth to a child. At that time, nobody from her in-

laws family came to see her. On 10-8-2014, on persuasion by her father and other persons, her husband Ashish took her back to her matrimonial house where again She was beaten by the applicants on 11-8-2014. She was turned out of her matrimonial house and She came back to her father's house on 12-8-2014 and from then She is residing with him.

The case diary statements of the witnesses including that of respondent no. 2 were recorded and after completing the investigation, the police filed the charge sheet. It is submitted by the Counsel for the applicants that merely because the criminal proceedings are pending after the charge sheet is filed, therefore, the application under Section 482 of Cr.P.C. may not be dismissed merely on this ground. If the allegations made against the applicants are not sufficient to make out a prima facie case against the applicants, then they may not be send to face the ordeal of the Trial. To buttress his contentions, the Counsel for the applicants relied upon judgment of Supreme Court passed in the case of **Satish Mehra Vs. State (NCT of Delhi) & Anr.** reported in **(2012) 13 SCC 614**, in which it has been held as under:-

> "14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or

the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

15. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this Court in State of

Karnataka v. L. Muniswamy (1977) 2 SCC 699 which may be usefully extracted below : (SCC pp. 702-03)

> "7. The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:
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> This section is contained in Chapter XVIII called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The

High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

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In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court

> to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

16. It would also be worthwhile to recapitulate an earlier decision of this court in Century Spinning & Manufacturing Co. vs. State of Maharashtra (1972) 3 SCC 282 noticed in L. Muniswamy's case (Supra) holding that: (SCC p. 704, para 10)

> "10 …. the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the materials warrant the framing of the charge.

It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial.

17. While dealing with contours of the inherent power under Section 482 Cr.P.C. to quash a criminal proceeding, another decision of this Court in Padal Venkata Rama Reddy v. Kovvuri Satyanaryana Reddy (2011) 12 SCC 437 to which one of us (P. Sathasivam, J.) was a party may be usefully noticed. In the said decision after an exhaustive consideration of the principles governing the exercise of the said power as laid down in several earlier decisions this court held that: (SCC 448, para 31)

> "31. .... When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would

> not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 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 detail in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335. The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution."

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21. A criminal trial cannot be allowed to assume the character of A fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the

> allegations levelled is clearly not maintainable against either of the accused – appellant G.K. Bhat and R.K. Arora."

It is further submitted by the Counsel for the applicants, that apparently, the respondent no.2 has lodged a false report. According to respondent no.2, immediately after She got pregnant, all the applicants including the applicant no. 4 started demanding dowry and started harassing and beating her. Undisputedly, the applicant no. 4 got married to the applicant no. 3 on 10-12-2013 whereas the respondent no. 2 had given birth to child on 17-12-2012. Thus, it was contended that when the respondent no. 2 got pregnant and even when She gave birth to child on 17-12-2012, the applicant no. 4 was not even married to the applicant no. 3. It was submitted that therefore, it is apparent that false allegations against applicant No.4 have been made.

It is further submitted that the applicants no. 5 and 6 got married to each other on 16-2-2010 i.e., just 7 days after the marriage of respondent no.2 with the applicant and the applicant no. 5 shifted to Gwalior. The applicant no. 5 and her husband (Applicant no. 6) are residing at Gwalior and they have nothing to do with the family affairs of the respondent no.2 and her husband (applicant no. 2).

So far as the applicant no. 3 is concerned, it is submitted by the Counsel for the applicants that at the time of marriage of the respondent no.2 with

the applicant no. 2, the applicant no. 3 was studying at Gwalior and after passing his Civil Engineering degree he shifted to Sagar and is doing job at Sagar. It is further submitted that the applicant no. 3 and 4 after their marriage are residing at Sagar and they have nothing to do with the family affairs of the respondent no.2.

It is further submitted that in fact the applicant no.2 had filed a suit for divorce and only by way of Counterblast, the respondent no.2 lodged a F.I.R. It is further submitted that a tendency is growing in the society to over implicate the near and distant relatives of the husband without there being any specific overt act on their part. Even in the present case, no specific allegations have been made against the applicants and the allegations which have been made are vague and omnibus. It is further submitted that the police has filed the M.L.C. Report of the respondent no. 2 along with the charge sheet according to which She was medically examined on 13-8-2014 and swelling on wrist and complaint of pain was found by the Doctor and according to him the duration of the injuries was 6 hours, whereas according to the respondent no. 2 She was beaten on 11-8-2014. Thus, it is submitted that the allegation of beating on 11-8-2014 is proved incorrect on the basis of the M.L.C. Report filed by the police along with the charge sheet and since, the M.L.C. report is a prosecution

document therefore, the prosecution cannot deny or disown the same.

Per contra, it is submitted by the Counsel for the respondents that the respondent no. 2 was harassed because of non-fulfillment of demand and it is incorrect to say that the F.I.R. was lodged by way of counterblast to the petition filed under Section 13 of Hindu Marriage Act.

Heard the learned Counsel for the parties.

So far as the contention of the Counsel for the applicants that the F.I.R. has been lodged only by way of counterblast to the petition under Section 13 of Hindu Marriage Act, filed by the applicant no.2 is concerned, suffice it to say that the submission made by the Counsel is misconceived and hence it is rejected.

The Supreme Court in the case of **Pratibha Vs. Rameshwari Devi** reported in **(2007) 12 SCC 369**, the Supreme Court has held as under :

> "16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and Respondent 2 husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out

> of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations."

Thus, merely because a petition under Section 13 of Hindu Marriage Act has been filed by the Husband, therefore, the F.I.R. cannot be quashed on the ground that the same has been lodged by way of counterblast to the Petition for divorce.

It is next contended by the Counsel for the applicants that so far as the applicants no. 3 to 6 are concerned, there are no specific allegations against them and they have been falsely implicated only because of the fact that the applicants no. 3 to 6 are the near relatives of the husband of the complainant. It is also pointed out that even the applicant no. 4 was not married to the applicant no. 3 in the year 2012 and false allegations have been made against her that She too had harassed the respondent no.2 in the year 2012 itself.

So far as the case of the applicant no. 4 is concerned, the undisputed fact is that She was married to applicant no. 3 on 10-12-2013. Thus, prior to 10-12-2013, She was not even the member of the family of the Husband of the respondent

no.2. If the allegations leveled against the applicant no. 4 are considered, then it would be clear that completely false allegations have been made by the respondent no.2 against the applicant no.4. It is the case of the respondent that when She got pregnant, the applicant no. 4 along with other co-accused started harassing her. Admittedly, the respondent no.2 gave birth to a child on 17-12-2012 whereas the applicant no. 4 got married to applicant no. 3 on 10-12-2013. Thus, it is clear that even on the date of birth of the child of the respondent no. 2, the applicant no. 4 was not even the member of the family. Therefore, it is clear that the respondent no.2, has made a completely false allegation against the applicant no. 4. Thus, it can be said that this case is a glaring example of false and over implication of the near and distant relatives of the husband in order to pressurize the husband. The Counsel for the respondent no. 2 submitted that even if the allegation of harassment by the applicant no. 4 immediately after the respondent no.2 got pregnant is ignored, then it would be clear that She too had harassed and treated the respondent no. 2 with cruelty. It is beyond imagination that the wife of the younger brother-in-law who is married after the marriage of the respondent no. 2 would indulge herself in such an act. The status of wife of younger brother-in-law and that of the respondent no. 2 is more or less, the

same. If She is instigating her in-laws to demand dowry from respondent no. 2 then She will also be inviting trouble for herself. No lady instead of enjoying her own life, would create such an atmosphere where She too may be harassed by her in-laws for demand of dowry. Further more, it is clear from the record, as well as it is not disputed by the respondent no.2, who is present in person, that the applicant no. 4 is residing at Sagar. It is not expected that a newly married girl who is residing at a different place, would harass the respondent no. 2 for demand of dowry. Therefore, this Court is of the considered view that there is no material on record to prima facie show that the applicant no. 4 has either harassed or treated the respondent no. 2 with cruelty.

So far as the applicant no. 3 is concerned, he is the younger brother-in-law of the respondent no.2. The applicants have filed the Provisional Degree Certificate issued by Rajiv Gandhi Proudyogiki Vishwavidyalaya, Bhopal to show that the applicant no. 3 was prosecuting his studies at NRI Institute of Technology and Management at Gwalior and had passed B.E. Civil Engineering in the year 2012. This fact has also not been disputed by the respondent no. 2. Further, the applicants have filed the copy of the driving license of the applicant no. 3 to show that after completing his studies, he is residing in Sagar. Thus, it is clear that the

applicant no. 3 is residing separately and is serving and residing at Sagar. Further there is no specific allegation against the applicant to show that he too had harassed and treated the respondent no. 2 with cruelty.

The applicant no. 5 is the sister-in-law of the respondent no.2 and the applicant no. 6 is the husband of the applicant no. 5. It is the case of the applicants that She was prosecuting her studies of LL.B. as a regular student of Maharani Laxmibai Govt. College of Excellence, Gwalior. The applicants have also filed the copies of the admission card, mark sheet of the applicant no. 5 of the year 2012-2013 to show that She had passed Second Semester Exam of LL.B. First Year from Jiwaji University, Gwalior. Thus, it is clear that in the year 2012-13 She was prosecuting her studies in Gwalior. Further, it is an admitted fact that the applicant no. 5 was married to the applicant no. 6 on 16-2-2010 i.e., just 7 days after the marriage of the respondent no. 2 with the applicant no.2. Thus, it is clear that immediately after the marriage of respondent no.2, the applicant no. 5 also got married and She shifted to her matrimonial house. It is also undisputed fact that the applicant no. 2 is the resident of Morena, whereas the applicant no. 5 is the resident of Gwalior. There are no specific allegations against the applicant no.5. Similarly, the applicant no. 6 is the husband of the applicant no. 5

and it appears that he has been implicated only because of that relation only.

If the allegations made against the applicants no. 3 to 6 are considered, then it would be clear that only vague and omnibus allegations have been made against them. No specific overt act has been attributed to these applicants.

The Supreme Court in the case of **Kans raj Vs. State of Punjab** reported in **(2000) 5 SCC 207,** has held as under :

> "5. … A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Supreme Court in the case **Monju Roy Vs. State of West Bengal**, reported in **(2015) 13 SCC 693**, has held as under :

> "8. While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out. In Kans Raj v. State of Punjab, (2000) 5 SCC 207, this

Court observed : (SCC p. 215, para 5)

> "5……A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.

9. In Raja Lal Singh vs. State of Jharkhand, (2007) 15 SCC 415, it was observed : (SCC p. 419, para 14)

> "14. No doubt, some of the witnesses e.g. PW 5 Dashrath Singh, who is the father of the deceased Gayatri, and PW 3 Santosh Kr. Singh, brother of the deceased, have stated that the deceased Gayatri told them that dowry was demanded by not only Raja Lal Singh, but also the appellants Pradip Singh and his wife Sanjana Devi, but

> we are of the opinion that it is possible that the names of Pradip Singh and Sanjana Devi have been introduced only to spread the net wide as often happens in cases like under Sections 498-A and 394 IPC, as has been observed in several decisions of this Court e.g. in Kamesh Panjiyar v. State of Bihar [(2005) 2 SCC 388], etc. Hence, we allow the appeal of Pradip Singh and Sanjana Devi and set aside the impugned judgments of the High Court and the trial court insofar as it relates to them and we direct that they be released forthwith unless required in connection with some other case."
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> 11. The Court has to adopt pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against brothers and sisters and other relatives do not stand on same footing as husband and parents. In such case, apart from general allegation of demand of dowry, the court has to be satisfied that harassment was also caused by all the named members."

The Supreme Court in the case of **Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741**, has held as under :

> "20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the

> names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding."

Thus, if the facts of the case are considered in the light of the judgments passed by the Supreme Court, it would be clear that the respondent no. 2 has in fact tried to over-implicate the applicants no. 3 to 6. The applicant no. 4 was not even the member of the family and She got married only on 10-12-2013 whereas the allegations have been made that She too harassed the respondent no. 2 in the year 2012. Similarly, the applicants no. 5 and 6 got married immediately after the marriage of the applicant no. 2 and respondent no. 2 and from thereafter they are residing separately in a different city. Similarly, the applicant no. 3 was prosecuting his studies in Gwalior and thereafter he has shifted to Sagar where he is residing with respondent no.4. Thus, considering the facts and circumstances of the case, this Court is of the considered opinion that neither the F.I.R. nor the charge sheet furnished any legal basis to prosecute the applicants no. 3 to 6. Accordingly, the application filed under Section 482 of Cr.P.C. is allowed and the F.I.R. and criminal proceedings pending against them in the Court of

A.C.J.M., Morena for offences punishable under Sections 498-A, 294,323,506-B of I.P.C. and under Section 3/4 of Dowry Prohibition Act are hereby quashed. However, the criminal proceedings against the applicants no. 1 and 2 shall continue.

Consequently, the application is partly allowed. The application filed by the applicants no. 1 and 2 are hereby **dismissed as withdrawn**, whereas the application filed by applicants no. 3 to 6 is hereby **allowed**.

**(G.S.Ahluwalia)**
**Judge**