

**M.Cr.C.No.319/2015**  
**(Prashant Sharma & Ors. v. State of M.P. & Ano.)**

**06/02/2017**

Shri P.S. Bhadoria, Counsel for the applicants.

Shri Arun Barua, Panel Lawyer for the respondent No.1/State.

Shri J.P. Mishra, Counsel for the respondent no. 2.

With the consent of the parties, case is heard finally.

This petition under Section 482 of Cr.P.C. has been filed challenging the F.I.R. in crime No. 205/2014 registered by Mahila Police Station, Padav, Distt. Gwalior for offences punishable under Sections 498A,506 of I.P.C. and under Section 3/4 of Dowry Prohibition Act.

The facts necessary for the disposal of this application in short are that the complainant/respondent no.2, lodged a written complaint on 8-12-2014 against the applicants alleging inter-alia that She was married to the applicant no.1 as per Hindu Rites and Rituals on 26-2-2014. At the time of marriage, apart from valuable household articles, an amount of Rs. 8,00,000 was given by her father in cash. When She went to her matrimonial house after marriage, all the applicants started passing taunts that less cash has been given in the marriage. All used to say that the complainant has three elder brothers and all of them are earning and since, they have spent lot of money on marriage therefore, the complainant should bring 10,00,000

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from her parents. All the applicants used to laugh at the complainant. The husband used to say that she is not beautiful. The applicant no. 5 (Sister of father-in-law) was saying that they would get the applicant no. 1 remarried. The applicants were getting the entire household work done from the complainant and they also used to say that she is short heighted. All the applicants started harassing her physically and mentally and used to say that She cannot see during the night. On 8-4-2014, her father-in-law informed her father that they should take her back as she is not well. When her father and brother tried to convince her in-laws, then all the applicants started making demand of Rs. 10 lacs. On 8-4-2014, She was sent along with her father and brother without allowing her to take extra cloths and from thereafter they have not come to take her back. Thus, it was mentioned that the complainant does not want to reconcile with her in-laws any more. The police accordingly registered the offence under Sections 498-A,506 of I.P.C. and under Section 3/4 of Dowry Prohibition Act.

It is submitted by the Counsel for the applicants that they have been falsely implicated. The applicant no. 4 who is the younger brother-in-law of the respondent no. 2/complainant and is working in Delhi and is residing separately. It was further submitted that several applications were given by the applicant no.1 against false implication

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however, no proper investigation has been done. It was further submitted that the F.I.R. has been lodged by way of counter blast as the applicant no.1 has filed a suit for divorce.

Per Contra, the Counsel for the respondents submitted that the complainant/respondent no. 2 was harassed and treated with cruelty due to non-fulfillment of their demand of dowry. It is further submitted that the complainant/respondent no. 2 had filed an application before the Parivar Paramarsh Kendra where the applicant no. 1 had appeared along with the applicant no. 3 and 4. The complainant/respondent no. 2 was ready and willing to go with the applicant no.1, but in fact the applicant no. 1 is not interested in keeping her with him. It is further submitted that in the Parivar Paramarsh Kendra, the applicants no. 1,2,3 and 4 had appeared whereas only the applicant no.1 was summoned, which clearly show that the applicant no. 4 is also actively interfering with the family affairs of the applicant no. 1 and the complainant/respondent no.2.

Heard the learned Counsel for the parties.

It is submitted by the Counsel for the applicants that so far as the applicant no. 5 is concerned, She has been arrayed as an accused merely because She is the sister of father-in-law (बुआ) of the applicant no.1. Although She is also the resident of Gwalior but She is residing separately

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from the family of the applicants no.1. The applicant no. 5 has her own separate family and She is looking after her family and has nothing to do with the family affairs of the applicants no. 1 to 4. Even otherwise, only omnibus and vague allegations have been made against her and She is the distant relative of the applicant no.1 and appears to have been over implicated in order to put pressure on the applicants no. 2 and 3.

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

“5.....In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that Respondents 3 to 5 were roped in the case only on the ground of being close relations of Respondent 2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. 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

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have happened in the instant case.”

It is undisputed fact that the applicant no. 5 is the sister of father-in-law of the complainant/respondent no. 2. She is residing separately. She has her own family to look after and therefore, it appears that the applicant no. 5 has been implicated falsely so as to pressurize the applicants. Omnibus and vague allegations against all the family members do not stand on same footing against husband and parents. So far as the other relatives are concerned, there has to be some specific overtact on their part to show their involvement in the crime. Thus, it is clear that except the omnibus and vague allegations, no specific overtact has been ascribed to the applicant no.5. The only specific overtact alleged against the applicant no. 5 is that on one occasion She had stated that they would get the applicant no. 1 remarried with a beautiful girl. Thus, in absence of any allegation of harassment due to non-fulfillment of demand of dowry, this Court is of the considered opinion that the allegations made in the F.I.R. do not make out a prima case against the applicant no.5

So far as the applicants no. 1 to 4 are concerned, it is the case of the applicants that the applicant no. 4 is working in Delhi and is residing separately and has nothing to do with the family affairs of the applicant no.1. The respondent no. 2 has relied upon the proceedings of Parivar

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Paramarsh Kendra to show that although only the applicant no.1 was summoned, but the applicant no. 4 had also gone there and had signed the proceedings. If the applicant no. 4 is residing separately and if he has nothing to do with the family affairs of the applicant no.1 then he should not have gone along with the applicant no. 1 to attend the Parivar Paramarsh Kendra. It is submitted that even in the Parivar Paramarsh Kendra, a statement was made by the applicant no.1 that he would take decision only after due deliberations, which clearly mean that he wanted to consult his family members, thus, it was submitted by the Counsel for the respondent no. 2 that in fact the applicant no. 4 is also playing a very important role and therefore, it cannot be said that he has nothing to do with the family affairs of the applicant no.1. It is further submitted that in fact the applicants no. 1 to 4 are constantly demanding an amount of Rs. 10 lacs from the respondent no.2/complainant and because of non-fulfillment of demand of Rs. 10 lacs She was harassed and treated with cruelty. Even now She is residing in her parents house.

The Supreme Court in the case of **Taramani Parakh Vs. State of M.P., (2015) 11 SCC 260**, it has been held by Supreme Court as under :

“13. In the present case, the complaint is as follows:

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"Sir, it is submitted that I was married on 18-11-2009 with Sidharath Parakh s/o Manak Chand Parakh r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial home, my husband, father-in-law and mother-in-law started harassing me for not bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs 2,00,000 in cash and only then they would keep me in the house otherwise not. On account of this my husband also used to beat me and my father-in-law and my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2-4-2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh and my mother-in-law Smt Indira Parakh for torturing me on account of demanding dowry."

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack

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of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.”

Therefore, in the light of the judgment passed by the Supreme Court in the case of **Taramani Parakh (Supra)**, this Court is of the considered opinion that it cannot be held that even if the allegations as made against the applicants no. 1 to 4 are proved, no case would be made out. Thus, there is prima facie evidence available on record against the applicants no. 1 to 4. Therefore, the criminal proceedings against the applicants no. 1 to 4 cannot be quashed at this stage.

It is further submitted by the Counsel for the applicants that in fact the F.I.R. has been lodged by way of counter blast as the applicant no. 1 has filed a petition for divorce.

The Supreme Court in the case of **Pratibha v. Rameshwari Devi and ors.** reported in **(2007) 12 SCC 369** 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 no.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



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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, if the wife was hopeful of settlement of matrimonial dispute and in order to save her matrimonial life, if She decided not to take any legal action against her husband and her in-laws, it would not mean that the F.I.R. was lodged by way of counterblast to the divorce petition. Only after realizing that now there is no possibility of compromise or saving her matrimonial house, if She lodges a F.I.R. that would not mean that the same was lodged by way of Counterblast. In fact the wife should not suffer for keeping the hope of settlement of her matrimonial dispute alive.

Considering the totality of the circumstances, this Court is of the considered view that so far as the applicants no. 1 to 4 are concerned, there are sufficient allegations against them and therefore, F.I.R. or the consequential proceedings against the applicants no. 1 to 4 cannot be quashed. So far as the applicant no. 5 is concerned, the F.I.R. in crime no. 205/2015 registered by Mahila Police Station

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Padav, Distt. Gwalior and the consequential proceedings against her are hereby quashed.

Hence, this application is partially allowed. The application filed by the applicants no. 1 to 4 is hereby **dismissed** and the application filed by the applicant no. 5 is hereby **allowed**.

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