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Keshav Singh Tomar & ors.

v.

State of M.P. & anr.

18/01/2017

Shri T.C.Narvariya, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.1/State.

Shri R.K.Soni, counsel for the respondent no.2.

This petition under Section 482 of CrPC has been filed for quashing the FIR No.139/2015 registered by Police Station-Civil Line, Morena for offences punishable under Sections 498-A and 323 of IPC.

The facts necessary for the disposal for this petition are that a FIR was lodged by the complainant Arti on 02/04/2015 in Police Station-Civil Line, Morena alleging that on 29/04/2013, she was married to Saurabh Tomar as per Hindu Rights and Rituals. Her father had given dowry as per his financial status. Applicants no.1,2 and 3 had attended the marriage of the complainant and from the said date, her in-laws started saying that her parents have given less dowry and, therefore, she should bring two lakhs rupees and more dowry and only then they will allow her to stay in the house. They also used to beat her. Her in-laws did not allow her to go to her parents house for the first two years and they were constantly beating her and she was also not allowed to talk to her parents. She is having a child aged about one year. Her parents and relatives also came to her matrimonial house and tried to convince the accused persons but they did not agree and on 25/01/2015, they left her in her parent's house. On 24/03/2015, again her husband Saurabh and her younger brother-in-law Gaurav came to her parent's house and

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assaulted her and made demand of dowry.

It is contended by the counsel for the applicants that so far as the applicant no.3 is concerned, she is the sister of mother-in-law of the complainant and she is resident of Kanpur whereas the applicants no.1 and 2 are residents of Gwalior. Merely because she had attended the marriage of the complainant, therefore, she has been made accused in the present case. There are no specific allegations against the applicant no.3. Even the vague and omnibus allegations have not been made against her.

It was further contended by the counsel for the applicants that even no specific allegations have been made against the applicants no.1 and 2. Only vague allegations have been made that they used to demand that she should bring more dowry as well as an amount of Rs.2,00,000/-. The allegation of beating the complainant is false and is an afterthought.

It is further submitted by the counsel for the applicants that as the entire allegations are in two parts, therefore, the Court at Morena has no jurisdiction to try the case. In support of his contention, it is submitted by the counsel for the applicants that as per the first part of the allegation, all the cruelty was done at Gwalior and second part of the allegation is that on 24/03/2015, the husband and younger brother-in-law of the complainant went to Morena, made a demand of dowry and gave her beating. Since, there is no allegation against the applicants no.1,2 and 3 that they ever went to Morena and treated the complainant with cruelty at Morena, therefore, the applicants no.1,2 and 3 cannot be tried at Morena.

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Per contra, the counsel for the respondent no.1/State submitted that there are sufficient allegations available on record which *prima facie* show that the applicants have committed offences punishable under Sections 498-A and 323 of IPC.

The counsel for the respondent no.2 vehemently opposes the submissions made by the counsel for the applicants. It is submitted by him that as the charge-sheet has already been filed, therefore, now it is for the Trial Court to decide that whether the applicants have committed any offence or not.

So far as the contention of the counsel for the applicants, with regard to the territorial jurisdiction of the Trial Court at Morena is concerned, the submissions of the counsel for the applicants that the allegations should be treated in two parts, cannot be accepted. It is well settled principle of law that even if a part of an incident has occurred within the jurisdiction of one police station, then that police station will also have the jurisdiction to investigate the matter. Undisputedly, the offence under Section 498-A is a continuous offence. As it is apparent from the FIR that the husband and younger brother-in-law of the complainant were alleged to have gone to Morena and treated the complainant with cruelty and had made a demand of dowry, then the Trial cannot be split in two parts merely because there is no allegation against the applicants no.1 to 3 for treating the complainant with cruelty at Morena.

Since a part of a cause of action has arisen within the jurisdiction of Police Station-Morena, therefore, this Court

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is of the view that the submissions made by the counsel for the applicants that the Court at Morena has no territorial jurisdiction to try the applicants no.1 to 3 is misconceived and, therefore, rejected.

So far as the allegations made against the applicants no.1 and 2 are concerned, there are specific allegations that after the marriage, a demand of Rs.2,00,000/- and more dowry was made. The complainant was treated with cruelty and she was beaten. Without commenting on the correctness of the allegations as this Court is expected only to consider that whether there is an allegation which makes out a case against the accused, this Court is of the view that there is a *prima facie* material against the applicants no.1 and 2.

The Supreme Court in the case of **Taramani Parakh v. State of Madhya Pradesh** reported in **(2015) 11 SCC 260** has held as under:-

"10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, in *Amit Kapoor vs. Ramesh Chander* (2012) 9 SCC 460, it was observed (SCC pp. 482-84, para 27):

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due

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care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents

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annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

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27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chundururu Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M.

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Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

12. In Kailash Chandra Agrawal & Anr. vs. State of U.P. (2014) 16 SCC 51, it was observed: (SCC p. 553, paras 8-9):

"8. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In Kans Raj vs. State of Punjab [(2000) 5 SCC 207], it was observed:- (SCC p.217, 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

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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. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. vs. State of Bihar [(2000) 8 SCC 547], Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749], State of Haryana v. Ch. Bhajan Lal [(1992) Supp (1) SCC 335] and Asmathunnisa v. State of A.P. [(2011) 11 SCC 259]."

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

"Sir, it is submitted that I was married on 18.11.09 with Sidharath Parakh s/o Manak Chand Parak, 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, 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

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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 the 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 No.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 of security and safety and proper environment in the matrimonial home. The question whether the appellant has infact 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."

As the applicants no.1 and 2 are the father-in-law and mother-in-law of the complainant and there is sufficient evidence against them to proceed, therefore, the application filed by the applicants no.1 and 2 is dismissed.

So far as the allegation against the applicant no.3 is concerned, it is clear that she is the sister of applicant no.2. The allegation is that she had also attended the marriage. No specific overt act has been attributed to the applicant no.3. Furthermore, the applicant no.3 is the resident of Kanpur whereas the applicants no.1 and 2 are

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the residents of Gwalior, it appears that with an intention to pressurize the in-laws, the complainant has over implicated the distant relatives of her in-laws.

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

"5. We agree with the learned counsel for the respondents 3 to 5 that his clients, namely, Ramesh Kumar, brother of the husband, Ram Pyari, mother of the husband and Bharti, sister-in-law of the husband-accused cannot be alleged to be involved in the commission of the crime and were rightly acquitted by the High Court. There is no evidence produced by the appellant worth the name against the aforesaid respondents. Even PW Nos.5 and 6 have not brought on record any incriminating circumstance attributable to the aforesaid accused which could be made the basis for their conviction. Ram Kishan, PW-5 in his deposition before the Court had stated that

"after the marriage Rakesh Kumar, accused raised a demand of Rs.15,000/- for a scooter and refrigerator. We fulfilled that demand by giving Rs.20,000/- to him for scooter and refrigerator ... Rakesh Kumar used to threaten Sunita that she would be done to death because of having inadequate dowry. On 21-9-1988 Sunita had come to my younger brother Tarsem in connection with a ceremony concerning his son. She also visited us as the house of Tarsem Kumar is close to our house. She stayed with us for the night. We gave her customary present i.e. clothes etc. and cash amount of Rs.500/-. She apprehended danger to her life in the house of her in-laws and was not willing to go there".

He has not referred to any demand of dowry or harassment by the respondents except Rakesh Kumar. Tarsem Kumar, the other brother of the deceased at whose residence she had gone on 21-9-1988 has not been produced as a witness in the case. Kans Raj PW6, the father of the deceased stated before

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the Trial Court that Sunita Kumari had told him that she was being taunted by her mother in-law Ram Piari, accused Ramesh Chander and his wife Bharti accused besides her husband Rakesh Kumar. The details of the alleged taunting have not been spelt out. The only thing stated is that the accused used to tell the deceased that she being the daughter of BJP leader, who used to boast about his financial position had brought inadequate dowry. He further stated that various sums of money and the colour TV was given to Rakesh Kumar on his demand. Amar Nath and Janak Raj, President and General Secretary of Mahajan Sabha respectively and one Kundan Lal Gaba were taken by him to the residence of the accused persons. The deceased was alleged to have been taunted again in presence of the aforesaid witnesses. However, none of the aforesaid witnesses supported the case of the prosecution. 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 No.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 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 have

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happened in the instant case.”

In the case of **Monju Roy v. State of West Bengal** reported in **(2015) 13 SCC 693**, it has been held by the Supreme Court 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-fulfilment 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* (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 overenthusiasm 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 the 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

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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."

10. Moreover, ingredient of offence under Section 304B is not mere demand of dowry but "cruelty or harassment" for or in connection with demand of dowry. In Amar Singh vs. State of Rajasthan (2010) 9 SCC 64, it was observed : (SCC pp. 71-72, para 29)

"29. ... What is punishable under Section 498-A or Section 304-B IPC is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

11. The court has to adopt a pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden

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scales. At the same time, omnibus allegation against all family members particularly against the brothers and sisters and other relatives do not stand on the 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.”

Considering the allegations made by the complainant against the applicant no.3, this Court is of the view that there is no sufficient material available on record against the applicant no.3 so as to compel her to face the ordeal of the trial.

Accordingly, application filed by the applicant no.3 is hereby allowed. The FIR and the charge-sheet filed against the applicant no.3 is hereby quashed.

Accordingly, this petition is partially allowed.

(G.S.Ahluwalia)

Judge

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