M.Cr.C.No.9879/2015
(Sabir Hussain & Ors. v. State of M.P. & Anr.)

28/02/2017

Shri Shishir Kumar Saxena, Counsel for the applicants.

Shri G.S. Chouhan, Public Prosecutor for the respondent No.1/State.

None for the respondent no.2 though served.

Heard finally.

This application has been filed under Section 482 of Cr.P.C. for quashing the Criminal Case No. 14629/2013 pending in the Court of ACJM Gwalior for offences punishable under Sections 498-A,506-B of I.P.C. and under Section 4 of Dowry Prohibition Act.

The necessary facts for the disposal of the present application in short are that the respondent no.2 was married to the applicant no. 1 on 21-10-2012 as per Muslim Rites and Rituals. As she was harassed and treated with cruelty, for demand of dowry therefore, a F.I.R. was lodged by the respondent no.2 against the applicants for offences punishable under Sections 498-A,506,34 of I.P.C. and under Section 4 of Dowry Prohibition Act. First Information Report was lodged by the respondent no. 2 on 16-9-2013 alleging that She was married to the applicant no. 1 and at the time of marriage, the father of the respondent no.2 had given sufficient dowry as per his financial capacity. When the respondent no.2 reached her matrimonial house for the first time, all the applicants started passing taunts that sufficient dowry has not been given, and

started demanding Rs. 2,50,000 for purchase of new house. When the respondent no.2 told her parents about the demand, it is alleged that with the help of senior members of the Society, the applicants were asked not to make demand. However, after some time, they again started demanding money and ultimately, her father gave Rs. 2.50 lacs to the applicants as she was being beaten regularly and even food was not given regularly. After the receipt of the amount of Rs. 2.50 lacs, the applicants kept the respondent no.2 properly but again they started demanding further amount of Rs. 2.50 lacs and started abusing, harassing her and they also used to extend threat to her life. They also used to say that unless and until, She brings further amount of Rs. 2.50 lacs, they would not keep her. From thereafter She is residing in her parents' house. She initially did not take any action in a hope that the conduct of her in-laws would improve but as She could not notice any change in the nature of her in-laws, therefore, F.I.R. was lodged.

From the record it appears that the Counsel for the respondent no.2 had informed this Court that the recording of evidence has begun and the evidence of the respondent no.2 has been recorded. However, today none appears for the respondent no.2 inspite of the fact that the case was passed over in the first round.

It is submitted by the Counsel for the applicants that although charges have been framed and the recording of evidence has also started, but merely because the charges have been framed, this petition may not be dismissed. In support of his contention, the Counsel for the applicant relied upon judgments of Supreme Court passed in the case of **Sathish Mehra Vs. State (NCT of Delhi) reported in (2012) 13 SCC 614** and submitted that if the allegations made against the accused do not make out a prima facie case against him/her, then compelling them to face the trial is unwarranted.

> **"13.** Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in *R.P. Kapur* v. *State of Punjab* wherein the parameters of exercise of the inherent power vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 CrPC, 1973) had been laid down in the following terms: (AIR p. 869, para 6)
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> (*i*) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process

of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(*ii*) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(*iii*) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(*iv*) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

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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> * * *
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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:

* * *

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."

In the case of **Ravikant Dubey and Others Vs. State of M.P. and another** reported in **2014 Cr.L.R. (M.P.) 162**, this Court has held as under :

> "8. In view of the above, the questions of law which requires consideration are as follows:
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> (i) Whether petition preferred by the petitioners under Section 482 of the Code for quashing the FIR can be entertained, when trial has been started and evidence of some witnesses have also been deposed before the Trial Court ?
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> (ii) Whether evidence recorded by Trial Court during trial can be considered for quashing the FIR ?
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> (iii) Whether any ground is available for quashing the FIR in view of the facts and laws available on record ?
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> Regarding question of law no. (i) :-
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> 9. Learned Senior Counsel for the petitioners submitted that inherent powers can be used at any stage to prevent abuse of process of

> any Court or otherwise to secure the ends of justice. It makes no different whether trial has been started or not and whether some evidence has been deposed before the Trial Court or not. In support of his contention he placed reliance in the case of Sathish Mehra (supra) and Joseph Salvaraja Vs. State of Gujrat and others, (2011) 7 SCC 59.
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> * * * *
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> 12. Therefore, in the considered view of this Court this petition is maintainable also even when trial is at advance stage. The question is answered accordingly."

Thus, it is held that even during the pendency of the petition under Section 482 of Cr.P.C., when the charges have been framed and even if some witnesses have been examined, the petition can be decided on merits.

It is submitted by the Counsel for the applicants that vague and omnibus allegations have been made against the applicants and therefore, there is no prima facie evidence against the applicants so as to compel them to face the ordeal of Trial. It is submitted by the Counsel for the applicants that the applicant no.1 had filed an application under Section 281 of Mohammedan Law for restitution of conjugal rights and only after the receipt of notice, the F.I.R. was lodged by way of Counterblast.

So far as the question of lodging of F.I.R. by way of counterblast to the petition under Section 281 of Mohammedan Law is concerned, the submissions made by the Counsel for the applicants

is misconceived and is hereby rejected.

The Supreme Court in the case of **Pratibha Vs. Rameshwari Devi** reported in **(2007) 12 SCC 369** has held that filing of divorce petition cannot be a ground to quash the proceedings under Section 482 of Cr.P.C.

> "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, it cannot be said that merely because the applicant no.1 had filed a petition under Section 281 of Mohammedan Law for restitution of conjugal rights therefore, the F.I.R. has been lodged by way of Counterblast.

It is submitted by the Counsel for the applicants that there is a difference between a petition for divorce and a petition for restitution of conjugal rights. In a case where the divorce

petition has been filed, it can be assumed that the wife after loosing the hope of reconciliation decided to lodge the F.I.R., but in the case of a petition for restitution of conjugal rights, there is a positive evidence to show that the husband is willing to keep his wife but in fact it is the wife, who is not ready to reside with her. Therefore, after receiving the notice of petition under Section 281 of Mohammedan Law, if the wife lodges the F.I.R., then it would be clear that in fact She is not interested in living with her husband therefore, the F.I.R. was lodged by way of counterblast.

Although the submissions made by the Counsel for the applicants appear to be very attractive but on deeper scrutiny, the same is found misconceived and is hereby rejected. In a petition for restitution of conjugal rights, it is never claimed by the Husband that he was at fault and because of his conduct, his wife has left him and therefore, She may be requested to join his company, but on the contrary, all sorts of allegations are made against the wife, in order to show that She has left her husband for no valid reasons and therefore, a decree for restitution of conjugal rights may be passed against her. Thus, when a wife finds that certain allegations have been made against her in a Court of law and then if She decides to lodge the F.I.R. after loosing hope of improvement on the part of her-in-laws or after loosing the hope of

reconciliation, then it cannot be said that the F.I.R. was lodged by way of Counterblast to the petition for restitution of conjugal rights.

In the F.I.R. it is specifically alleged by the respondent no. 2 that the applicants no. 1 and 2 along with the applicants no.2 and 3 were not satisfied with the dowry given by her father and started harassing and treating her with cruelty and started demanding Rs. 2.50 lacs for purchasing new house and even after fulfillment of their demand of Rs. 2.50 lacs, their conduct didnot improve and all of them continued to harass her for non-fulfillment of their further demand of Rs. 2.50 lacs. So far the allegations of demand of Rs. 2.50 lacs and harassment by the applicants no.1 and 2 are concerned, the said allegations cannot be said to be vague and omnibus in nature.

The Supreme Court in the case of **Taramani Parakh Vs. State of M.P.** reported in **(2015) 11 SC 260** has held as under :

> "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 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."

Thus, it cannot be said that at present there are no allegations against the applicants no.1 and 2 to prima facie show their involvement in commission of offences punishable under Section 498-A,506,34 of I.P.C. and under Section 4 of Dowry Prohibition Act.

So far as the case of the applicants no. 3 and 4 are concerned, their case stand on different footings. By relying on judgments passed by the Supreme Court in cases of **Geeta Mehrotra Vs. State of U.P.** reported in **(2012) 10 SCC 741, Preeti Gupta Vs. State of Jharkhand,** reported in **(2010) 7 SCC 667**, it is submitted by the Counsel for the applicants that there should be specific and clear allegations against the relatives of the husband. There is an increasing tendency in the society to over implicate the near and dear relatives of the husband so as to pressurize the husband.

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

> "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 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 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)
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> > "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."

Thus, if the allegations made against the applicants no. 3 and 4 are considered in the light of the judgments passed by the Supreme Court in the case of Kansraj (Supra), Monju Roy (Supra), it is clear that there are no specific allegations against them. All the allegations which have been made against the applicants no.3 and 4 are general in nature and they have been overimplicated merely because they are the brother and sister of the husband of the respondent no.2.

Accordingly, the application filed by applicants No.3 & 4 is **allowed** and the Criminal Case No. 14629/2013 pending in the Court of ACJM Gwalior for offences punishable under Sections 498-A,506-B of I.P.C. and under Section 4 of Dowry Prohibition Act qua the applicants no. 3 and 4 is hereby quashed. The application filed by the applicants no. 1 and 2 is hereby **dismissed**.

The application succeeds and is **partly allowed** to the extent mentioned above.

(G.S.Ahluwalia)
Judge