

M.Cr.C.No.10156/2016
(Smt. Anuradha Saxena & Ors. v. State of M.P. & Anr.)

01/03/2017

Shri Deependra Singh Kushwaha, Counsel for the applicants.

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

Shri Amit Lahoti, 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 for quashing the F.I.R. in crime no. 443/2016 registered by Police Station Kotwali, Shipuri, Distt. Shivpuri for offences punishable under Sections 498A,354 of I.P.C.

The necessary facts for the disposal of the present application in short are that the respondent no.2 lodged a F.I.R. on 22-5-2016 alleging that She got married to respondent no. 4 in the year 2005 as per Hindu Rites and Rituals. Sufficient dowry was given by her parents at the time of marriage, however, the applicants were not satisfied with the dowry and were harassing and treating the respondent no.2 with cruelty. She was forced to bring cash from her father from time to time. Her ornaments were kept by her husband and her mother-in-law. As the respondent no. 2 could not conceive therefore, on that count also, she was mentally and physically harassed by the applicants. Her father-in-law was having an evil eye on her and

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whenever, She made complaint to her husband, no heed was paid by him and on the contrary, he clearly said that if She wants to reside in the house, then She will have to bear all such incidents. She was not allowed to keep contacts with her parents. Whenever, her parents came to Shivpuri, She was not allowed to meet them. On 11-5-2016, at about 4-5 P.M., the respondent no.2 was alone in the house. At that time, the applicant no. 3 came in the room of the respondent no. 2 and said that She should have physical relations with her so that She can conceive. He also pressed her breasts. She immediately pushed the applicant no. 3 and got herself locked in another room. After the applicant no.2 and 4 came back, the entire incident was narrated to them, but they also started saying that not only, her parents have not given any dowry but on the other hand, She is unable to conceive also. They also threatened that in case, the incident is informed by her to her parents, then She will not be allowed to stay in her matrimonial house. When her parents asked her that why She is so serious, then after lot of persuasions, she informed her parents about the incident and therefore, the F.I.R. was lodged.

The Police on the basis of the written report, lodged the F.I.R. and started investigation and filed the charge sheet.

It is submitted by the Counsel for the

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respondent no. 2 that the applicants have filed an application under Section 239 of Cr.P.C. and the case is fixed for arguments on the said application, but because on the ground of pendency of this petition, they are frequently seeking adjournment in the Trial Court. It is further submitted that as the matter is fixed for arguments on the question of framing of Charges, therefore, this Court may not entertain the application, and the applicants be directed to argue the matter before the Trial Court.

The Counsel for the applicants, in the reply, submitted that this petition be heard on merits. It is further submitted by the Counsel for the applicants that there are only vague and omnibus allegations against the applicants. The allegation of attempt to outrage her modesty is false. The applicant no. 3 has already undergone the operation of sterilization and therefore the allegation made by the respondent no. 2 that if She have physical relations with him, then She may conceive is *per se* false. Further it is submitted that allegation of outraging the modesty of daughter-in-law would not be an offence under Section 498-A of I.P.C.

Per Contra, it is submitted by the Counsel for the respondent no.2 that there are sufficient allegations against the applicants, warranting their prosecution.

Heard the learned Counsel for the parties.

So far as the question of availability of

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alternative remedy of arguing the matter before the Trial Court on the question of framing of charge is concerned, suffice it to say that merely because the applicants have an option of arguing the matter before the Trial Court, that by itself cannot be a ground to dismiss the petition filed under Section 482 of Cr.P.C.

The Supreme Court in the case of **Umesh Kumar v. State of A.P., (2013) 10 SCC 591**, has held as under:

20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the

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framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide *Pepsi Foods Ltd. v. Judicial Magistrate* [(1998) 5 SCC 749], *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698], *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636] and *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy* [(2011) 12 SCC 437].

As the Counsel for the applicants insisted that the case should be heard on merits, therefore, this Court is of the considered opinion that the present application cannot be dismissed on the ground of availability of alternative remedy of arguing the matter before the Trial court on the question of framing of charges.

It is next contended by the Counsel for the applicants that the allegations made by the respondent no. 2 are false and therefore, the F.I.R. and the charge sheet is liable to be quashed. When the allegations made in the F.I.R. and the charge sheet do not prima facie disclose the commission of cognizable offence, then compelling the applicants to face the hardship of trial would not be in the interest of justice. It is further submitted that the allegations are not factually correct and therefore, this Court in exercise of powers under Section 482 of Cr.P.C. can test the veracity, correctness of the allegations made against the applicants.

The submissions made by the Counsel for the

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applicant are misconceived and hence rejected.

This Court in exercise of powers under Section 482 of Cr.P.C. cannot test the veracity and correctness of any allegation. The factual allegations and counter allegations made by the parties cannot be adjudicated by this Court, while exercising power under Section 482 of Cr.P.C. The disputed questions of facts are to be adjudicated upon by the Trial after considering the evidence of the parties.

So far as the allegations against the applicants no. 2 to 4 are concerned, the applicant no. 2 is the mother-in-law, applicant no. 3 is father-in-law and the applicant no. 4 is the Husband. There are specific allegations against the applicants no. 2 to 4 that they were not satisfied with the dowry which was given at the time of marriage and were demanding Car and since, their demand was not fulfilled, therefore, they were harassing and treating the respondent no. 2 with cruelty. Further it is the case that as the respondent no. 2 could not conceive therefore, also, She was being harassed and treated with Cruelty. Thus it cannot be held that only vague and omnibus allegations have been made by the respondent no.2 against the applicants no. 2 to 4.

It is further submitted by the Counsel for the applicants that as an allegation of outraging the modesty of the respondent no.2 has been made,

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therefore, this allegation against the applicant no. 3 would not fall within the definition of Cruelty.

Section 498A of I.P.C. reads as under :

498-A. Husband or relative of husband of a woman subjecting her to cruelty.

—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

“Cruelty” has been defined under Section 498-A of I.P.C. itself and it involves harassment of women with a view to coerce her to meet any unlawful demand or a wilful conduct of such a nature which is likely to drive a woman to commit suicide.

The status of father-in-law is just like a father. A girl feels safe under the guardianship and protection of her father. Not only it is a **Pious** relation, but it is also a relation of trust. A girl feels safe in the company of her father. She knows that

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so long as her father is with her, no body can tease her or harass her and She can live her life independently without any fear. But where the belief of a girl is broken by the father by sexually assaulting her, then the girl is not only sentimentally broken but She loses all her faith in all the relations. Under this circumstances, the act of the father-in-law in sexually assaulting his daughter-in-law would certainly amount to cruelty. When a person is charged with both the offences, then whether he is to be punished for offence under Section 354 of I.P.C . or under Section 498-A of I.P.C. or for both is concerned, it is for the Trial Court to take a decision after the conclusion of the Trial. Thus, the contention of the Counsel for the applicants cannot be accepted and is hereby rejected.

It is further submitted that since, the applicant no. 3 had already undergone the sterilization operation and he is not competent for reproduction, therefore, under these circumstances, the allegation made by the respondent no. 2 that the applicant no. 3 had offered that She may have physical relations with him in order to get pregnant is false and baseless.

So far as the question of undergoing the sterilization operation is concerned, it has nothing to do with an intention to outrage the modesty of the respondent no.2. Whether the applicant no. 3 is

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competent to reproduce or not cannot be considered at this stage. It is a well established principle of law that the disputed facts cannot be adjudicated by this Court while exercising powers under Section 482 of Cr.P.C. and further the defence of the parties cannot be taken into consideration. Further, the documents relied upon by the applicants cannot be considered at this stage as they are required to be proved in accordance with law and only thereafter, the Court would be in a position to consider the effect of those documents. As the documents filed by the applicants are not of indubitable, reasonable or sound in nature, and the same have been refuted by the respondent no.2, therefore, they cannot be relied upon to disbelieve the ocular statement of the respondent no.2.

The Supreme Court in the case of **HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776**, has held as under :

11. In *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.*, this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)

"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-

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known legal principles involved in the matter.

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22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In *Rallis India Ltd. v. Poduru Vidya Bhushan*, this Court expressed its views on this point as under: (SCC p. 93, para 12)

"12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was

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dissolved and since what date the respondents ceased to be the partners of the firm.”

13. In view of the law laid down by this Court as above, in the present case the High Court exceeded its jurisdiction by giving its opinion on disputed questions of fact, before the trial court.

Thus, the documents relied upon by the applicants are neither in the nature of public document nor are beyond doubt. The respondent no. 2 has also not admitted those documents. Thus, where the triable issues are involved then the highly disputed documents cannot be taken into consideration at this stage.

The Supreme Court in the case of **Taramani Parakh Vs. State of M.P.** 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.

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

“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

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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

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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, if the allegations made against the applicants no. 2 to 4 are considered in the light of the judgment passed by the Supreme Court in the case of **Taramani Parakh** (Supra), then it would be clear that there are sufficient allegations against the applicants no. 2 to 4 to hold that triable issues are involved and thus, at this stage, *prima facie* case is made out against the applicants no. 2 to 4 and therefore, their prosecution cannot be quashed.

So far as the case of the applicant no.1 is concerned, her case stands on a different footing. In the F.I.R., it is mentioned that after the marriage, the applicant no.1 along with applicants no. 2 to 4 started harassing and treating the respondent no. 2 with cruelty for demand of dowry. Except this allegation, there is no whisper in the F.I.R. about any overtact on the part of the applicant no.1. Admittedly, the applicant no.1 is a married lady residing separately at Bhopal, whereas the remaining applicants are the residents of Shivpuri. Bhopal is near about 300-400 Kms. away from Shivpuri. There is no allegation in the F.I.R. as well as in the case diary statement as to how and in

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what manner, the applicant no.1 had harassed or treated the respondent no. 2 with cruelty. The statement of the respondent no.2 was also recorded under Section 164 of Cr.P.C. In her statement under Section 164 of Cr.P.C., the respondent no. 2 has not even mentioned the name of the applicant no.1. There is nothing in her statement recorded under Section 164 of Cr.P.C. that the applicant no.1 had also ever demanded any car or had ever harassed or treated the respondent no. 2 with cruelty.

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 and vague and omnibus allegations would not be sufficient to compel them to face the agony of Trial. It is further submitted that 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

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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 of **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

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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

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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.”

* * * * *

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, considering the allegations made against the applicant no.1, this Court is of the considered opinion that the allegations made against the applicant no.1 are not sufficient to compel her to face the ordeal of Trial, therefore, Charge-sheet and the criminal proceedings against the applicant no.1 is quashed.

Accordingly, the application under Section 482 of Cr.P.C. filed by the applicant no.1 is hereby **allowed** and the charge sheet as well as the criminal proceeding pending filed against the applicant no.1 is hereby quashed. So far as the application filed by the applicants no. 2 to 4 under Section 482 of Cr.P.C. is concerned, the same is **dismissed**.

It is made clear that the observations in this order, have been made in order to consider the

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submissions made by the Counsel for the applicants. However, it is directed that the Trial Court shall not get prejudiced by any of the observation made by this Court while deciding the Trial on merits.

(G.S.Ahluwalia)
Judge