

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

31/01/2017

Shri Prashant Sharma, counsel for the applicants.

Shri R.D. Agrawal, Panel Lawyer for the respondent No.1.

Shri A.K. Dwivedi, counsel for the respondent No.2.

This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.249/2013 registered by Police Station Jaura, District Morena for offences punishable under Sections 498A, 506, 323, 427 of IPC as well as under Section 3, 4 of Dowry Prohibition Act and all the consequent proceedings pending before the Court of JMFC, Morena.

The necessary facts for the disposal of the present application are that a complaint was made by the complainant/respondent No.2 on 16.05.2013 that the engagement of the complainant had taken place with the applicant No.1 on 12th June, 2011 and the father of the complainant had spent Rs.2.5 lacs and Rs.1 lac in cash was given. Thereafter, the applicants and other relatives started demanding money and they were demanding Rs.8 lacs in cash and as the father of the complainant was not in a position to fulfill their demand, therefore, they refused for marriage which was scheduled on 12th February, 2012, because of that, the complainant had lodged a FIR against the applicants and their

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

relatives and accordingly the FIR in Crime No.21/2012 for offences punishable under Sections 406, 506 Part II of IPC and under Section 3, 4 of Dowry Prohibition Act was registered. Thereafter, the applicant No.1 tendered his apology and assured that the complainant will not be harassed in future and therefore relying on the assurance given by the applicant No.1, the complainant got married to the applicant No.1 on 16th July, 2013 in the Arya Samaj Temple and on the assurance given by the applicants and their relatives, the matter was compromised. However, thereafter, the applicants and their relatives started demanding salary from the complainant and when the complainant refused to give her salary to the applicants and their relatives, then they started harassing her physically as well as mentally. On 13.05.2013, the applicants again demanded her salary and when she refused to give the same then she was beaten as a result of which she suffered several injuries. When the complainant tried to go to the police station to lodge a FIR then the doors of the room were locked and the spectacles of the complainant were broken and the contact lens was thrown. On hearing hue and cry raised by the complainant her neighbor Neeraj Sharma and his wife alongwith their servant intervened in the matter. The applicant No.1 took away the mobile of the complainant. On 16.05.2013, while she was taking rest in

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

the house, the applicant No.1 entered in the official residence of the complainant and started beating her. Her mother was also assaulted, when she tried to intervene in the matter. Accordingly, the FIR was lodged.

It is submitted by the counsel for the applicants that initially the complainant compromised the matter which was registered on the report of the complainant for offences punishable under Sections 406, 506 Part II of IPC and under Section 3, 4 of Dowry Prohibition Act. Thereafter, she again filed an application under Section 320 (2) of CrPC seeking permission of the Court to compound the present case. The said application was partially allowed and as the offence punishable under Sections 498-A, 506 Part II of IPC and under Section 3, 4 of Dowry Prohibition Act were not compoundable, therefore, the prayer in respect of these offences was rejected. However, the offences under Section 323 r/w 34 and 427 of IPC were compounded and the applicants were acquitted for the said offences. As the Trial Court did not have any jurisdiction to compound the non-compoundable offences, therefore, the applicants filed a petition under Section 482 of CrPC before this Court which was registered as M.Cr.C.No.201/2016 for quashing the proceedings on the basis of compromise. However, the respondent No.2 did not appear in

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

M.Cr.C.No.201/2016, therefore, the proceedings could not be quashed. It is further submitted that ultimately by order dated 03.03.2016, M.Cr.C.No.201/2016 was dismissed for want of prosecution. It is submitted by the counsel for the applicants that in order to make out an offence under Section 498A of IPC, there must be some allegation that the complainant was harassed because of non-fulfillment of demand of dowry. It is evident from the FIR that there are allegations to the effect that she was beaten because of her refusal to handover her salary to the applicants. It is further submitted that as the applicants were being tried under Section 323 of IPC for their act of assault and since the complainant has compromised for offence punishable under Section 323 of IPC, now it cannot be said that the complainant was ever harassed for demand of dowry.

It is further submitted by the counsel for the applicants that the only allegation is that the applicants were demanding the salary of the complainant and, therefore, it would not fall within the definition of cruelty as made punishable under Section 498-A of IPC. It is further submitted by the counsel for the applicants that even otherwise from the plain reading of the FIR, it would be clear that no cognizable offence is made out.

Per contra, it is submitted by the counsel for the respondents that there are specific allegations

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

against the applicants. The conduct of the applicants is such that even prior to the marriage and after the engagement they had started demanding Rs.8 lacs. When the complainant lodged a FIR against them then they realized their mistake and assured the complainant that no such demand will be made in future and relying on their assurance the complainant not only agreed to marry to the applicant No.1 but she also compromised in the proceedings initiated in Crime No.21/2012. However, it is clear that the applicants did not improve their conduct and they started demanding the monthly salary of the complainant. Thus, instead of demanding dowry in lump sum, the applicants were insisting to recover dowry in installments by taking the monthly salary of the complainant. It is further submitted that merely because the complainant had compromised for offence punishable under Section 323 of IPC then it would not mean that the applicants are entitled for quashment of proceedings under Section 498-A of IPC.

Heard the learned counsel for the parties and perused the documents filed along with the petition.

From the FIR, it is clear that after the engagement took place, the applicants had started demanding money and, therefore, the complainant had lodged a FIR which was registered as Crime No.21/2012 for offences punishable under Sections

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

406, 506 Part II of IPC and under Section 3, 4 of Dowry Prohibition Act.

No lady after her engagement and prior to marriage would lodge a false report against her would be in-laws, therefore, prima-facie, it appears that after the engagement, the applicants had demanded Rs.8 lacs by way of dowry. However, it appears that for the time being good senses prevailed and the applicants realized their mistake and they not only tendered their apology but they also assured that the complainant will not be harassed in near future. Relying on the assurance given by the applicants, the marriage of the complainant with the applicant No.1 was performed. It appears that the applicants could not insist for demand of dowry, therefore, they started demanding the monthly salary from the complainant. On her refusal to handover her salary, she was beaten and tortured physically and mentally. Thus, the question is that whether the demand of salary from the complainant and her harassment because of non-handing over the salary to the applicants would fall within the purview of Section 498A of IPC or not.

Section 498A of IPC reads as under:-

"498A. 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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

- (a) any willful 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.”

Explanation (b) of Section 498A of IPC deals with demand for any property or valuable security. The word “dowry” has not been mentioned in Section 498A of IPC. Thus, the demand of any property or valuable security whether it has any connection with the dowry or not will bring it within the purview of offence under Section 498A of IPC. In the present case the allegations are that the complainant was being harassed mentally and physically because of her refusal to handover her monthly salary to the applicants, therefore, in the considered opinion of this Court, the monthly salary of the complainant would be her property and harassment of the complainant would certainly fall within the purview of Section 498A of IPC. Thus, the contention of the counsel for the applicants that there is no allegation that any dowry was demanded

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

after the marriage, therefore, no offence would be made out under Section 498A of IPC is concerned, the same being misconceived is rejected.

The next contention of the counsel for the applicants is that after compounding the offence punishable under Section 323 of IPC by the complainant, now it cannot be said that there was any harassment of the complainant because of refusal on her part to handover her salary.

The contention made by the counsel for the applicants cannot be accepted. The applicants for the reasons best known to them have not filed the copy of the charges which were framed against them. Generally, charge under Section 323 of IPC is framed for the act of assault and, therefore, merely because the complainant had compounded the offence under Section 323 of IPC then it would not *ipso facto* mean that she has also compromised/compounded for offence punishable under Section 498A of IPC. The explanation (b) of Section 498A of IPC involves two ingredients:-

- (i) Harassment of the woman; and
- (ii) 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.

Therefore, charge under Section 498A of IPC independently involves the harassment. Offence

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

under Section 323 of IPC can be committed even without demanding any property or dowry. Offence under Section 323 of IPC has nothing to do with the harassment of the lady in connection with demand of any property or valuable security.

There is a specific allegation in the FIR that the complainant was being harassed because of her refusal to handover her salary. Accordingly, the submission made by the counsel for the applicants that by compounding the offence under Section 323 of IPC, the complainant has in fact compounded all acts of harassment also is misconceived and cannot be accepted and, hence, it is rejected.

Another contention of the counsel for the applicants is that after filing an application under Section 320 (2) of CrPC, her non-appearance in M.Cr.C.No.201/2016 which was the petition for quashing the proceedings on the basis of compromise should be considered against the respondent No.2.

This contention made by the counsel for the applicants cannot be accepted as M.Cr.C.No. 201/2016 was dismissed for want of prosecution, therefore, it is clear that even the counsel for the applicants did not raise any contention before the Court for considering the application filed under Section 320 (2) of CrPC, as sufficient for quashing the criminal proceedings on the basis of compromise.

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

Under these circumstances, the applicants cannot be allowed to raise an argument which was otherwise available to them in previously instituted proceedings.

Even otherwise, if the complainant/wife is not willing to compromise the matter and is not willing that the proceedings should be quashed on the basis of compromise and because of her unwillingness if she does not appear in the proceedings initiated for quashing of the prosecution on the basis of compromises then no adverse inference can be drawn against the complainant. Thus, viewed from any angle, the submission made by the counsel for the applicants that an adverse inference should be drawn against the complainant for her non-appearance in M.Cr.C.No.201/2016 cannot be accepted. Hence, it is rejected.

It is next contended by the counsel for the applicants that the complainant is not appearing before the Trial Court for recording of her evidence.

It is made clear that the Trial Court is competent enough to ensure the appearance of the witnesses, therefore, the criminal proceedings cannot be quashed merely on the ground that on some dates the complainant did not appear before the Trial Court.

Furthermore, the respondent No.2 has submitted that as the child of the complainant had fallen down from the stairs and was injured,

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

therefore, she could not appear before the Trial Court for recording her evidence. It was further submitted that the examination-in-chief of the complainant has already been recorded and now her cross-examination has to be recorded. It was assured by the counsel for the respondent No.2 that there would not be any undue delay on the part of the respondent No.2 in the trial.

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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

documents 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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

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.

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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

& 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. 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

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

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 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],

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

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 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-

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

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.”

Thus, from the facts and circumstances of the case, this Court is of the considered view that not only the allegations made in the FIR discloses commission of cognizable offence but the criminal proceedings cannot be quashed against the applicants.

By way of caution, it is made clear that any observation made in this order should not come in the way of the Trial Court while deciding the trial on merits. As the arguments were raised by the counsel for the applicants, therefore, in order to consider those arguments, in the light of limited Scope of powers of High Court under Section 482 of CrPC, the above mentioned observations have been made.

M.Cr.C.No.10756/2016
(Vikas Arya & Ano. v. State of M.P. & Ano.)

The Trial Court is requested not to get prejudiced by any of the observations made in this order while deciding the trial on the basis of evidence which would ultimately come on record.

Accordingly, this petition fails and is hereby dismissed.

(ra)

(G.S.Ahluwalia)
Judge