

THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR

(Single Bench – Rajendra Mahajan J.)

Miscellaneous Criminal Case No. 1126 of 2016

1. Uday Narayan S/o Late Shri Babulal Dixit aged 67 years.
2. Smt. Shashi Prabha W/o Uday Narayan Dixit aged 62 years.
Both are the residents of 5 Chandra Villa New Agrasen Nagar Byawar Ajmer Rajasthan.

Petitioners

Versus

1. State of M.P. through Station Incharge, Mahila Police Station Padav Gwalior(M.P.)
2. Smt. Manjari W/o Shri Abhishek Dixit C/o Akhilesh Kumar Tiwari Chaturvedi Nagar Bhind (M.P.)

Respondents

For petitioners	:- Shri K.B. Chaturvedi, Ld. Senior Counsel with Shri Atul Gupta, Ld. counsel.
For respondent No.1/State	:- Shri Shiraz Quraishi, Ld. Public Prosecutor.
For respondent No.2- complainant	:- Shri Prashant Sharma, Ld. counsel with Shri Devendra Sharma, learned counsel.

ORDER

(Passed on the 11th day of October 2017)

The petitioners have invoked the extraordinary jurisdiction of this Court by filing the petition under Section 482 of the CrPC for quashing the FIR registered at Crime No. 145/2015 at Mahila Police Station Padav Gwalior and the criminal proceedings of Criminal Case No. 10076/2015 arisen out of the said crime number, pending before the Court of Judicial Magistrate First Class Gwalior insofar as the matter relates to them.

2. The short facts of the case for adjudication of the petition are that on 25/9/2015 respondent No.2-complainant Smt. Manjari Dixit gave a typed complaint to Mahila Police Station Padav Gwalior stating that she was married to Abhishek on 19/11/2013 as per Hindu rites and customs. Uday Narayan and Smt. Shashi Prabha, who are the petitioner Nos. 1 and 2 herein respectively, are her father-in-law and mother-in-law and Abhilash is her Devar. In her marriage, her parents had given dowry to his optimum financial

capacity. She has alleged that some time into the marriage, her husband and in-laws used to force her to bring ten lakh rupees in cash and one five tolas gold-bracelet in dowry. She would tell them that the financial position of her father is not such that he would meet their said demands of dowry. Thereupon, they would keep her confined hours together in the bathroom and the bedroom of her matrimonial home at Gwalior as a captive with an objective to force her to get their demands fulfilled. On 14/8/2014, her husband and in-laws assaulted her with fists and kicks in her matrimonial home, making the demands of dowry. At that time she ran towards the balcony of the house to save herself from being further beaten by them. Thereupon, her husband pushed her forcefully from the balcony, saying that today he would kill her. As a result, she fell down from the balcony and suffered a fracture in her hip bone. During her pregnancy, they did not provide her healthy diets. They also forced her to undergo a test for determination of sex of the foetus. For the said

reasons, she had to leave her matrimonial home. On 10/8/2015 in a private nursing home at Bhind, she gave birth to a baby-boy. Right from the birth, the health of the boy was very critical and serious. On the second day of his birth, he passed away. Her husband and in-laws did not visit her despite having heard that said news. Her Devar Abhilash does a job somewhere in the State of Rajasthan. Whenever he visited his parents and her husband, he would force her to fulfill their demands of dowry giving threats of her being eliminated. He would also hurl filthy abuses at her. On 13.9.2015, she had also made a complaint in this respect to Mahila Police Station Padav Gwalior. Thereupon, an attempt was made by the Police for conciliation, but in vain. On the basis of the written complaint, an FIR is recorded and a case is registered at Crime No. 145/2015 under Sections 498-A, 506 and 34 of the IPC and 3 and 4 of the Dowry Prohibition Act (for short "D.P. Act") against the aforesaid four persons. After investigation a charge-sheet was filed against them. The same has been registered as

Criminal Case No. 10076/2015 and the case is pending in the Court of Judicial Magistrate First Class Gwalior. On 29/10/2015, the learned JMFC framed the charges against the petitioners and said Abhishek and Abhilash for the offences punishable under Sections 498-A and 506 (part II) IPC and 4 DP Act. Aggrieved thereby, the petitioners have approached this Court by filing this petition. It be noted that said Abhilash has also filed MCRC No. 1895/2016 seeking the same reliefs as sought by the petitioners. The said MCRC is to be decided at the same time.

3. I have heard the learned counsel for the parties.

4. Learned Senior Counsel for the petitioners submitted that petitioner No.1 retired in the year 2008 as the Principal Government Science College Gwalior and petitioner No. 2 retired as the Professor and Head of Department from the MLB College Gwalior after attaining the age of retirement. They are presently aged about 68 and 65 years respectively. After their retirements, they are residing with their youngest son Abhilash, the accused of the case, at Byawar Ajmer

Rajasthan. In this regard a copy of the family ration card issued by the competent authority of Ajmer is on record. He further submitted that the petitioners' eldest son Abhishek and the daughter-in-law respondent No.2-complainant are the MBBS doctors. Abhishek is posted in Civil Hospital Gwalior and respondent No.2 was posted as Junior Resident Doctor in Trauma Centre J.A Group of Hospital Gwalior (for short "trauma centre") since 6/6/2014 till her resignation from the post on 30/6/2015. He submitted that some time after the marriage, the behavior of respondent No. 2 got changed and she started creating troubles in routine life of her husband Abhishek and that she used to express her unwillingness to live with them. On 15/7/2015, she left the house when she had nine month's old pregnancy by saying her husband Abhishek that she is going to do her job. When she did not come back, then he went to the trauma centre to know her whereabouts. There, he came to know that she had resigned the job on 30/6/2015 and ever since she did not come to the trauma centre. On 15/7/2015,

Abhishek tried to make contact on telephone. Thereupon, he came to know that she is in her parents' house at Bhind. Upon the sudden leaving of the matrimonial home by her, on 17/7/2015 Abhishek gave a written intimation to the SHO Police Station Jhansi Road Gwalior. In this respect a copy of the intimation is on record. He submitted that on account of some malicious intentions, she lodged the police report making false, absurd and frivolous allegations to harass and torture the petitioners and their both the sons.

5. After referring to the contents of the FIR and the case-diary statement of respondent No. 2 and her relatives, learned Senior Counsel further submitted that only specific allegation against the petitioners is that on 14/8/2014 they and Abhishek assaulted her with fists and kicks and on account of her being pushed by Abhishek, she sustained a fracture in her hip bone. But, there is no prima facie evidence on record to prove the said incident. He submitted that only naive person would believe that the petitioners

having such high social statuses had beaten respondent No. 2. He submitted that the remaining allegations against the petitioners are omnibus and that respondent No. 2 also levelled omnibus allegation against their youngest son Abhilash. Upon these contentions, he submitted that it is manifest that respondent No. 2 has made wild allegations against the petitioners with an objective to harass and torture by dragging them in the Court. After referring to the proceedings dated 18/9/2015 of the counsellors of Mahila Paramarsh Kendra Gwalior, he submitted that it has been mentioned therein that respondent No. 2 was not ready to live with her husband Abhishek. On the basis of that proceedings, he submitted that if the prosecution proceedings against the petitioners are allowed to continue in the court, then it would be a sheer abuse of process of law, and it would cause harassment and torture to the petitioners at the advanced stage of their lives without any fault on their parts. Therefore, it is a fit case for quashment of the FIR and the criminal proceedings insofar as the

petitioners are concerned. In support of the submissions, reliance is placed upon the decisions rendered in Preeti Gupta V. State of Jharkhand, (2010) 7 SCC 667, Taramani Parakh V. State of M.P., (2015) 11 SCC 260, Geeta Mehrotra and Anr. V. State of U.P. and Anr., (2012) 10 SCC 741 and some unreported orders of this Court passed under Section 482 CrPC.

6. Learned counsel for respondent No. 2 submitted that the trial has been started. In the circumstance, this Court cannot go into the reliability or otherwise of the version or the counter-version of the parties concerned. Therefore, the petition deserves to be dismissed. Be it noted that learned Public Prosecutor for respondent No. 1/State supported the arguments raised on behalf of respondent No. 2.

7. I have earnestly considered the aforesaid rival submissions made by learned counsel for the parties at the Bar and perused the material on record.

8. In Amar Chand Agarwala V. Shanti Bose, (1973) 4 SCC 10 = AIR 1973 SC 799, the Supreme Court has held that there is no time-limitation to exercise powers

under Section 561 old CrPC corresponding to Section 482 of the new CrPC. This Court has also held in Ravikant Dubey and Ors. V. State of M.P. and Anr., 2014 CLR (M.P.) 162, that the petition under Section 482 CrPC is maintainable even the trial has commenced, therefore, the objections raised on behalf of the respondents for non-maintainability of this petition is dismissed and it is held that the petition is maintainable.

9. Admittedly, this is a case of matrimonial bickerings, therefore, it will be seen as to how to deal with a petition under Section 482 CrPC for quashing the FIR and subsequent criminal proceedings.

10. In Kans Raj V. State of Punjab, (2000) 5 SCC 207, the Supreme Court has observed that a tendency has developed for roping in all relations of the husband on the part of the wife. Mere naming them in the FIR is not enough to summon them in the absence of any specific role and material to support such role.

11. In Geeta Mehrotra's case (supra), the Supreme Court has held that if in a case of dowry related

offences the names of husband's relatives are casually mentioned in the FIR and the contents of it do not disclose their active involvement and the cognizance of matter against them would not be justified. Under such conditions, the cognizance would result in abuse of judicial process. Quashment of such proceedings in exercise of Power under Section 482 CrPC would be fully justified (for details please see paras 20 and 25 of the decision).

12. In Taramani Parakh's case (supra), the Supreme Court has observed in para 10 of the decision that in matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against the relatives who are not generally concerned with the affairs of the couple.

13. In Preeti Gupta's case (supra), the Supreme Court has observed in para 32 that it is a matter of common experience that most of the complaints under Section 498-A are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are

not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

14. More recently, in Criminal Appeal No. 1265/2017, Rajesh Sharma and Ors. V. State of U.P. and Anr., date of judgment 27/7/2017, the Supreme Court has judicially acknowledged the misuse of the provisions of Section 498-A IPC and the provisions of DP Act. It has emphasized that there is need to adopt measures to prevent such misuse. In this respect, it has issued directions in para 19 of the decision.

15. The parameters in quashing an F.I.R or complaint or proceedings in a criminal case is well known. If there are trivial issues, the Court is not expected to go into the veracity of the rival versions, but where on the face of it the allegations are absurd or do not make out any case of it and the criminal proceedings are abuse of the Court's process, quashing jurisdiction under Section 482 CrPC can be exercised. In this respect a reference may be made to the parameters or

guidelines given by the Supreme Court in the cases of State of Haryana V. Bhajanlal, AIR 1992 SCW 237, Indian Oil Corporation V. NEPC India Limited, (2006) 6 SCC 736, Prashant Bharti V. State of NCT of Delhi, AIR 2013 SC 275, Amit Kapoor V. Ramesh Chander, (2012) 9 SCC 460 and other cases.

16. In the light of the aforesaid case-law, I would decide this petition.

17. From the perusal of a copy of family ration card issued by the District Administration Ajmer Rajasthan, it appears that the petitioners have been residing with their youngest son Abhilash and his family members. As per the FIR lodged by respondent No. 2 and her case-diary statement, she has only made a specific allegation against the petitioners that on 14/8/2014, the petitioners assaulted her with fists and kicks and her husband Abhishek pushed her as a result she sustained fracture in her hip bone. But, in support of the said allegation there is no evidence on record even medical evidence. As per the FIR and her case-diary statement, she has also levelled allegation against her

Devar Abhilash by saying that whenever he would visit his parents/petitioners and brother Abhishek, he would force her to fulfill their demands of dowry and threaten her to eliminate her in case of non-fulfillment of the demands. If the allegations levelled against the petitioners and Abhilash are read together, it can be said that respondent No. 2 has levelled the allegations without any material in support thereof. Thus, the allegations are prima facie false and malicious. The petitioners had retired from the respectable posts with handsome pensions, therefore, this Court cannot accept the allegation by any stretch of the imagination that they would assault her with fists and kicks demanding dowry. Her husband Abhishek had intimated in writing the SHO Police Station Jhansi Road Gwalior on 17/7/2015 itself when respondent No. 2 left her matrimonial home without giving any intimation. On the basis of the proceedings dated 18/9/2015 written by the counselors and the sudden leaving of matrimonial home by respondent No.2, when she was carrying advance pregnancy, it might be said that it is

a case of mal-adjustment and personality clashes between respondent No.2 and her husband Abhishek. Thus, instead of sorting out all her disputes with her husband Abhishek, respondent No. 2 has maliciously implicated the petitioners making allegations against them without any prima facie evidence. In the light of the above discussion, it is apparent that the allegations of demand of dowry, harassment and beating made against the petitioners are inherently improbable, absurd and malicious. It appears that allegations have been levelled with a view to harass and torture the petitioners.

18. For the reasons stated herein above, I am of the considered opinion that continuation of the criminal proceedings against the petitioners would be sheer abuse of the process of law when they are in their late sixties.

19. Consequently, the petition is allowed and the FIR registered at Crime No. 145/2015 at Mahila Police Station Padav Gwalior and the criminal proceedings of Criminal Case No. 10076/2015 pending before the

Court of Judicial Magistrate First Class Gwalior are hereby quashed in respect of the petitioners. The bail bonds of the petitioners are also cancelled.

20. A copy of this order be sent to the concerned Court of Judicial Magistrate First Class Gwalior for information and necessary compliance.

**(Rajendra Mahajan)
Judge**

AKS