

**THE HIGH COURT OF MADHYA PRADESH BENCH GWALIOR**

**(Single Bench – Rajendra Mahajan J.)**

**Miscellaneous Criminal Case No. 1895 of 2016**

Abhilash S/o Shri Uday Narayan Dixit  
aged 32 years resident of 5, Chandra  
Villa Agresen Colony Delwara Road  
Beawar Ajmer (Rajasthan).

**Petitioner**

**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**

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For petitioner	:- Shri Atul Gupta, learned counsel.
For respondent No.1/State	:- Shri Shiraz Quraishi, learned Public Prosecutor.
For respondent No.2- complainant	:- Shri Prashant Sharma, learned counsel assisted by Shri Devendra Sharma, learned counsel.

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**ORDER**

(Passed on the 11th day of October 2017)

The petitioner has filed this 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 emanating from the said crime number, pending on the file of Judicial Magistrate First Class Gwalior insofar as the matter relates to him.

**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 got married to Abhishek on 19/11/2013 as per Hindu rites and customs. Uday Narayan and Smt. Shashi Prabha are her father-in-law and mother-in-law and Abhilash, the petitioner, 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 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 in this respect. When she ran towards the balcony of the house to save herself from being further beaten by them, 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, the petitioner, does a job somewhere in the state of Rajasthan. Whenever he visited his parents and brother Abhishek, he would force her to fulfill their demands of dowry otherwise he would get her 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 "DP Act") against the aforesaid persons. After investigation a charge-sheet was filed against them. It 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 petitioner Abhilash and the aforestated persons for the offences punishable under Sections 498-A, 506 (part II) IPC and 4 DP Act. Aggrieved thereby, the petitioner has approached this Court by filing this petition. It be noted that respondent No. 2-complainant's in-laws Uday Narayan and Smt. Shashi Prabha have also filed MCRC No. 1126/2016 seeking the same reliefs as sought by the petitioner. The said MCRC is to be decided at the same time.

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

**4.** After referring to the family ration card issued by the competent authority of Ajmer, a copy of which is on record, learned counsel for the petitioner submitted that the petitioner resides with his family members and his parents in Ajmer, where he does a job before the marriage of respondent No. 2 with his brother Abhishek. Thus, respondent No. 2 has falsely implicated him in the case with a sole objective to torture and harass him mentally and monetarily. After referring to the contents of the FIR and case-diary statement of respondent No. 2, he submitted that she has made very vague allegations against the petitioner without giving an iota of factual evidence in support thereof. Thus, the learned JMFC has gravely erred in framing the charges against the petitioner. On the other hand, learned JMFC ought to have discharged the petitioner exercising powers under Section 239 CrPC. Upon these submissions, learned counsel for the petitioner prayed to allow the petition granting the reliefs as sought.

**5.** Learned counsel for respondent No. 2 submitted that the petition is not maintainable on two grounds

“first”- the trial Court has framed the charge against the petitioner, therefore, the revision under Section 397 read with 401 CrPC shall lie not the petition and “second”- the trial proceedings have been started, therefore, this Court cannot go into the reliability or otherwise of the version or the counter-version of the parties concerned. Therefore, the matter pertaining to the petitioner is sufficient for framing the charges. Upon these submissions, he prayed for dismissal of the petition. Be it noted that learned Public Prosecutor for respondent No. 1/State supported the arguments raised on behalf of respondent No. 2.

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

**7.** Recently, a three Judges Bench of the Supreme Court in Prabhu Chawla V. State of Rajasthan and another, 2017 CRLJ 1080 SC, has held that notwithstanding the availability of remedy to the aggrieved for filing criminal revision under Section 397 read with 401 CrPC, a petition under Section 482 CrPC is maintainable. In view of the said ratio, it is held that this

petition under Section 482 CrPC is maintainable despite the fact that the learned JMFC has framed the charges against the petitioner. Therefore, the objection raised on behalf of respondent No. 2 on the first ground for non-maintainability of this petition is dismissed.

**8.** In Amar Chand Agarwalla V. Shanti Bose and Anr., (1973) 4 SCC 10 = AIR 1973 SC 799, the Supreme Court has laid down that there is no time limitation to exercise the powers under Section 561 old CrPC corresponding to Section 482 of the new CrPC. This Court has held in Ravikant Dubey and Ors. V. State of M.P. and Anr., 2014 CLR (MP) 162 that the petition under Section 482 CrPC is maintainable even the trial proceedings have started. Therefore, the objection raised on behalf of respondent No. 2 for non-maintainability of the petition on second ground is not tenable.

**9.** In view of the discussions in the preceding two paras, it is held that this petition is maintainable.

**10.** 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.

**11.** 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.

**12.** In Geeta Mehrotra and Anr. V. State of U.P. and Anr., (2012) 10 SCC 741, 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).

**13.** In Taramani Parakh V. State of M.P., (2015) 11 SCC 260, 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.

**14.** In Preeti Gupta V. State of Jharkhand, (2010) 7 SCC 667, 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.

**15.** In Century Spg. & Mfg. Co. Ltd. V. State of Maharashtra, AIR 1972 SC 545, the Supreme Court has observed in respect of the order of framing of charge that the order of framing a charge affects a person's liberty substantially and therefore it is the duty of the Court to consider judicially whether the material warrants 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.

**16.** In Neelu Chopra and another V. Bharti, (2009) 10 SCC 184, the Supreme Court has held in para 9 of the

judgment that in order to lodge a proper complaint, mere mention of the Sections and the language of those Sections is not be all and end of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

**17.** 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 also issued directions in para 19 of the decision.

**18.** The parameters in quashing 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.

**19.** In the light of aforesaid legal positions, I would proceed to decide this petition.

**20.** From the perusal of a copy of family ration card issued by the District Administration Ajmer Rajasthan, it is evident that the petitioner along with his family members and parents resides in Ajmer. This fact is also admitted by respondent No. 2 in the F.I.R and her case-diary statement. Thus, an inference can be drawn that the petitioner casually visits Gwalior to meet his brother Abhishek and his Bhabhi/respondent No. 2.

**21.** The records reveals that Abhishek and respondent No. 2 are the MBBS doctors. Upon the material on record, it may be said that it is probably a case of mal-adjustment and personality clashes between respondent No. 2 and her husband Abhishek. Therefore, false

implication of the petitioner is there.

**22.** In the F.I.R respondent No. 2 has levelled following allegations against the petitioner:-

"मेरा देवर अभिलाष दीक्षित जो राजस्थान में नौकरी करता है जब कभी घर पर आता था तो वह भी मुझे अपने पिता की धमकी देता था की अगर तुम हमारी मांगे पूरी नहीं करोगें तो हम लोग तुझे ठिकाने लगा देंगे और गाली गलोच करता था।"

Respondent No. 2 in her case-diary statement has made allegations against the petitioner thus:-

"देवर अभिलाष द्वारा मुझे धमकी दी अगर मांगे पूरी नहीं कराई तो तुम्हे जान से खत्म कर देंगे।"

**23.** Upon the perusal of the aforesaid allegations made by respondent No. 2 against the petitioner, I hold that the allegations are omnibus and vague and respondent No. 2 has attributed no specific role to the petitioner in respect of the dowry related cruelties. Therefore, the aforesaid statements of respondent No. 2 appearing in her F.I.R and the case-diary statement is not sufficient for framing the charges against the petitioner under Sections 498, 506 (part II) IPC and 4 DP Act. Thus, learned JMFC has erred in framing the said charges against the petitioner for want of prima facie evidence.

**24.** In view of the above discussions, if the prosecution against the petitioner under Sections 498-A, 506 (part II) IPC and 4 DP Act remains to be continued, it will be nothing but absolutely abuse of process of law by respondent No. 2.

**25.** As a consequence, this petition deserves to be allowed and is accordingly 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 petitioner. The bail-bonds of the petitioner are also cancelled.

**26.** 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**