

M.Cr.C. No.7706/2016
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21.02.2017

Shri S.K.Tiwari, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondents No.1 and 2/State.

Shri P.S.Bhadoriya, Shri Sanjay Singh and Shri Rajnish Sharma, counsel for the respondent No.3.

This petition under Section 482 of Cr.P.C. has been filed against the order dated 30.11.2012 passed by the JMFC, Gwalior in Criminal Case No.11557/2007 for framing charges under Section 498-A of IPC and 3/4 of Dowry Prohibition Act.

The said order was challenged by filing a Criminal Revision No.600505/2012 which too has been dismissed by order dated 26.05.2016 by 4th ASJ, Gwalior.

The necessary facts for the disposal of the present application in short are that on 04.08.2005, the respondent No.3 lodged a FIR against the applicants for offences punishable under Section 498-A of IPC and under Section 3/4 of Dowry Prohibition Act. The Police Station-Jatara, District-Tikamgarh after completing the investigation filed a charge sheet in the Court of JMFC, Jatara. On 22.12.2005 a petition under Section 482 of Cr.P.C. was filed before the Principal Bench of this Court which was registered as M.Cr.C.No.2756/2006 and by order dated 10.01.2007 this Court had set aside the proceedings which were pending before the Court of JMFC, Jatara on the ground of lack of territorial jurisdiction and the Court was directed to return the charge sheet to Police Station-Jatara, District-Tikamgarh for transferring the same to the police station having territorial jurisdiction in the matter. It was further submitted that the Police Station-Jatara instead of transferring the FIR only, send the entire record to the Superintendent of Police, Gwalior, who handed over the matter to Police Station-Kotwali, District-Gwalior. It was further stated that the Police Station-Kotwali, District-Gwalior instead of investigating the matter afresh filed the charge sheet

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before the Court of JMFC, Gwalior. It was further submitted that as the last incident of cruelty took place in the year 2003 and since, the charge sheet was filed in the year 2007 therefore, the case is barred by limitation. It was further submitted that even if, the entire allegations as contained in the FIR as well as in the charge sheet are taken on their face value, then it would be clear that no offence against the applicants is made out. It is pointed by the counsel for the applicants that the applicant No.1 is the elder brother-in-law (जेठ) applicant no.2 is the wife of applicant no.1 (जेठानी), applicant no.3 is mother-in-law and applicants no.4 and 5 are the sister-in-laws of respondent no.3. Lastly, it was submitted that in view, of the growing tendency in the society to falsely implicate the near and distant relatives of the husband, have been falsely implicated.

Per contra, counsel for the respondent no.3 submitted that the period of limitation would start from the date of the FIR and not from the date of taking of cognizance. Secondly, it was contended that it was incorrect that the distant and near relatives of the husband of respondent no.3 have been implicated. Only those persons have been implicated who had in fact harassed and treated the respondent no.3 with cruelty. If the intention of the respondent no.3 was to falsely implicate all the relatives of her husband then, she would not have spared three more sister-in-laws namely Smt. Munni@Meena, Smt.Rama and Smt.Meera. As these three persons did not commit any offence and did not harass the respondent no.3, therefore, no allegations were made against them. It is further submitted by the respondent no.3 that after the death of her husband, the applicants have turned her out of her matrimonial house and they had treated the respondent no.3 with cruelty.

Heard learned counsel for the parties.

So far as, the first contention of the applicants is that the

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cognizance has taken in the year 2007 and therefore, the case is barred by limitation is concerned, the same appears to be misconceived, and therefore, it is rejected. It is clear that the FIR was lodged on 04.08.2005 and the police of Police Station-Jatara after completing the investigation filed the charge-sheet against the applicants on 22.12.2005. The Court of JMFC, Jatara took cognizance of the offence and against which a petition under Section 482 of Cr.P.C. was filed before the Principal Bench of this Court and the said petition was allowed on the ground of lack of territorial jurisdiction and it was directed that the charge-sheet be returned back so that the same can be filed before the Court of competent jurisdiction. Thus, it is clear that in fact, the charge-sheet was filed for the first time on 22.12.2005 and, therefore, even for the purposes of offence punishable under Section 498-A of IPC, the charge-sheet was filed within the period of limitation. Merely, because the charge-sheet was returned back on the ground of lack of territorial jurisdiction with a direction to file the same before the Court of competent jurisdiction, would not mean that the cognizance was taken for the first time by the Court of competent jurisdiction and it would not be material for the purpose of calculating the period of limitation. Further-more, the charge-sheet has also been filed for offence punishable under Section 3/4 of Dowry Prohibition Act. The sentence provided for offence under Section 3 of Dowry Prohibition Act is five years therefore, the Provisions of Section 468 of Cr.P.C. would not apply to the fact of the case and thus, the proceedings cannot be quashed on the ground that as the cognizance was taken by the Court of competent jurisdiction in the year 2007 therefore, the proceedings are barred by limitation.

It is next contended by the counsel for the applicants that all the near and distant relatives of the husband of respondent no.3

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have been implicated. The counsel for the applicants relied upon the judgments of the Supreme Court in the cases of **Kans Raj Vs. State of Punjab & Ors.** reported in **AIR 2000 SC 2324** and **Monju Roy and Others Vs. State of West Bengal** reported in **(2015) 13 SCC 693.**

It is submitted by the counsel for the applicants that the Supreme Court has deprecated the increasing tendency of falsely implicating the near and dear ones of the husband, so as to pressurize the husband and his parents. Accordingly, it is submitted that, so far as the applicants no.4 and 5 are concerned, they are married ladies and they have nothing to do with the affairs of the family of respondent no.3 and therefore, they have been falsely and over implicated.

Before considering the above mentioned submissions made by the counsel for the applicants, it is necessary to consider the allegations which have been made by the respondent no.3. On 04.08.2005, the respondent no.3 lodged a FIR against the applicants alleging that she was married to Manoj Choubey in the year 1997. Unfortunately, her husband died on 05.11.2002. At the time of marriage her father had given one Maruti 800 car, rupees two lacs in cash, five *tolas* of gold ornaments and other household articles. Immediately after the marriage, the applicants started harassing and treated her with cruelty for demand of dowry. They used to pass taunts that a poor lady has come to their house and they also used to talk indecently about her parents. Respondent no.3 on some occasions informed her father, who convinced her that with passage of time, everything will get normalized. After the death of her husband in the year 2002, all the applicants started abusing her and beating her and she was harassed and treated with cruelty. Her father also tried to resolve the matter but, none of the applicants agreed for the same and after keeping the ornaments

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and all her *stridhan*, she was turned out of her matrimonial house. The applicants had even not given the food for several days. She was not allowed to take her clothes also. After her father got retired, the applicants demanded that in case if, she wants to reside in her matrimonial house then, she should bring rupees three lacs. From the month of January, 2003, she is residing in her father's house and she has not been allowed to stay back in her matrimonial house. Lot of efforts were made to make compromise and defuse the situation but, the applicants did not agree for the same.

It is submitted by the counsel for the applicants that even if, the entire allegations are accepted then, it would be clear that no offence is made out.

Per contra, it is submitted by the counsel for the respondent no.3 that the applicant no.4 was granted divorce by her husband and from the year 2001 she is residing along with the other applicants therefore, it is submitted that it is incorrect to say that the applicant no.4 is residing separately from that of the other applicants. So far as the applicant no.5 is concerned, her address has been shown to be of Kailaras, District-Morena, whereas the other applicants have been shown to be the resident of Naya Bazaar, Lashkar, Gwalior. After going through the arrest memo of applicant no.5, it is clear that the address of the applicant no.5 in the arrest memo is also mentioned as Naya Bazaar, Lashkar, Gwalior. It is submitted by the counsel for the respondent no.3 that at the time of arrest, the address which is disclosed by the detenu is mentioned in the arrest memo. Thus, it is submitted that applicant no.5 is also residing at the same address and not at Kailaras, District-Morena. It is further submitted that the husband of the respondent no.3 had five sisters. The allegations have been made against the two sisters. If, the intention of the respondent

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no.3 was to falsely and over implicate the relatives of the husband then, respondent no.3 would not have spared the other three sisters. The very fact that the respondent no.3 did not lodge anything against the remaining three sisters of her husband clearly shows that the allegations have been made only against those persons who have really harassed and treated the respondent no.3 with cruelty. It is further submitted that out of the three, remaining two sisters are also resident of Gwalior.

Be that as it may be. For the purposes of framing charges and taking cognizance, meticulous appreciation of evidence is not permissible. If, there is some suspicion of commission of offence and involvement of accused then, that would be sufficient to frame charges.

At this stage, the only consideration is that whether there is any ground to presume that the accused has committed an offence or not. Even a strong suspicion is sufficient to refuse discharge.

From the FIR and the case diary statements of the respondent no.3, it appears that the harassment at the hands of the applicants had increased after the death of the husband of the respondent no.3. The applicants were not interested in allowing her to stay back in her matrimonial house and therefore, they treated respondent no.3 with cruelty and harassed her by making demand of money for staying in her matrimonial house.

Prima facie, there is sufficient evidence available on record against the applicants and therefore, at this stage, the FIR registered against the applicants and the criminal proceedings pending against them cannot be quashed.

Accordingly, this application fails and is hereby **dismissed**.

(G.S.Ahluwalia)
Judge