THE HIGH COURT OF MADHYA PRADESH AFR M.Cr.C. No.9047/2017 (Ajay Batham and another Vs. State of M.P. and another)

Gwalior, Dated : 27/08/2018

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Shri Ravi Ballabh Tripathi, Advocate for applicants.

Shri RVS Ghuraiya, Public Prosecutor for respondent no.1/State.

Shri G.P. Chaurasiya, Advocate for respondent no.2. Case diary is available.

With the consent of the parties, the case is heard finally.

This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. Registered at Crime No.360/2017 registered at Police Station Kotwali, Distt. Bhind, for offence under Section 498-A of I.P.C. and under Section 3/4 of Dowry Prohibition Act.

2. The undisputed facts are that the applicant no.1 is the younger-brother-in-law (Devar) and applicant no.2 is the Sister-in-law (Nanad) of the respondent no.2.

3. The applicant no.1 has disclosed his age in the cause title as 24 years, whereas the applicant no.2 has disclosed her age in the cause title as 22 years. A Specific ground "L" has been raised by the applicants that at the time of marriage of the respondent no.2, the applicants were 12 years and 10 years of age respectively. Although the respondent no.2 has filed her reply, but has not controverted this ground. Thus, in absence of any specific denial/dispute with regard to the age of the applicants, as disclosed in the cause title, as well as with regard to the minority of the applicants, at the time of the marriage of the respondent no.2, this Court is left with no other option, but to accept the contention of the applicants that at the time of the marriage of the respondent no.2, the applicants were aged about 12 years and 10 years respectively.

4. The necessary facts in brief are that the respondent no.2

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has lodged the F.I.R. against the applicants and other in-laws, on the allegations that she was married to Pramod on 15-7-2005 as per Hindu rites and rituals and sufficient dowry was given as per the financial condition of her father. The respondent no.2 was kept properly for a period of one year from the date of her marriage, but thereafter, the applicants and her in-laws started demanding Rs.5 lacs and were passing taunts that unless and until the respondent no.2 brings the amount of Rs.5 Lacs, she would not be allowed to stay in her matrimonial house. It was further alleged that because of demand of Rs.5 lacs, the applicants along with her in-laws were harassing the respondent no.2, mentally and physically, and therefore, she has come to lodge the F.I.R.

5. The police on the above mentioned complaint, has registered the offence under Section 498-A of I.P.C. and under Section 3/4 of Dowry Prohibition Act.

6. The police has also recorded the statement of the respondent no.2 and again she has stated that from the year 2006, the applicants and her in-laws started demanding Rs.5 lacs and she was being harassed mentally and physically by the applicants and her other in-laws. It was further alleged that about 1 year back, she was turned out of her matrimonial house and at present she is residing in her parental home.

7. Challenging the F.I.R. registered against the applicants, it is submitted by the counsel for the applicants that the applicants were minor, aged about 12 and 10 years of age at the time of the marriage of the respondent no.2. Even if the allegations made by her are accepted, then it would mean that at the age of 13 years and 11 years, the applicants had started demanding Rs. 5 lacs from the respondent no.2 and had also started

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harassing her mentally and physically. It is also submitted that except mentioning that the respondent no.2 was harassed mentally and physically, she has not alleged as to how she was harassed mentally and physically. Furthermore, the present case is the glaring example of growing tendency in the society to falsely implicate the close relatives of the husband and even the minor relatives are not being spared.

8. *Per contra*, it is submitted by the counsel for the State as well as the counsel for the complainant that there are specific allegations that the applicants had started demanding Rs.5 lacs from the year 2006 and because of non-fulfillment of their demand of dowry, the applicants along with other family members used to harass the respondent no.2 physically and mentally.

9. Heard the learned counsel for the parties.

10. Before considering the allegations made against the applicants, it would be appropriate to consider different judgments passed by the Supreme Court concerning the appreciation of allegations made against the close relatives of the husband.

11. The Supreme Court by order dated 21-8-2018 passed in the case of K. Subba Rao and others Vs. The State of Telangana Rep. By its Department of Home and others (Criminal Appeal No. 1045 of 2018), has held as under :

"5. Criminal Proceedings are not normally interdicted by us at the interlocutory state unless there is an abuse of process of a Court. This Court, at the same time, doesnot hesitate to interfere to secure the ends of justice. See **State of Haryana Vs. Bhajan Lal 1992 Supp. (1) SCC 335.** The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The reatives of the

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husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. See Kansraj Vs. State of Punjab and others (2000) 5 SCC 207 and Kailash Chandra Agrawal and another Vs. State of Uttar pradesh and others (2014) 16 SCC 551."

The Supreme Court in the case of Kansraj Vs. State of

Punjab, (2000) 5 SCC 207, has held as under :

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"In the light of the evidence in the case we find substance in the submission of the 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. Bv 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 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 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

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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 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 the High Court and the trial court insofar as it relates to them and we direct that they be released

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forthwith unless required in connection with some other case."

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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."

The Supreme Court in the case of Chandralekha & Ors. v.

State of Rajasthan & Anr. reported in 2013 (1) UC 155 has held as under:-

"8. We must, at the outset, state that the High Court's view on jurisdiction meets with our approval and we confirm the view. However, after a careful perusal of the FIR and after taking into consideration the attendant circumstances, we are of the opinion that the FIR lodged by respondent 2 insofar as it relates to appellants 1, 2 and 3 deserves to be quashed. The allegations are extremely general in nature. No specific role is attributed to each of the appellants. Respondent 2 has stated that after the marriage, she resided with her husband at Ahmedabad. It is not clear whether appellants 1, 2 and 3 were residing with them at Ahmedabad. The marriage took place on 9/7/2002 and respondent 2 left her matrimonial home on 15/2/2003 i.e. within a period of seven months. Thereafter, respondent 2 took no steps to file any complaint against the appellants. Six years after she left the house, the present FIR is lodged making extremely vague and general allegations against appellants 1, 2 and 3. It is important to remember that appellant 2 is a married sister-in-law. In our opinion, such extra ordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by respondent 2 against appellants 1, 2 and 3, which are, in any case, general in nature. We have no doubt

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that by making such reckless and vague allegations, respondent 2 has tried to rope them in this case along with her husband. We are of the confirmed opinion that continuation of the criminal proceedings against appellants 1, 2 and 3 pursuant to this FIR is an abuse of process of law. In the interest of justice, therefore, the FIR deserves to be quashed insofar as it relates to appellants 1, 2 and 3."

The Supreme Court in the case of Arnesh Kumar Vs. State

of Bihar reported in (2014) 8 SCC 273 has held as under :

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."

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In the case of **Preeti Gupta Vs. State of Jharkhand** reported in **AIR 2010 SC 3363** it has been held by the Supreme Court as under :

"34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial. it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.

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39. When the facts and circumstances of the case are considered in the background of legal principles set out in the preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of

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the High Court is set aside. Consequently, this appeal is allowed."

In the case of Neelu Chopra and another Vs. Bharti reported in (2009) 10 SCC 184, it has been held by the Supreme Court, as under :

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all 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.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants."

12. Thus, it is clear that unless and until there are specific allegations against the near, dear or distant relative of the husband, the relatives should not be compelled to go through the ordeal of trial. The vague and omnibus allegations are not sufficient to rope the near and dear relatives of the husband in a criminal case. If the allegations made against the applicants are considered, then it would be clear that the respondent no.2 has stated that she was married in the year 2005 and from the year 2006, the applicants and her other in-laws started demanding Rs.5 lacs and also started harassing her physically and mentally, because of non-fulfillment of their demand of dowry. Thus, there is an allegation against the applicants that from the

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year 2006, the applicants also started demanding Rs.5 lacs and also started harassing her physically and mentally because of non-fulfillment of the said demand. Thus, it is clear that the respondent no.2 has made allegations of demand of dowry and harassment against the applicants, when they were only 13 and 11 years old respectively. No specific allegations or overtact has been alleged against the applicants, either in the F.I.R. or in her statement under Section 161 of Cr.P.C. Undisputedly, the applicants are the siblings of the husband of the respondent no.2. Thus, under these circumstances, it appears that the allegations of demand of dowry and harassment by the minor siblings of her husband have been made. Thus, this Court is of the considered opinion that the allegations made against the applicants are vague and omnibus and too far from reality, because it is not expected from a minor child aged about 13 or 11 years to know the meaning of "Dowry" or to harass the lady because of non-fulfillment of demand of dowry. Even otherwise, except mentioning that she was harassed mentally and physically, no details have been given as to in what manner the respondent no.2 was harassed mentally and physically.

13. Thus, this Court is of the considered opinion that the F.I.R. as well as the case diary statement of the respondent no.2, does not make out a *prima facie* case against the applicants.

14. However, as the wild, vague and omnibus allegations have been made against the applicants, who were minor on the date when the demand of Rs.5 lacs was allegedly made for the first time and harassment, this Court is of the view that now the time has come when the tendency of false implication of the near and dear relatives of the husband should be checked and dealt with firmly.

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15. Accordingly, the F.I.R. registered at Crime No.360/2017 by Police Station Kotwali, Distt. Bhind, for offence under Section 498-A of I.P.C. and under Section 3/4 of Dowry Prohibition Act **qua the applicants** is hereby **quashed**.

16. As an attempt has been made to falsely implicate the siblings of the husband, who were minor at the relevant time, it is directed the applicants are entitled for cost for undergoing the agony of registration of a criminal case against them. Therefore, the respondent no.2 is saddled with the cost of Rs.10,000/-, out of which Rs. 4,000/- shall be payable to each of the applicants and the remaining amount of Rs. 2000/- be deposited with the Registry of this Court for consuming the precious time of the Court.

Let the cost be deposited within a period 60 days from today.

17. The application succeeds and is hereby **Allowed**.

(G.S. Ahluwalia) Judge

Arun*