

THE HIGH COURT OF MADHYA PRADESH
CRR-2045-2021
Balkrishna Devda and ors. Vs. State of MP and anr.

Through video conferencing

Gwalior, Dated :. 11.01.2022

Shri Milan Singh Tomar, Counsel for the applicants.

Shri R.P. Singh, Counsel for the State.

This criminal revision under Section 397, 401 of CrPC has been filed against the order dated 03.02.2021 passed by JMFC, Seondha District Datia in Criminal Case No.4/2021, by which the charges under Sections 498-A, 294, 323/34, 506 (Part-II) of IPC and under Section 3/4 of Dowry Prohibition Act have been framed.

2. It is submitted by the counsel for the applicants that respondent No. 2 is the legally wedded wife of son of the applicants No. 1 and 2. She lodged a FIR on 02.11.2020 on the allegations that she got married to Aditya Devda on 17.04.2019 and at present she is residing in Datia. Her father had given cash, household articles, silver and gold ornaments as per his financial condition. After the marriage when she went to her matrimonial house for the second time, then the applicants as well as her husband Aditya Devda started demanding four wheeler vehicle and also started harassing her. Even during the pregnancy of the complainant/respondent No. 2, the applicant No. 2 used to pressurize her to work fast and when it was replied by the respondent No. 2 that on account of pregnancy, she cannot work fast, then the applicant No. 2 used to harass her mentally. After some time,

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she came back to her parental home at Datia and informed the entire incident to her parents and siblings. When the parents of the respondent No. 2 requested the applicants and her husband to come to Datia in order to resolve dispute, then the husband of the respondent No. 2 and the applicant No. 2 came to her parental home. When her parents were trying to convince her husband and applicant No. 2, then her husband got annoyed and assaulted her. After great persuasion by the parents of the respondent No. 2, she was taken to her matrimonial house and was kept properly for few days, but again thereafter all the four persons, i.e., the applicants and her husband demanded dowry and also started beating her. They used to abuse her filthily and they were also alleging that the respondent No. 2 is a characterless person. Accordingly, the respondent No. 2 informed the entire incident to her father. Thereafter, she came back to her parental home along with her father. On 27.06.2020 at about 01:30 in the night, the applicants No. 1 and 2 as well as her husband came to her parental home and said that they have come to take her back. When the respondent No. 2 came out of the house, then her husband as well as the applicants No. 1 and 2 started assaulting her and also instructed that she should come along with four wheeler vehicle, otherwise they will not allow her to enter inside the matrimonial house.

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3. It is submitted that in fact, the FIR has been lodged by way of counterblast. The husband of the respondent No. 2 namely Aditya sent a registered notice dated 17.08.2020 asking her for divorce otherwise it was also mentioned that in case, if the respondent No. 2 does not agree for divorce by mutual consent, then husband of respondent No. 2 would file a petition for divorce. It is further submitted that accordingly on 09.10.2020 divorce petition has been filed by the husband of the respondent No. 2. Notices were issued by order dated 10.11.2020 and only after receiving notice, the FIR in question has been lodged on 02.11.2020. Thus, it is clear that the FIR in question is bad in law as it has been lodged by way of counterblast. It is further submitted that the applicant No. 3 is residing in Indore and she is a spinster and is practicing as Dentist at Indore. She has nothing to do with the family affairs of the respondent No. 2 and her husband Aditya. It is further submitted that it is well established that the tendency to falsely implicate near and dear relatives of the husband is increasing day by day and near and dear relative of the husband should not be prosecuted unless and until there are specific allegations against them. In support of the contention, counsel for the applicant has relied upon the judgment passed by coordinate Bench of this Court on **18.08.2021** in the case of **Abhishek Pandey @ Ramji Pandey and others Vs. State of**

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Madhya Pradesh and Others in Criminal Revision No.521/2021

(Jabalpur Seat). It is further submitted that there is a considerable delay in lodging the FIR.

4. Per contra, the revision is vehemently opposed by the counsel for the State.

5. Heard the learned counsel for the parties.

6. So far as the contention of the counsel for the applicant with regard to the lodging of FIR after receiving notice of divorce petition is concerned, this Court is of the considered opinion that the submission made by the applicants is misconceived and is liable to be rejected, as the question raised by the applicants is no more *res integra*. The Supreme Court in the case of **Pratibha Vs. Rameshwari Devi and others** reported in **(2007) 12 SCC 369** has held as under:-

“14. From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made in the FIR for quashing the same in the exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in Bhajan Lal's case and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as noted herein above. The High Court has drawn an adverse inference on account of the FIR being lodged on 31st December, 2001 while the

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appellant was forced out of the matrimonial home on 25th May, 2001.

15. In our view, in the facts and circumstance of the case, the High Court was not justified in drawing an adverse inference against the appellant-wife for lodging the FIR on 31st December, 2001 on the ground that she had left the matrimonial home atleast six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that the respondent No.2-husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with the respondent No.2-husband.

16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and the respondent No.2-husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a Civil Court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations.”

7. Furthermore, every lady would like to save her matrimonial life. The moment an FIR is lodged about the cruelty meted out to the wife, then there is every possibility that the family life of the wife may get ruined, so in order to save her matrimonial life if the

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respondent No.2 did not lodge the FIR, then it cannot be said that the FIR was lodged by way of counterblast after receiving the notice of divorce petition. At the most, it can be said that when the respondent No.2 realized that now there is no possibility of reconciliation, then if s he decided to go for lodging of FIR against the applicants, then it cannot be said that the FIR was the product of counterblast. Furthermore, the divorce petition is to be decided on its own merits and it is well established principle of law that the findings recorded by the Civil Court are not binding on the criminal court.

8. So far as the judgment passed by the coordinate Bench of this Court in the case of **Abhishek Pandey @ Ramji Pandey (supra)** is concerned, it is sufficient to hold that the coordinate Bench of this Court has not taken into consideration the judgment passed by the Supreme Court in the case of of **Pratibha (supra)**. Therefore, the judgment passed by the coordinate Bench of this Court in the case of **Abhishek Pandey @ Ramji Pandey (supra)** does not lay down the correct law on the issue and is *per incuriam* as it has been passed in ignorance of the judgment passed by the Supreme Court in the case of **Pratibha (supra)**. Furthermore, this Court in the case of **Smt. Meera Vs. State of MP passed on 05.07.2021 in M.Cr.C. No.10353/2015** has also considered the aspect of lodging the FIR after the receipt of divorce petition and has held that the FIR cannot

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be quashed on the ground that it was lodged subsequent to filing of the divorce petition.

9. So far as the question of delay in lodging the FIR is concerned, under Section 468 of Cr.P.C., the period of limitation is three years. The marriage of the respondent No.2 was performed on 17.04.2019 and the FIR was lodged on 02.11.2020. Even the period of three years has not expired from the date of marriage. Merely because the respondent No.2 chose not to lodge the FIR immediately under the hope and belief that her marital life may improve, then it cannot be said that the allegations which have been levelled in the FIR are belated.

10. So far as the separate residence of applicant No.3 is concerned, the applicants have filed a copy of rent note to show that the applicant No.3 is the resident of Indore. It is also the case of the applicants that the applicant No.3 is practicing as Dentist. No document in this regard has been filed by the applicants. It is not known as to whether she is working as a Dentist in any hospital or she is practicing privately. No document of her Clinic has been placed on record. Furthermore, the plea of alibi is to be proved by the appellant by leading cogent and reliable evidence and the same cannot be considered at the stage of framing of charges.

11. So far as the false allegations against the near and dear

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relatives of the husband of respondent No.2 are concerned, it is specifically alleged in the FIR that applicant No.3 also used to beat the respondent No.2.

12. It is well established principle of law that roving and detailed enquiry at the stage of framing of charge is not permissible.

The Supreme Court in the case of **M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru** reported in **(2020) 2 SCC 768** has held as under:-

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. *P. Vijayan v. State of Kerala* [*P. Vijayan v. State of Kerala*, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

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17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see *State of J&K v. Sudershan Chakkar* [*State of J&K v. Sudershan Chakkar*, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415 : AIR 2005 SC 359]).

The Supreme Court in the case of **Soma Chakravarty v.**

State through CBI reported in (2007) 5 SCC 403, has held as

under:-

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“10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused *might* have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused *has* committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

19. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith. The learned trial Judge, it appears, did not properly apply its mind in regard to the different categories of the accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exist some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.”

The Supreme Court in the case of **State (NCT of Delhi)**

v. Shiv Charan Bansal and others reported in **(2020) 2 SCC 290**,

has held as under:-

“39. The court while considering the question of framing charges under Section 227 CrPC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the

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facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the judgment of this Court in *State of Bihar v. Ramesh Singh* [*State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533] where it has been held that at the stage of framing charges under Sections 227 or 228 CrPC, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed the offence, then the court should proceed with the trial.

40. In a recent judgment delivered in *Dipakbhai Jagdishchandra Patel v. State of Gujarat* [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547] decided on 24-4-2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction.”

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The Supreme Court in the case of **State of Rajasthan v. Fatehkaran Mehdu** reported in **(2017) 3 SCC 198**, has held as under:-

“26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.”

13. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no error could be pointed out by the counsel for the applicant in the order passed by the Court below.

14. *Ex consequenti*, the order dated 03.02.2021 passed by JMFC, Seondha District Datia in Criminal Case No.4/2021 is hereby affirmed.

15. The revision fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge