IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 21st OF NOVEMBER, 2024

MISC. CRIMINAL CASE No. 12294 of 2022

PANKAJ KUMAR MISHRA

Versus

THE STATE OF MADHYA PRADESH AND ANOTHER

Appearance:

Shri Ankur Maheshwari and Shri Divakar Vyas– Advocates for applicant.

Shri Naval Kishor Gupta – Public Prosecutor for respondent/State.

Shri Jai Prakash Kushwah- Advocate for respondent No.2.

ORDER

This application, under Section 482 of Cr.P.C., has been filed for quashment of FIR, charge-sheet and consequential proceedings arising out of FIR in Crime No.139 of 2018 registered at Police Station Mahila Thana, Padav, Gwalior for offence under Section 498-A/34 of IPC and under Section 4 of Dowry Prohibition Act.

2. The prosecution story, in short, is that complainant/respondent no.2 lodged an FIR against applicant and her in-laws that she got married to applicant on 03-02-2014 as per Hindu rites and rituals. As per the demand

raised by her in-laws, her father had given Rs.5 lacs in cash, gold ornaments of 15 tolas, Diamond ring of Rs.50,000, cloths to applicant worth Rs.60,000/-, apart from household articles. In all, Rs.30 lacs were spent in the marriage. After marriage, applicant and her in-laws started making demand of dowry and also started harassing her physically and mentally. Her in-laws used to pass taunt that applicant is a Software Engineer and at least Rs.1 Cr. should have been spent in the marriage. Applicant badly assaulted her in Rewa. When she informed the incidents to her parents, then they tried to convince her that with passage of time, the things would improve. When her father talked to her in-laws and applicant on phone, then they also misbehaved with him. She went to Hyderabad, where husband was working. She got pregnant but her husband and in-laws started abusing her and said that now the expenses would increase and accordingly, the pregnancy was got aborted. In the engagement of her sister-in-law, applicant and her in-laws misbehaved with the parents of the complainant and said that by performing marriage in Gwalior, they have saved lot of money accordingly, in-laws and all her relatives were invited to Gwalior. In Gwalior, applicant and her in-laws said that her father had earned a lot of money but has performed marriage like a miser, and accordingly, he should make arrangement of further amount of Rs.50 lakh. Applicant is the only son of her parents-in-law and he has no other son to fulfill his dreams. However, her parents somehow convinced applicant and her in-laws. With an intention to save her matrimonial life, She was somehow tolerating the harassment. After one year of marriage, the harassment went to such an extent where she started thinking to put an end to her life. In the month of March 2015, applicant went to Sweden and accordingly, she also went to Sweden in the year 2015. She also got job in Sweden. However, the cruelty of applicant continued in Sweden. She made complaint to Swedish authorities also. In the year 2016, her husband came back to India. In the engagement of her another sister-in-law Priyanka, a further

demand of Rs.50 lakhs was made. When her father expressed his inability to pay so much of amount, then again she was beaten. In the month of March 2017, applicant again came back and extended a threat to her parents in Gwalior. When her parents opposed then she was beaten by applicant. Thus, it was alleged that applicant and her in-laws have made her life miserable in last 4 years. For various days, even food was not given and every time, taunts were being passed that they have performed marriage in the family of beggars. Now the things have crossed all limits. Accordingly, FIR was lodged for offence under Section 498-A/34 of IPC and Section 4 of Dowry Prohibition Act.

3. Challenging the FIR lodged by respondent No.2, it is submitted by counsel for applicant, that his parents and sister had filed Cr.A. No.1545 of 2023 and the Supreme Court by order reported in the case of **Priyanka Sharma Vs. State of M.P. and others,** reported in **2023(2) MPLJ (Cri) (SC) 586** has quashed the FIR and criminal proceedings against all the relatives of applicant. In fact, divorce had already taken place in Sweden and only thereafter, respondent No.2 lodged an FIR. It is submitted that the allegations made by respondent No.2 in her FIR are false, baseless, therefore, they are liable to be quashed.

4. *Per contra*, the application is vehemently opposed by counsel for State and complainant.

5. Heard the learned counsel for applicant.

6. So far as the quashment of FIR against the relatives of applicant are concerned, it is clear from para 21 to 23 of the Judgment passed in the case of **Priyanka Sharma (Supra)** that the said judgment has been confined to the case of relatives of applicant. In para 21 of the judgment, it is held that lodging of FIR by respondent No.2 is “retaliatory tactic, in as much as appellants herein are

concerned.” In para 22 of the judgment, it was mentioned that divorce petition was filed in Sweden and therefore, there was no occasion *per se* for respondent No.2 after coming from Sweden to visit the matrimonial home, much less reside there. Furthermore, it is well established principle of law that for prosecuting the near and dear relatives of the husband, the allegations must be clear and specific and ambiguous and general allegations are not sufficient to compel the relatives of the husband to face the ordeal of trial. Therefore, the evidence was considered by Supreme Court in the light of position of the co-accused who are the relatives of applicant who is the husband.

Divorce has taken place and its effect

7. It is submitted by counsel for applicant that Sweden Court has already granted divorce, therefore, the allegations against applicant are false and baseless.

8. Considered the submissions made by Counsel for applicant.

9. Section 13 of CPC which deals with conclusiveness of the judgment passed by foreign Courts reads as under:

> **13. When foreign judgment not conclusive**.— A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—
> (*a*) where it has not been pronounced by a Court of competent jurisdiction;
> (*b*) where it has not been given on the merits of the case;
> (*c*) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
> (*d*) where the proceedings in which the judgment was obtained are opposed to natural justice;
> (*e*) where it has been obtained by fraud;

(*f*) where it sustains a claim founded on a breach of any law in force in India.

10. Now, the decree of divorce passed by Sweden Court shall be considered in the light of Section 13 of CPC.

11. Although it was submitted by counsel for applicant that a joint application was filed by applicant and respondent No.2 for grant of divorce, but the pleadings of divorce petition indicate that it was not a joint application for grant of divorce by mutual consent. The pleadings raised by applicant in the divorce petition read as under :

> I am filing divorce as I am facing cruel behaviour from wife, she has been abusing me. I have already requested my wife for mutual divorce. However, she is not ready for the same and haven't responded yet. Also, she is pressurizing my parents and my sister by calling them to call me back in India.
>
> I want divorce as soon as possible on the grounds of Cruelty (Which will also make this divorce valid in India, my home country). The address mentioned in the apartment is owned by me. I am already paying major part of loan amount and I have no other place to live. I would like to have right to remain in residence (kvarsittanderatt) also, because of my wife abusive behaviour I want my wife to move out until the division of the couples matrimonial property. My wife is full time working with good salary and can afford to live outside.
>
> I want an interim decision for kvarsittanderatt.
>
> Please note, we do not have any kids at the moment.

12. Thus, it is clear that the divorce petition filed by applicant was not joint and it was filed by making allegations against respondent no.2.

13. In the decree of divorce, it is mentioned as under:

> After some deliberation, Nikhita Gautam has requested them.
> Pankaj Mishra has opposed Nikhita Guatam's request

REAONS FOR JUDGEMENT
Nikhita Gautam has right to divorce.
HOW TO APPEAL, See appendix (TR-02)
The appeal is addressed to the svea court of appeal but is submitted to the district court at the latest on August 29, 2019.

14. From the plain reading of decree, the following reasons make the decree inconclusive:

(i) The decree is unreasoned, because the decree was prayed on the ground of cruelty by respondent No.2, but no reasons have been assigned to show that whether respondent No. 2 was found to be cruel towards applicant or not;

(ii) Respondent No.2 had raised some objections which were not accepted by applicant, but what was the nature of such objections which were not accepted by applicant is not clear;

(iii) Respondent No.2 had never prayed for divorce, but still it was held that respondent no. 2 has right to divorce;

(iv) Aforesaid observation clearly means that even Sweden Court had found applicant at fault, otherwise, would not have observed that respondent no. 2 has a right to divorce; or otherwise

(v) The aforesaid observation with regard to the right of respondent no. 2 to take divorce is false and incorrect because respondent no.2 had never prayed for divorce.

15. From plain reading of decree, it is clear that foreign judgment is inconclusive and is duly covered by Section 13 of CPC because (i) it is an unreasoned order (ii) it has not given verdict on merits by discussing the material and allegations (iii) the decree of divorce has been passed by ignoring the Law of this Country as there is no finding that respondent no.2 was cruel towards applicant.

16. Thus, the divorce decree relied upon by applicant is of no assistance for applicant.

Merits of the case

17. This Court has already considered the allegations made by respondent No. 2 in the FIR. The allegations of demand of dowry, physical and mental harassment against applicant, who is the husband of respondent No.2 are clear and specific.

18. So far as the contention of counsel for applicant that the allegations are false and are products of *mala fide* intention is concerned, it is suffice to mention here that this Court while exercising power under Section 482 of Cr.P.C. cannot consider the reliability and correctness of the allegations, and the proceedings can be quashed only when the uncontroverted allegations do not make out an offence.

19. In the light of judgments passed by the Supreme Court in the cases of **XYZ v. State of Gujarat** reported in **(2019) 10 SCC 337**, **State of Tamil Nadu Vs. S. Martin & Ors.** reported in **(2018) 5 SCC 718**, **Ajay Kumar Das v. State of Jharkhand**, reported in **(2011) 12 SCC 319**, **Mohd. Akram Siddiqui v. State of Bihar** reported in **(2019) 13 SCC 350**, **State of A.P. v. Gourishetty Mahesh** reported in **(2010) 11 SCC 226**, **M. Srikanth v. State of Telangana**, reported in **(2019) 10 SCC 373**, **CBI v. Arvind Khanna** reported in **(2019) 10 SCC 686**, **State of MP Vs. Kunwar Singh by order dated 30.06.2021 passed in Cr.A. No.709/2021**, **Munshiram v. State of Rajasthan**, reported in **(2018) 5 SCC 678**, **Teeja Devi v. State of Rajasthan** reported in **(2014) 15 SCC 221**, **State of Orissa v. Ujjal Kumar Burdhan**, reported in **(2012) 4 SCC 547**, **S. Khushboo v. Kanniammal** reported **in (2010) 5 SCC 600**, **Sangeeta Agrawal v. State of U.P.,** reported in **(2019) 2 SCC 336**, **Amit Kapoor v. Ramesh Chander** reported in **(2012) 9 SCC 460**, **Padal Venkata Rama Reddy Vs.**

Kovuri Satyanarayana Reddy reported in **(2012) 12 SCC 437** and **M.N. Ojha v. Alok Kumar Srivastav** reported in **(2009) 9 SCC 682**, this Court can quash the proceedings only if the uncontroverted allegations do not make out an offence. Furthermore, this Court in exercise of powers under S..482 of Cr.P.C. (S.528 of BNSS) cannot conduct a roving enquiry to hold as to whether the allegations made in the FIR are correct or not.

20. The three Judges Bench of Supreme Court in the case of **Neeharika Infrastructure (P) Ltd. v. State of Maharashtra,** reported in **(2021) 19 SCC 401** has held as under :

> **13.** From the aforesaid decisions of this Court, right from the decision of the Privy Council in *Khwaja Nazir Ahmad*, the following principles of law emerge:
>
> **13.1.** Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.
>
> **13.2.** Courts would not thwart any investigation into the cognizable offences.
>
> **13.3.** However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.
>
> **13.4.** The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)
>
> **13.5.** While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.
>
> **13.6.** Criminal proceedings ought not to be scuttled at the initial stage.
>
> **13.7.** Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.
>
> **13.8.** Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however,

recognised to secure the ends of justice or prevent the above of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482 CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.

13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in *R.P. Kapur* and *BhajanLal*, has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482 CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

21. So far as *mala fides* are concerned, the Supreme Court in the case of **Renu Kumari Vs. Sanjay Sharma** reported in **(2008) 12 SCC 346** has held as under :

> **9.** "*8*. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of *quandolexaliquidalicuiconcedit, concederevidetur et id sine quo res ipsaeesse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debitojustitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of

justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur* v. *State of Punjab* this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(*i*) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(*ii*) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(*iii*) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana* v. *BhajanLal*. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

(*1*) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(*2*) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(*3*) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(*4*) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(*6*) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

11. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the

> issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See *Janata Dal* v. *H.S. Chowdhary* and *Raghubir Saran (Dr.)* v. *State of Bihar*.] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See *Dhanalakshmi* v. *R. Prasanna Kumar*, *State of Bihar* v. *P.P. Sharma*, *RupanDeol Bajaj* v. *Kanwar Pal Singh Gill*, *State of Kerala* v. *O.C. Kuttan*, *State of U.P.* v. *O.P. Sharma*, *Rashmi Kumar* v. *Mahesh Kumar Bhada*, *SatvinderKaur* v. *State (Govt. of NCT of Delhi)* and *Rajesh Bajaj* v. *State NCT of Delhi*.]"

22. Thus, it is clear that where the allegations made in the FIR, makes out a cognizable offence, then *mala fides* of the complainant becomes secondary.

23. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the allegations made against applicant are prima facie sufficient to prosecute him.

24. Accordingly, the application fails and is hereby ***dismissed.***

(G.S. Ahluwalia)
Judge

pd