IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 22nd OF APRIL, 2025

MISC. CRIMINAL CASE No. 16212 of 2025

ANURAG SAXENA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Romesh Pratap Singh – Advocate for applicants.

Shri Mohit Shivhare – Public Prosecutor for respondent/State.

ORDER

This application, under section 528 of the BNSS, has been filed for quashment of FIR in Crime No. 304 of 2024 registered at Police Station Dinara, District Shivpuri for offence under Section 85 of BNS and Sections 3 and 4 of the Dowry Prohibition Act, as well as, charge sheet and criminal proceedings pending before the trial court.

2. It is submitted by counsel for applicant that applicant No. 1 is husband and applicant No. 2 is mother-in-law of respondent No. 2. Respondent No. 2 lodged an FIR alleging that she got married to applicant No. 1 on 20.1.2022 in accordance with Hindu rites and rituals. Her father had given a cash amount of Rs. 7 lakhs and goods worth Rs. 2 lakhs in dowry, apart from gold and silver

ornaments worth Rs. 3 lakhs. After marriage, for about one and a half years, she was kept properly but thereafter applicants started harassing her by alleging that her father has given less dowry and therefore she should bring an additional amount of Rs. 5 lakhs from her father and only then they would keep her. After sometime, the cruelty of applicants increased to such an extent, that she informed the incidents to her father, brother, uncle and aunty on telephone. Thereafter, her father tried to convince the applicants but they did not agree and used to beat her on the ground of non-fulfilment of demand of dowry. On 23.8.2024, her husband took her to Pune where applicant No. 1 and her sister-in-law Aastha started quarreling with her on the question of dowry and they also used to insist that she should bring an amount of Rs. 5 lakhs and only then she would be allowed to live in her house. Ultimately on account of non-payment of additional dowry of Rs. 5 lakhs, applicant No. 1 and her sister-in-law ousted her from the matrimonial house. Thereafter, she contacted her father on phone. Then her father requested applicant No. 1 that she should be sent back to her parental home and accordingly applicant No. 1 left her on 29.8.2024 to her parental home and while going back he again reiterated that until and unless she brings an amount of Rs. 5 lakhs, she should not come back and she should stay back in her parental home only. It was alleged in the FIR that applicants are not intending to keep her with them and her father does not have the financial capacity to fulfill their demand and accordingly the FIR was lodged.

3. It is submitted by counsel for applicants that Police after completing the investigation has deleted the name of Aastha Saxena from the charge sheet and has filed charge sheet against the applicants. **However, counsel for applicants was not in a position to point out as to whether trial Court has passed any**

order with regard to non-filing of charge sheet against Aastha Saxena or not.

4. Be that whatever it may be.

5. It is submitted by counsel for applicants that allegations are omnibus and general in nature and therefore applicants cannot be prosecuted for the offence under Section 85 of BNS and Sections 3/4 of the Dowry Prohibition Act.

6. *Per contra*, application is vehemently opposed by counsel for the State.

7. Heard learned counsel for the parties.

8. The Supreme Court in the case of **Taramani Parakh Vs. State of Madhya Pradesh and Others** reported in **(2015) 11 SCC 260** has held as under:-

> "**12.** In *Kailash Chandra Agrawal* v. *State of U.P.* (2014) 16 SCC 551, it was observed (SCC p. 553, paras 8-9):
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> > "*8*. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In *Kans Raj* v. *State of Punjab* (2000) 5 SCC 207 : 2000 SCC (Cri) 935 : (2000) 3 SCR 662]it was observed (SCC p. 217, para 5):
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> > > "*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 overenthusiasm 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 the absence of any specific role and material to support such role.

9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to *K. Ramakrishna* v. *State of Bihar*, (2000) 8 SCC 547 : 2001 SCC (Cri) 27, *Pepsi Foods Ltd.* v. *Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400, *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604 and *Asmathunnisa* v. *State of A.P.*, (2011) 11 SCC 259 : (2011) 3 SCC (Cri) 159."

13. In the present case, the complaint is as follows:

"Sir, it is submitted that I was married on 18-11-2009 with Sidharath Parakh s/o Manak Chand Parakh r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial home, my husband, father-in-law and mother-in-law started harassing me for not bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs 2,00,000 in cash and only then they would keep me in the house otherwise not. On account of this my husband also used to beat me and my father-in-law

> and my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2-4-2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh and my mother-in-law Smt Indira Parakh for torturing me on account of demanding dowry.
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> **14.** From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible."

9. Thus, it is clear that passing taunts for bringing less dowry itself is sufficient to *prima facie* make out an offence warranting prosecution under Section 498A of IPC. However, in the present case it was specifically alleged that on account of non-fulfilment of demand of Rs. 5 lakhs, respondent No. 2 was beaten by the applicants and lateron she has been abandoned by applicant No. 1. Respondent No. 2 was ousted from her matrimonial house at Pune and only at the request of father of respondent No. 2 she was brought back and was

left at her parental home by applicant No. 1. It is also alleged that while going back, applicant No. 1 had also threatened that until and unless she brings an amount of Rs. 5 lakhs she should not come back. Thus the allegations made against applicants are specific and cannot be said to be general or omnibus in nature.

10. It was next contended by counsel for applicants that FIR was lodged by respondent No. 2 on 24.11.2024, whereas much prior thereto i.e. on 25.10.2024, applicant no.1 had already instituted a suit for divorce. Therefore, it is submitted that the FIR in question is lodged by way of counter blast and thus it is liable to be quashed.

11. Considered the submissions made by counsel for applicants.

12. The Supreme Court in the case of **Pratibha v. Rameshwari Devi,** 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 exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in *BhajanLal case* [1992 Supp (1) SCC335 : 1992 SCC (Cri) 426] 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 hereinabove. The High Court has drawn an adverse inference on account of the FIR being lodged on 31-12-2001 while the appellant was forced out of the matrimonial home on 25-5-2001.

15. In our view, in the facts and circumstances of the case, the High Court was not justified in drawing an adverse inference against the appellant wife for lodging the FIR on 31-12-2001 on the ground that she had left the matrimonial home at least 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 Respondent 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 Respondent 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 Respondent 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.

22. For the reasons aforesaid, we are inclined to interfere with the order of the High Court and hold that

> the High Court in quashing the FIR in the exercise of its inherent powers under Section 482 of the Code by relying on the investigation report and the findings made therein has acted beyond its jurisdiction. For the purpose of finding out the commission of a cognizable offence, the High Court was only required to look into the allegations made in the complaint or the FIR and to conclude whether a prima facie offence had been made out by the complainant in the FIR or the complaint or not."

13. It is well established principle of law that findings recorded by Criminal Court are not binding on the Civil Court and vice versa. If a wife under the hope and belief that with passage of time her matrimonial life would improve, decides not to lodge the FIR, and lateron lodges the FIR after realising that the things have gone too far where reconciliation may not be possible, then it cannot be said that FIR lodged by her is false or by way of counter blast to the divorce petition. Merely because a divorce petition has been filed it would not mean that the allegations made in the divorce petition are true. The allegations are yet to be proved by applicant No.1. Under these circumstances, this Court is of considered opinion that patience shown by a wife cannot be used against her for holding that FIR lodged by her is false.

14. Furthermore this Court in exercise of powers under Section 482 of Cr.P.C./528 of B.N.S.S. cannot conduct a mini trial. 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.

15. Therefore contention of applicants that FIR in question was lodged by way of counter blast to the divorce petition is hereby rejected being misconceived.

16. It is next contended by counsel for applicants that applicant No.1 was regularly making payment of certain amount to respondent No. 2 which is evident from the various transactions done by him from January 2024 till July 2024.

17. Considered the submission made by counsel for applicants.

18. It is the duty of husband to maintain his wife. According to the FIR, she was ousted from her matrimonial house at Pune on 29.8.2024. Thus, it is clear that some money was transferred by applicant No.1 while respondent No. 2 was residing with him. Since respondent No. 2 was residing with applicant No. 1 upto August, 2024, therefore it is clear that the money transactions which were done by applicant No. 1 were not by way of maintenance to respondent No. 2. Therefore, it is clear that for some reason the money must have been transferred

by applicant No.1 and now applicants cannot take advantage of the same. If money from January 2024 till July 2024 was separately paid by applicant No.1 to respondent No. 2 for her maintenance, then it is clear that although respondent No. 2 was residing with applicant No. 1 but still for financial purposes he had separated her from himself and was separately making payment to bear her expenses.

19. Be that whatever it may be.

20. Merely because some money was transferred by applicant No.1 on certain occasions to the account of respondent No. 2, that by itself cannot be a ground to hold that allegations made by respondent No. 2 in the FIR are false.

21. No other argument is advanced by counsel for the applicant.

22. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference.

23. Application fails and is hereby dismissed.

(G. S. AHLUWALIA)
JUDGE

(and)