

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF APRIL, 2024

MISC. CRIMINAL CASE No. 21239 of 2022

BETWEEN:-

1. AADITYA GODHA S/O DINESH GODHA,
AGED ABOUT 33 YEARS, OCCUPATION:
GOVT. SERVICE R/O A-102 MEGA FLATS
NEAR PARIS NAGAR GADAURA
VADODARA (GUJARAT)
2. AABHA GODHA W/O DINESH GODHA,
AGED ABOUT 58 YEARS, OCCUPATION:
HOUSEHOLD 20, SILAVATO KA VAAS,
LAKKAD PITHA CHANDANI CHOWK
(MADHYA PRADESH)
3. DINESH CHAND S/O LATE MANAKLAL
GODHA, AGED ABOUT 59 YEARS,
OCCUPATION: BUSINESS 20, SILAVATO KA
VAAS, LAKKAD PITHA CHANDANI CHOWK
(MADHYA PRADESH)

.....PETITIONERS

(BY SHRI AKHIL GODHA – ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION MAHILA THANA
(MADHYA PRADESH)
2. RISHIKA GODHA W/O AADITYA GODHA,
AGED ABOUT 33 YEARS, OCCUPATION:
SERVICE 308-A, SHIV NAGAR COLONY,

RAU ROAD (MADHYA PRADESH)**.....RESPONDENTS****(BY MS. GEETANJALI CHAURASIA – G.A. FOR RESPONDENT NO.1/STATE - NONE FOR RESPONDENT NO.2)**

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This petition coming on for admission this day, the court passed the following:

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioners under Section 482 of Cr.P.C. for quashing the FIR and the subsequent proceedings arising out of the Crime No.233 of 2021 dated 07.12.2021, under Sections 498-A, 323, 506 and 34 of IPC registered at Police Station – Mahila Thana, District – Indore.
- 3] In brief, the facts of the case are that the aforesaid FIR was lodged by the complainant/respondent No.2 Rishika Godha, whose marriage was solemnized with the petitioner No.1 on 21.05.2013. According to the petitioners, after the marriage, the respondent No.2 wife resided with the petitioner No.1 at Delhi till 2015, and thereafter she went back to her parents' house at Khargone and has been residing there only since then. A legal notice dated 29.05.2017, was also served by the respondent no.2 on the petitioner No.1 for restitution of conjugal rights, and its reply was also sent by the petitioner No.1 on 03.09.2017. On 11.06.2020, the petitioner No.1 filed an application under Section 13 of Hindu Marriage Act for divorce, and subsequently, the decree of divorce has also been passed in favour of the petitioner No.1 vide judgement and decree

dated 05.09.2023.

4] Counsel for the petitioners has submitted that as per the FIR dated 07.12.2021, omnibus allegations have been levelled against the petitioner No.1 and his parents, the petitioner Nos.2 and 3, who are well educated as the petitioner No.1 is an Excise Officer, whereas petitioner No.2 is his mother and petitioner No.3 is the father, who is a businessman. Counsel for the petitioner has also submitted that a perusal of the FIR itself would reveal that it has been lodged on 07.12.2021, in respect of the offence which allegedly took place between 21.05.2015 and 07.12.2021. Thus, it is submitted that, admittedly, the FIR was hopelessly delayed and was filed only to falsely implicate the petitioners as even in the FIR, the complainant has mentioned that her husband has already filed a divorce case in the Family Court. It is thus submitted by Shri Godha that only with a view to wreck vengeance, the FIR has been lodged after more than six years and six months, falsely accusing that the petitioners were demanding dowry worth Rs.50 lakhs from the complainant.

5] Counsel has also drawn the attention of this Court to the judgement passed by the Family Court in the divorce matter wherein, the divorce petition was filed on 11.06.2020, and after the evidence was led by the parties, the Family Court has held that the complainant wife has abandoned the petitioner No.1 without any justifiable reasons since last two years. It is submitted that prior to the aforesaid date, the respondent No.2 was already residing separately since 2015 and the Family Court has also come to a

conclusion that the respondent No.2's behavior towards the petitioner no.1 was one of cruelty. Thus, it is submitted that the FIR and the consequent proceedings be quashed.

6] Counsel for the petitioners has also drawn the attention of this Court to a matrimonial site in which the respondent No.2/complainant has already given her profile.

7] In support of his submissions, counsel for the petitioners has also relied upon certain decisions in the case of **Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.** reported as **2022 Legal Eagle (SC) 142 Criminal Appeal No.195 of 2022 (Arising out of S.L.P. (Crl.) No.6545 of 2020), dated 08.02.2022; Kamlesh Kalra Vs. Shilpika Kalra & Ors.** reported as **2020 (4) JKJ 176;** and **Abhishek Pandey @ Ramji Pandey and others Vs. State of Madhya Pradesh and others** passed in **Criminal Revision No.521 of 2021 dated 18.08.2021.**

8] Counsel for the State has opposed the prayer and it is submitted that no case for interference is made out.

9] None has appeared on behalf of the respondent No.2 despite service of notice and there is no reply filed.

10] Heard counsel for the parties and perused the record.

11] From the perusal of the record, it is found that the FIR in the present case was lodged on 07.12.2021, whereas the period of commission of offence is said to be 21.05.2015 to 17.12.2021, thus if the cause of action arose to the complainant on 21.05.2015, she has waited for six years and six months which is an inordinate delay in lodging the FIR. It is also found that in the FIR the complainant

has also stated that she has suffered the ill treatment by the accused persons until now, but as her husband has also filed a divorce case, she is feeling extremely harassed. It is also found that a settlement efforts also took place in the year 2016, but were of no avail, and according to the complainant, her husband and in-laws still persisted with their demand of dowry. Thus, even after 2016 she again endured the ill treatment at the hands of the petitioners for further four years before filing the FIR. Similar statements have also been made by the complainant in her statement recorded under Section 161 of Cr.P.C. as also by her family members.

12] In this regard, it would also be germane to refer to the decree of divorce, which has been passed in H.M.A. Case No.1317 of 2022 by the Principal Judge, Family Court, Indore in favour of the petitioner No.1 husband, and against the complainant vide judgement and decree dated 05.09.2023 wherein the following findings have been recorded on the issues framed:-

“उभयपक्ष के अभिवचनों के आधार पर निम्नलिखित वाद-प्रश्नों की रचना की गई, जिनके निष्कर्ष उनके सम्मुख अंकित हैं:-

क्र०	वादप्रश्न	निष्कर्ष
1.	क्या विवाह के अनुष्ठापन के पश्चात प्रतिप्रार्थी ने प्रार्थी के साथ क्रूरता का व्यवहार किया है?	“प्रमाणित”
2.	क्या प्रतिप्रार्थी ने प्रार्थी का पर्याप्त कारण-के बिना दो वर्ष से अधिक समय से अभित्यजन किया हुआ है?	“प्रमाणित”
3.	क्या प्रार्थी, प्रतिप्रार्थी से विवाह विच्छेद की डिक्री प्राप्त करने का अधिकारी है?	“हां”

4.	सहायता एवं वाद व्यय ?	“ निर्णय के पैरा-87 के अनुसार याचिका स्वीकार कर डिक्री किया गया ।”
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13] It is apparent that the Family Court has found that it was the complainant wife, who has treated the petitioner No.1 with cruelty and also that she has abandoned him since last more than 2 years and thus, the petitioner No.1 has been found to be entitled to the decree of divorce. Whether the Family court’s decision would be binding on the criminal court is a disputed question of law, however, reference in this regard may be had to a recent decision of the Supreme Court in the case of *Prem Raj vs. Poonamma Menon and another* reported as **2024 SCC OnLine SC 483**. The relevant paras of the same read as under:-

“3. The sole issue that we are required to consider is, whether, a criminal proceeding can be initiated and the accused therein held guilty with natural consequences thereof to follow, in connection with a transaction, in respect of which a decree by a competent Court of civil jurisdiction, already stands passed.

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9. In advancing his submissions, Mr. K. Parameshwar, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In *Karam Chand Ganga Prasad v. Union of India*, this Court observed that:

“.....It is a well-established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true.”

In *K.G. Premshanker v. Inspector of Police*, a Bench of three learned Judges observed that, following the *M.S. Sheriff v. State of Madras*, no straight-jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

10. We notice that this Court in *Vishnu Dutt Sharma v. Daya Sapra (Smt.)*, had observed as under:

“26. It is, however, significant to notice a decision of this Court in *Karam Chand Ganga Prasad v. Union of India* (1970) 3 SCC 694, wherein it was categorically held that the decisions of the civil court will be binding on the criminal courts but the converse is not true, was overruled therein...”

This Court in *Satish Chander Ahuja v. Sneha Ahuja* considered a numerous precedents, including *Premshanker* (supra) and *Vishnu Dutt Sharma* (supra), to opine that there is no embargo for a civil court to consider the evidence led in the criminal proceedings.

The issue has been laid to rest by a Constitution Bench of this Court in *Iqbal Singh Marwah v. Meenakshi Marwah*:

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a

Constitution Bench in *M.S. Sheriff v. State of Madras* [(1954) 1 SCC 524 : 1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed : (AIR p. 399, paras 15-16)

“15. As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we

are of the view that the civil suits should be stayed till the criminal proceedings have finished.”
(Emphasis Supplied)

11. The position as per *Premshanker* (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the Courts. Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed both sentence and damages, the ratio of the above-referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security.

12. In that view of the matter, the criminal proceedings resulting from the cheque being returned unrealised due to the closure of the account would be unsustainable in law and, therefore, are to be quashed and set aside. Resultantly, the damages as imposed by the Courts below must be returned to the appellant herein forthwith.”

(Emphasis Supplied)

14] In view of the aforesaid dictum of the Supreme Court, the finding recorded by the Family Court can be discarded and can be relied upon in this proceedings also regarding the conduct of the respondent no.2 wife in treating the petitioner no.1 husband with cruelty and leaving him without any sufficient cause.

15] Regarding initiating the criminal proceedings against the husband and his family members after the divorce petition is filed by the husband, reference may also be had to the decision of the Supreme Court in the case of **Kamlesh Kalra (supra)**, the Supreme Court has held as under:-

“15. As regards, the finding recorded by the High Court in respect of complaint/FIR filed under Section 498A IPC, we are of the firm opinion that the same does not call for interference. In the facts of this case, it is clear that the FIR filed in this regard in 2015 was time barred, having been filed

much more than three years after the separation of xxxx (husband) and xxxx (wife) and the filing of the divorce petition by the husband, both in 2009. In the facts of the case, the reasons given by the High Court for quashing the proceedings under section 498A IPC are justified and do not call for interference by this Court.

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19. In view of the aforesaid facts, we are of the opinion that the allegations of the complainant-xxxx with regard to non-return of the Stridhan articles and the charges under Section 406 against the xxxx (or even against xxxx, xxxx and xxxx) are not sustainable in law. It clearly appears that the filing of the criminal complaint is a pressure tactic, having been employed by the complainant-xxxx against her husband, mother-in-law, brother-in-law and sister-in-law, which is clearly an abuse of the process of Court, and is liable to be quashed in toto.

20. As such, we allow the Appeal arising out of Special Leave Petition (Crl.) No. 2908 of 2019 filed by xxxx and quash the FIR no. 390 of 2014 under Sections 498A/406 IPC; and dismiss the Appeal arising out of Special Leave Petition (Crl.).....(Diary No. 9972 of 2019) filed by xxxx.”

(Emphasis supplied)

16] Similarly, in the case of **Kahkashan Kausar @ Sonam & Ors. (supra)**, the Supreme Court has dealt with the growing tendency in matrimonial disputes to lodge false FIR against the husband and his family members u/s.498-A of IPC to settle the personal scores against them, and it is held as under:-

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12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-AIPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

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14. Previously, in the landmark judgment of this Court in *Arnesh Kumar v. State of Bihar Anr. (2014) 8 SCC 273* it was also observed:-

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC 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-AIPC 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 quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in *Preeti Gupta v. State of Jharkhand & Anr. (2010) 7 SCC 667* it has also been observed:-

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

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 complaint 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.”

16. In *Geeta Mehrotra v. State of U.P. & Anr (2012) 10 SCC 741* it was observed:-

*“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733]* wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that :*

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on

their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.”

The view taken by the Judges in this matter was that the courts would not encourage such disputes.”

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18. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

(Emphasis Supplied)

17] Thus, when the facts of the case in hand are tested on the anvil of the aforesaid decisions of the Supreme Court, it is apparent that the trigger point for the complainant to lodge the FIR was only when she was served with the notice of divorce case by her husband, the petitioner no.1, whereas in her complaint, as also the statements of her family members, it appears that omnibus allegations have been levelled against them and there is no specific instance which can be corroborated by any tangible evidence which may suggest that the complainant wife was subjected to ill treatment by the petitioners.

18] It may also not be out of place to mention here that the

complainant has also refrained from appearing before this Court and to reply to petition, which also shows her unwillingness to contest the matter. In such facts and circumstances of the case, this Court is of the considered opinion that no purpose would be served to drag this matter in the trial Court. .

19] Resultantly, the petition stands allowed and the FIR, charge-sheet and the subsequent proceedings arising out of the Crime No.233 of 2021 dated 07.12.2021 under Sections 498-A, 323, 506 and 34 of IPC registered at Police Station – Mahila Thana, District – Indore are hereby **quashed**.

20] With the aforesaid, the petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj