

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 26th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 2964 of 2024

BETWEEN:-

1. **SMT. MOOL KAWAR MEHTA W/O SHRI RAKESH MEHTA, AGED ABOUT 53 YEARS, R/O H NO 202 FIRST MAIN ROAD TULSI ENCLAVE SRIRAMPURAM OKALIPURAM MAIN ROAD BEHIND MANTRI MALL BENGALURU (KARNATAKA)**
2. **SHRI RAKESH MEHTA S/O LATE SHRI MAHADEV CHAND MEHTA, AGED ABOUT 58 YEARS, R/O H. NO. 202 FIRST MAIN ROAD TULSI ENCLAVE SRIRAMPURAM OKALIPURAM MAIN ROAD BEHIND MANTRI MALL BENGALURU KARNATAKA (KARNATAKA)**
3. **SHRI SUMIT MEHTA S/O SHRI RAKESH MEHTA, AGED ABOUT 34 YEARS, R/O H. NO. 202 FIRST MAIN ROAD TULSI ENCLAVE SRIRAMPURAM OKALIPURAM MAIN ROAD BEHIND MANTRI MALL BENGALURU KARNATAKA (KARNATAKA)**

.....APPLICANTS

(BY SHRI NITIN AGRAWAL - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION MAHILA THANA DISTRICT BHOPAL (MADHYA PRADESH)**
2. **BHAVA PATEL D/O LEELADHAR PATEL, AGED ABOUT 31 YEARS, R/O G-9/4 NEW NARMADA BHAWAN TULSI NAGAR LINK ROAD BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI K.S.BAGHEL – GOVERNMENT ADVOCATE)

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

ORDER

This application under section 482 of CrPC has been filed seeking the following reliefs :-

“(i) To quash the impugned Chargesheet no.01/2022 dated 04/11/2022 registered at Police Station-Mahila Thana, District Bhopal (M.P.) for the offence u/s 498-A, 506, 34 of the Indian Penal Code, 19\860 and section 3 and 4 of Dowry Prohibition Act, 1961 and other consequential proceedings arising out of the said Chargesheet/Final Report bearing RCT no.14430/2022 pending before Judicial Magistrate First Class, Bhopal (M.P.)**(EXHIBIT A/1)** in the interest of justice.

(ii) To pass any other order which this Hon’ble Court may deem just and proper, in the interest of justice.”

2. The undisputed facts are that the applicant no.1 is the mother-in-law, applicant no.2 is the father-in-law and applicant no.3 is the elder brother in-law of respondent no.2. By this application, the applicants are seeking quashment of FIR, registered for offence under section 498-A, 506, 34 and section 3/4 of Dowry Prohibition Act.

3. According to the prosecution case, the respondent no.2 lodged an FIR on the allegations that on 25.11.2020 she got married to Hitesh Mehta as per Hindu rites and rituals. Immediately after her marriage, the applicants and husband of respondent no.2 started harassing her for want of dowry. They used to pass comments on every day. They were not keeping her properly in the matrimonial

house. They were not providing food to her. Every day taunts were being passed on account of bringing no dowry. Her husband also used to quarrel with her on daily basis. Since she was in a private job, therefore, she was giving 50% of her salary to the in-laws, in spite of that the applicants and her elder brother in-law were demanding more money. They were insisting that she should bring Rs.7,00,000/- from her parents because less dowry has been given. They were also instigating her husband to demand a car and money. When she refused to accede to their demand, then she was tortured mentally by abusing as well as extending a threat to her life. Her mother-in-law also used to abuse her on daily basis. Even when she narrated the incident to her father, he also tried to convince them but they did not accept. The applicants are insisting that either the respondent no.2 should bring Rs.7,00,000/- and a car, otherwise not only she will not be allowed to stay back in her matrimonial house but even they would remarry her husband i.e. Hitesh Mehta. Although she was bearing all the atrocities with an intention that one day the things would improve, but she has been turned out of her matrimonial house.

4. Challenging the FIR lodged by the respondent no.2, it is submitted by counsel for applicants that it is well established principle of law that unless and until there are specific allegations against the near and dear relatives of husband of the complainant, they should not be compelled to undergo the ordeal of the criminal trial. In fact the complainant was residing separately from the applicants. The office address of the complainant was changed from Bangalore to Mumbai and, therefore, she demanded that her husband should also shift to Mumbai after leaving his parents at Bangalore.

Since her husband was working in Bangalore and did not want to leave his parents for the reason that applicant no.1 is a heart-patient and has undergone Angioplasty in past and his mother (applicant no.2) is a thyroid and Asthma patient and he himself is also suffering from Trigeminal Neuralgia. He also tried to make the complainant understand about the situation but she did not improve her behavior and ultimately the complainant has come back to Bhopal on 12.02.2022. The complainant is living in her parental home for the last 8 months without any rhyme or reason. The allegations leveled against them are false. The applicants are innocent persons. Even otherwise, all the major atrocities, if accepted, were committed at Bangalore and, therefore, FIR at Bhopal is misuse of legal procedure.

5. Heard the learned counsel for the applicants.
6. Whether the applicants were residing separately from the complainant and her husband, cannot be adjudicated by this Court while exercising power under section 482 of CrPC. It is a matter of evidence, which has to be proved by the applicants by leading cogent evidence before the trial court.
7. There are specific allegations against the applicants of demand of dowry and cruelty. It is the case of the respondent no.2 that on account of demand of dowry, not only she was mentally and physically harassed but she was turned out of her matrimonial house. Why a girl, who was in a private job, would leave her matrimonial house, can only be considered and decided by the trial court.
8. Whether the defence taken by the applicants in the present case are correct or whether the allegations made by the complainant are correct, are disputed questions of fact, which cannot be decided

unless and until their evidence is tested on the anvil of cross-examination. The applicant no.2 is a lady and being a lady it is expected from a woman that she would protect another woman i.e. her daughter-in-law and if the applicant no.2 has failed in discharging her duties, then it is matter which is to be introspected by the applicant no.2 also.

9. The Supreme Court in the case of **Meera Vs. State By The Inspector of Police Thiruvotriyur Police Station Chennai**, reported in **(2022) 3 SCC 93**, has held that “when an offence has been committed by a woman by meeting out cruelty to another woman, i.e., the daughter-in-law, it becomes a more serious offence. Such woman deserves no leniency. Mother-in-law must protect daughter-in-law.”

10. 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:-

"10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460 : (2013) 1 SCC (Cri) 986 : (2012) 4 SCC (Civ) 687, it was observed : (SCC pp. 482-84,

para 27)

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be

committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials

on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be

more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283, *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234, *Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059, *G. Sagar Suri v. State of U.P.*, *Ajay Mitra v. State of M.P.*, (2003) 3 SCC 11 : 2003 SCC (Cri) 703, *Pepsi Foods*

Ltd. v. Judicial Magistrate,
 (1998) 5 SCC 749 : 1998 SCC
 (Cri) 1400, *State of U.P. v. O.P.*
Sharma, (1996) 7 SCC 705 :
 1996 SCC (Cri) 497, *Ganesh*
Narayan Hegde v. S.
Bangarappa, (1995) 4 SCC 41 :
 1995 SCC (Cri) 634, *Zandu*
Pharmaceutical Works
Ltd. v. Mohd. Sharaful Haque,
 (2005) 1 SCC 122 : 2005 SCC
 (Cri) 283, *Medchl Chemicals &*
Pharma (P) Ltd. v. Biological E.
Ltd., (2000) 3 SCC 269 : 2000
 SCC (Cri) 615, *Shakson*
Belthissor v. State of Kerala,
 (2009) 14 SCC 466 : (2010) 1
 SCC (Cri) 1412, *V.V.S. Rama*
Sharma v. State of U.P., (2009) 7
 SCC 234 : (2009) 3 SCC (Cri)
 356, *Chundurur Siva Ram*
Krishna v. Peddi Ravindra Babu,
 (2009) 11 SCC 203 : (2009) 3
 SCC (Cri) 1297, *Sheonandan*
Paswan v. State of Bihar, (1987)
 1 SCC 288 : 1987 SCC (Cri)
 82, *State of Bihar v. P.P.*
Sharma, 1992 Supp (1) SCC 222
 : 1992 SCC (Cri) 192, *Lalmuni*
Devi v. State of Bihar, (2001) 2
 SCC 17 : 2001 SCC (Cri)
 275, *M. Krishnan v. Vijay Singh*,
 (2001) 8 SCC 645 : 2002 SCC
 (Cri) 19, *Savita v. State of*
Rajasthan, (2005) 12 SCC 338 :
 (2006) 1 SCC (Cri) 571 and *S.M.*
Datta v. State of Gujarat, (2001)
 7 SCC 659 : 2001 SCC (Cri)
 1361 : 2001 SCC (L&S) 1201.]

27.16. These are the principles
 which individually and
 preferably cumulatively (one or

more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

* * *

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.

15. The decisions referred to in the judgment of the High Court are distinguishable. In *Neelu Neelu Chopra v. Bharti*, (2009) 10 SCC 184 : (2010) 1 SCC (Cri) 286, the parents of the husband were too old. The husband Rajesh had died and main allegations were only against him. This Court found no cogent material against the other accused. In *Manoj Mahavir Prasad Khaitan v. Ram Gopal Poddar*, (2010) 10 SCC 673 : (2011) 1

SCC (Cri) 94, the appellant before this Court was the brother of the daughter-in-law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier Section 498-A IPC case. This Court found the said case to be absurd. In *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741 : (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused."

11. Even otherwise 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. From the plain reading of FIR, it cannot be said that no cognizable offence is made out.

12. So far as the territorial jurisdiction is concerned, it is suffice to mention here that compelling a married woman to live in her parental home on account of cruelty is a continuous offence of cruelty. The Supreme Court in the case of **Rupali Devi v. State of U.P.**, reported in (2019) 5 SCC 384 has held as under:-

“14. “Cruelty” which is the crux of the offence under Section 498-A IPC is defined in *Black's Law Dictionary* to mean “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental

trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.”

13. This Court in the case of **Amar Singh vs. Smt. Vimla** decided on **22.06.2021** in **Criminal Revision No.2376/2020 (Gwalior Bench)** has held that compelling a married woman to live in her parental home amounts to cruelty.

14. Since the respondent no.2 is residing in Bhopal, therefore, Police Station Mahila Thana, Bhopal also has territorial jurisdiction to investigate the matter. There are specific allegations against the applicants and they cannot be termed as general, omnibus or vague.

15. Under these circumstances, this Court is of considered opinion that in the light of limited scope of interference, no case is made out warranting interference.

16. The application fails and is hereby **dismissed**.

(G.S.AHLUWALIA)
JUDGE

TG/-