

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 4th OF MARCH, 2024

MISC. CRIMINAL CASE No. 46355 of 2019

BETWEEN:-

1. NITISH UMARIYA S/O SHRI DINDAYAL

2. ASHWANI UMARIYA S/O SHRI DINDAYAL

3. VAISHALI UMARIYA W/O ASHWINI

4. SUNITA UMARIYA S/O SHRI DINDYAL

5. DINDAYAL UMARIYA S/O SHRI GENDALAL

.....PETITIONER

(BY SHRI NISHANT AGRAWAL - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION HARDA,
DISTRICT HARDA, M.P. (MADHYA
PRADESH)
2. POONAM UMARIYA W/O SHRI NITISH

.....RESPONDENTS

**(RESPONDENT NO.1 BY SHRI K.S.BAGHEL – GOVT. ADVOCATE)
(NONE FOR THE RESPONDENT NO.2 THOUGH SERVED AND REPRESENTED)**

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

ORDER

1. This application under section 482 Cr.P.C. has been filed for quashment of FIR in Crime No.396/2019 registered at Police Station Harda, District Harda for the offence under sections 498-A, 506, 34 of I.P.C. read with section 3/4 of the Dowry Prohibition Act.
2. The applicant No.1 namely Nitish Umariya is husband, applicant No.2 Ashwini Umariya is elder brother-in-law, applicant No.3 Vaishali Umariya is wife of applicant No.2, applicant No.4 Sunita Umariya is mother-in-law whereas applicant No.5 Deen Dayal Umariya is father-in-law of respondent No.2. It is submitted by counsel for the petitioner that earlier respondent no.2 had lodged an FIR against the applicant No.1 for offence under section 354D of IPC read with section 66C of the Information Technology Act on the allegations that the husband of the respondent No.2 is in habit of watching messages of her Facebook and also of Email Account. It was also alleged that husband of the

respondent No.2 was using her Facebook id and Gmail id without her permission and consent. He was doing so by alleging that respondent No.2 is in relationship with other person and he has proof of the same. On 1.7.2018 husband of the respondent No.2 kept her mobile phone with him and introduced the pattern lock and also changed the Id of Facebook and Gmail account which was supported by applicant No.2 Ashwini Umaria, who also alleged that now they would not return the mobile and the said mobile shall be produced in the court. Although, the respondent No.2 tried to change the Id Password of Gmail and Facebook account but since recovery mobile number was changed by her husband, therefore, she could not change the Gmail and Facebook ID. Her husband has also kept her original documents with him. Accordingly, FIR was lodged with request to return of mobile phone, Gmail and Facebook account access as well as return of her mobile phone Oppo A57. It is submitted that the applicant No.1 has also filed an application under section 9 of the Hindu Marriage Act for restitution of conjugal rights by alleging that respondent No.2 is residing separately and she has left the house on 14.7.2018. However, it is submitted by counsel for the applicants that the application was later on withdrawn. Apart from the above case, multiple complaints were made by applicant No.1 before the police authorities in which it was alleged that respondent No.2 is having love affair with a boy, namely, Sarvesh Gupta. In spite of his best efforts to persuade the respondent No.2 to stop talking to the said boy, the respondent No.2 gave threats of falsely implicating the applicants. Finally, applicant No.1 filed a suit for divorce on the ground of cruelty and extra-marital relationship. On

20.8.2019 the applicant No.1 and respondent No.2 appeared before the Family Court and conciliation took place immediately. After conciliation, on very next day, i.e. on 21.8.2019 respondent No.2 lodged an FIR for the offence under section 498-A, 506, 34 IPC and 3/4 of the Dowry Prohibition Act. The police after investigation has filed the charge-sheet.

3. Challenging the FIR lodged by respondent No.2, it is submitted by counsel for the applicants that applicants No.2 to 5 are the family members against whom omnibus, vague and general allegations have been leveled. FIR is a counter blast to the allegations and complaints made by the applicant No.1. Earlier also, an FIR under section 354D of IPC and section 66 of the I.T. Act was lodged in which no allegation of dowry was made and accordingly the impugned FIR dated 21.8.2019 is a by-product of deliberation and afterthought. All the applicants are not living together and even according to the complaint, the respondent No.2 is residing separately from the applicants. Accordingly, it is submitted that the FIR lodged by the respondent No.2 may be quashed.

4. Considered the submissions made by counsel for the applicants.

Whether the FIR discloses commission of offence by the applicants or not ?

5. The strained relationship of the applicants with the respondent No.2 have already been reproduced in the previous paragraphs. The impugned FIR has been lodged by the respondent No.2 on the allegations that she got married to applicant No.1 on 27.4.2018 at Itarsi in accordance with Hindu rites and rituals. Sufficient dowry was given

by her father at the time of marriage and an amount of Rs.1,80,000/- was deposited by her father in the account No.30783074580 of her father-in-law. However, applicants were not giving food to her and they used to keep the eatables hiding and by keeping her thirsty and hungry they are harassing her mentally on the allegations that she has not brought Air Conditioned car in dowry. For the last one year, she has been left in her parental house home and are not taking back in her matrimonial house. In the FIR there are specific allegations against applicants that they are not providing food in the house and they are in habit of hiding eatables and by keeping her hungry and thirsty, they are mentally harassing her on account of non bringing of Air Conditioned car in dowry and for the last one year she has been left in her parental home.

6. Not providing food to the married woman on account of non fulfillment of demand of dowry would certainly amount to physical and mental harassment. Since there are specific allegations against applicants No.2 and 3 also of not providing food to her and they are in habit of hiding eatables, this Court is of considered opinion that it cannot be said that the allegations made against applicants no.2 and 3 are general, omnibus and vague in nature. Furthermore, compelling a married woman to live in her parental home on account of non fulfillment of demand of dowry would certainly amounts to mental harassment, punishable under section 498-A of IPC.
7. 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.* [*Kailash Chandra Agrawal v. State of U.P.*, (2014) 16 SCC 551], it was observed (SCC p. 553, paras 8-9):

“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* [*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):

“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* [K. *Ramakrishna v. State of Bihar*, (2000) 8 SCC 547 : 2001 SCC (Cri) 27] , *Pepsi Foods Ltd. v. Judicial Magistrate* [*Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , *State of Haryana v. Bhajan Lal* [*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.* [*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.

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.

8. Accordingly, this Court is of considered opinion that the allegations made in the FIR are specific against each and every applicants and by no stretch of imagination it can be termed as a vague, omnibus or general in nature.

Whether the FIR has been lodged by way of counter blast to the divorce petition filed by the applicant No.1 or not ? and its effect.

9. The Supreme Court is the case of **Pratibha v. Rameshwari Devi**, reported in **(2007) 12 SCC 369** as 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 *Bhajan Lal case* [1992 Supp (1) SCC 335 : 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.

10. Therefore, it is clear that merely because the FIR has been lodged after filing of divorce petition, the same cannot be quashed on the ground that it is by way of counter blast. The findings recorded by the civil court are not binding on the criminal court, and the criminal case has to be decided on the basis of allegations made therein. The degree of proof in civil case and criminal case are different. If the FIR lodged after filing of divorce petition is considered, then it can also be said that the respondent No.2 might be interested in saving her matrimonial life, therefore, she kept quiet and only when she realized that now her husband has gone to the extent where the possibility of reconciliation is bleak, then if she lodges the FIR for the misdeeds done to her than it cannot be said that it is by way of counter blast to the divorce petition. Furthermore, even according to the applicants, the respondent No.2 had earlier lodged an FIR against the applicant No.1 on the allegations that he is alleging illicit relationship of respondent No.2 with another boy and, accordingly, he has taken away her mobile phone and has also changed the Id password of Gmail and Facebook account and has refused to return the same with a clear threatening that the mobile would be used as an evidence in the Court proceedings. Thus, it is clear

that the relationship of applicants with respondent No.2 were not cordial and the applicant No.1 has gone to the extent of making allegations of adultery against the respondent No.2.

- 11.If the allegation of adultery is found to be incorrect, then that allegation, by itself, would amount to cruelty.
- 12.Under these circumstances, this Court is of considered opinion that no case is made out warranting interference.
- 13.The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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