

**A.F.R.****Court No. - 41****Case :-** APPLICATION U/S 482 No. - 25300 of 2012**Petitioner :-** Umesh @ Banti And Others**Respondent :-** State Of U.P. And Another**Petitioner Counsel :-** V.P. Gupta**Respondent Counsel :-** Govt.Advocate**Hon'ble Sunil Hali,J.**

Process under sections 498-A, 452. 323. 506 IPC & Section 3/4 D.P.Act has been issued against the applicants in Criminal Complaint Case No. 2248 of 2010. The applicants filed an application under section 245(2) Cr.P.C. before the Magistrate seeking discharge from the trial. The Magistrate while considering the application recorded that the application under section 245(2) Cr.P.C. is not maintainable. After perusing the record, summons have been issued and application under section 245(2) Cr.P.C. has been rejected.

The allegations leveled against the applicants in the complaint are that opposite party no. 2 is married to applicant no. 1 and applicant nos. 2 and 3 are her mother-in-law and brother-in-law respectively. Ever since the inception of marriage, the opposite party no. 2 was harassed by the applicants' family by demanding more dowry. It is also alleged that opposite party no. 2 was thrown out of the house as she failed to fulfill the dowry demand of the applicants by not bringing a motorcycle and Rs. 50,000/- in cash. It is further alleged that on 12.5.2010, the applicants came to the parental house of opposite party no. 2 and demanded dowry. However, on their refusal, they beat the mother, father and opposite party no. 2. They threatened her that in case, the demand of dowry is not met, they will not spare them. Initially, a FIR was lodged with the Police concerned but they refused to register the same. Thereafter, an application under section 156(3) Cr.P.C. was filed before the concerned Magistrate which was treated as complaint and the Magistrate, thereafter, recorded the statement of the complainant and

other witnesses and process has been issued against the applicants to face trial for the said offences.

The applicants filed an application under section 245 (2) Cr.P.C. seeking their discharge from the trial on the ground that no case is made out against them. It is stated in the application that the story of the complainant was improbable and no prudent person can believe the same. The trial court after hearing the parties on the discharge application recorded its finding that there was contradiction in the statement of the complainant and the complaint filed by her. In the complaint, it is stated that the parents of the complainant were beaten by the applicants. However, in her statement recorded by the Magistrate, she has not deposed anything in this behalf. She has stated that she was throttled by the applicants and threatened that in case, the demand of dowry is not met, they will not spare her. However, in her statement, she has only stated that she was threatened only. She had suffered injuries, however, she was not medically examined by the doctor. The explanation put forth by her is that it was not possible for her to get medically examined as she could not afford it. Despite, these discrepancies in her statement and the complaint, the Magistrate proceeded to summon the applicants.

I have heard learned counsel for the parties.

In a warrant case, the procedure provided is contained under Chapter-19 of the Code. Section 239 Cr.P.C. provides that the Magistrate is empowered to discharge a person after report is submitted under section 173 provided that he is of the opinion that the charges are groundless, he may discharge the accused and record his reasons for doing so. Under section 244 Cr.P.C. when a case is instituted otherwise than on a police report, the accused appears or is brought before the Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Under section 245 (1) Cr.P.C. after taking all the evidence referred to in section 244 Cr.P.C. the Magistrate considers for reasons to be recorded that no case

against the accused has been made out which if unrebutted, would not warrant his conviction, the Magistrate shall discharge him. Section 245(2) Cr.P.C. provides that the Magistrate may entertain any application or on his own can discharge a person if for reasons to be recorded he considers the charges to be groundless.

Under section 246 Cr.P.C. it is provided that in case such evidence has been taken or at any previous stage of the case, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, he shall frame charges in writing against the accused. While examining the aforementioned provisions, there are three occasions provided by the Code where the power has been given to the Magistrate not to proceed against the accused. First occasion when the Magistrate takes cognizance of the case, he may refuse to issue process if he finds that there is not sufficient material to proceed against the accused. Second occasion is when after recording evidence under section 244 Cr.P.C. he is of the opinion that no case against the accused is made out, if unrebutted, would not warrant in his conviction. Third occasion is when an application for seeking discharge under section 245(2) Cr.P.C. is made by the accused for seeking his discharge on the ground that the charges are groundless. This remedy has been provided to the accused to bring to the notice of the court that there is no ground to proceed in the matter as the charges are groundless. This can be invoked by the accused at any time after the process has been issued and before framing charge. It is implied that before proceeding under section 244(1) Cr.P.C. are taken up, the accused has an option to file an application for seeking his discharge. This protection has been given to the accused to question the order of the Magistrate while issuing process against him before evidence in the case is taken under section 244 Cr.P.C. The ground for seeking discharge under this Section is that the charges framed against the accused on the face of it are groundless. The Magistrate has to consider the charges and after

recording the reason if he finds that the charges are groundless, before resorting to procedure provided under section 244 Cr.P.C. he may discharge the accused. It clearly means that if there is no ground to presume that the accused has committed the offence, the charges must be considered to be groundless which is same thing as saying that there is no ground for framing charges.

What is clearly visible is that the power has been given to the Magistrate after taking into account the evidence which has been recorded to charge the accused in case there is ground for presuming that the accused has committed an offence triable under section. Contrary is also true if after examining such evidence and complaint, he considers that no case against the accused is made out which if unrebutted would not warrant his conviction. So in both the eventualities, the Magistrate is required to consider the complaint and evidence which has come on record otherwise than on Police report. While exercising the power, the application filed under section 245(2) Cr.P.C. the power to discharge can be exercised, if the charges are groundless. The word '*groundless*' under the Black's Law Dictionary is synonymous to '*frivolous*'. It defines that a pleading which is clearly insufficient on its face and does not controvert the material point of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. The charges, if found, groundless must satisfy on the basis of which the accused is being charged, is deficient or insufficient on the face of it, as it is presumably with little prospect of success brought to embarrass upon. Once it appears from the complaint and the statement recorded that there is deficiency in the material facts, which constitute ingredients of substantive offence, charges can be held to be frivolous. It also contemplates that if the facts controvert the material ingredients of the offence and is presumably interposed for mere purpose of delay or to embarrass the accused. A groundless charge has a little prospect of success which is often brought to embarrass or annoy the accused. While

framing charges under section 245(2) Cr.P.C. the Magistrate is to examine the contents of the complaint and the statement so recorded, and if he finds that the intended purpose of filing the prosecution lacks material facts that constitute ingredients of substantive offence and where the intention is to embarrass the other side to seek revenge against him, he can discharge the accused. There is additional burden on the Magistrate to examine this question by not looking only to the complaint and the statements of the witnesses appended thereto but the intended purpose of lodging such a prosecution against the accused. However, there has to be sufficient material on the basis of which such a conclusion can be drawn.

While considering the question of discharge, he is to examine the complainant and evidence, what is required to be seen by the Magistrate is that even if the allegations are uncontroverted, it would not entail conviction of the accused. While recording its findings that the charges are groundless not only the facts enumerated above are required to be seen but the probability and credibility of the story, as revealed, is also to be considered. The facts may constitute offence but if the conduct is improbable, the Magistrate has power to consider this fact. The Legislature has used the word '*groundless*' intentionally with a view to ensure that the area of consideration for the Magistrate is not only to look into the facts which may constitute an offence but also probability of the story which is reflected in the complaint. The court should not proceed to frame charges mechanically. It is trite law that the order framing the charges substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in Section 173 or in the complaint, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision

of the prosecution.

From the conjoined reading of the aforementioned provisions, the additional responsibility has been given to the Magistrate to examine the private complaint accompanied by the evidence before framing the charges. While framing the charges on a Police report which is confined to the material collected during the course of investigation, if he finds that there is ground for presuming that the accused has committed the offence, he can frame charges. If he finds that no case against the accused has been made out, if unrebutted, that would not warrant his conviction, he can discharge the accused. In the cases based upon private complaint, the Magistrate before framing charges has to hear the prosecution and allow them to lead evidence in support thereto. Merely on the basis of complaint, he can not proceed to frame charges. The power to discharge under this provision is confined only where he finds that after taking all the evidence recorded under section 244 Cr.P.C. he considers that no case against the accused is made out, which would warrant his conviction, he can discharge him. Section 246(i)Cr.P.C. provides that when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Section 246 Cr.P.C. contemplates that charge can be framed only where evidence under section 244 has been taken by the Magistrate. The expression at any previous stage of the case would not mean that the Magistrate has power to frame charge without taking any evidence under section 244 Cr.P.C. At any stage would reflect that the Magistrate is not required to examine all the witnesses under section 244 Cr.P.C. which the prosecution intends to produce. If on taking some evidence, it is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame charges in writing. Any other interpretation of the

rules would run contrary to the scheme of Chapter XIX relating to warrant cases. The expression that the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced implies that if the Magistrate is satisfied that it is not necessary to examine all the evidence in order to frame charge and he is satisfied that there is sufficient evidence on record for presuming that the accused has committed an offence, he may frame the charge. The power to frame charge has to follow only after evidence has been recorded under section 244 Cr.P.C.

What is clearly emerges is that it is not necessary for the Magistrate to examine all the evidence produced but the Magistrate may proceed to frame charge if there is some evidence on record. The interpretation of 'at any stage' would not mean stage prior to section 244 Cr.P.C.

Learned counsel for the applicant has placed reliance on a decision of Apex Court in **Ajoy Kumar Ghose versus State of Jharkhand and another, Criminal Appeal No. 485 of 2008 (arising out of SLP (CRL.) No. 5296 of 2006)**, decided on 18.3.2009 in which the Apex Court has dealt with the identical question. The Apex Court has held that :

“The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Cr.P.C. is completed or any stage prior to that. Such stages would be under Section 200 Cr.P.C. to Section 204 Cr.P.C. Under Section 200, after taking cognizance, the Magistrate examines the complainant or such other witnesses, who are present. Such examination of the complainant and his witnesses is not necessary, where the complaint has been made by a public servant in discharge of his official duties or where a Court has made the complaint or further, if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 Cr.P.C. Under Section 201 Cr.P.C., if the Magistrate is not competent to take the cognizance of the case, he would return the complaint for presentation to the proper Court or direct the complainant to a proper Court. Section 202 Cr.P.C. deals with the postponement of issue of process. Under sub-Section (1), he may direct the investigation to be made by the Police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section

202(1)(a) Cr.P.C., the Magistrate cannot give such a direction for such an investigation, where he finds that offence complained of is triable exclusively by the Court of sessions. Under Section 202(1)(b) Cr.P.C., no such direction can be given, where the complaint has been made by the Court. Under Section 203 Cr.P.C., the Magistrate, after recording the statements on oath of the complainant and of the witnesses or the result of the inquiry or investigation ordered under Section 202 Cr.P.C., can dismiss the complaint if he finds that there is no sufficient ground for proceeding. On the other hand, if he comes to the conclusion that there is sufficient ground for proceeding, he can issue the process under Section 204 Cr.P.C. He can issue summons for the attendance of the accused and in a warrant-case, he may issue a warrant, or if he thinks fit, a summons, for securing the attendance of the accused. Sub-Sections (2), (3), (4) and (5) of Section 204 Cr.P.C. are not relevant for our purpose. It is in fact here, that the previous stage referred to under Section 245 Cr.P.C. normally comes to an end, because the next stage is only the appearance of the accused before the Magistrate in a warrant- case under Section 244 Cr.P.C. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Cr.P.C., where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Cr.P.C., and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him. The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Cr.P.C., makes an application for discharge."

While considering the application under section 245(2) Cr.P.C. the Magistrate can discharge a person at any previous stage if he considers the charges to be groundless.

Now applying these principles in the present case, it has

to be seen as to whether the Magistrate was right in framing charges while rejecting plea of the accused that the charges are groundless. Following things emerge from the complaint and evidence recorded:-

(i) Inconsistency in the statement of the complaint and complainant are clearly visible even from the order of the Magistrate in her complaint. The complainant has stated that accused persons have been demanding a motorcycle, colour TV and Rs. 50,000/- in cash. She was thrown out from the house and asked to bring him a motorcycle, colour TV and Rs. 50,000/-. Only if she brings the dowry, she can be entertained in the house. The story further goes to show that on 12.5.2010 the accused persons came to the parental house of the complainant and started demanding dowry and on her refusal to do, they started beating her. When the parents of the complainant intervened, they were also beaten. In her statement recorded before the Magistrate, there is no mention that the parents of the complainant were beaten nor there is a mention that she was throttled by the accused persons. It is also revealed from the complaint that she was not medically examined as she could not afford it, which part of the statement is missing in her statement. Improbability in the story is clearly visible from the facts once that the complainant was thrown out of the house and asked to come back only after she brings dowry, there was no occasion for the accused to demand dowry and beat the complaint at her parental house.

In the case of **State of Haryana versus Bhajan Lal** **AIR 1992 (1) SCC 335**, the following observation has been made by the Apex Court:

“ (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 fides 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.”

While applying the aforementioned observation in the present case, it is necessary to examine provisions of Section 498-A I.P.C. The said section is quoted below :-

**"Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

**Explanation**

*For the purpose of this section, "cruelty" means—*

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

The aforementioned section contemplates that if the husband or relative of the husband of a woman, subjects such woman to cruelty which shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The word cruelty has been defined as 'any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide or cause dangerous injuries or danger to her life or health whether mental or physical. Causing harassment to a woman so as to coerce her or any other person related to her to meet unlawful demand which demand is not met by the woman. In the present case, in clause (b) of Section 498-A IPC, three essential components are visible. (i) there is harassment of the woman; (ii) harassment is to coerce her to meet unlawful demand; and (iii) failure on her part to meet such a demand.

The word '*harassment*' has been defined in Black's Law Dictionary that a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

The word '*coerce*' has been defined in Black's Law Dictionary as it may be actual, direct or positive, as constraint to compel by force or arms or threat.

Both the definitions incorporated in the section convey that an act directed at specific person that causes such emotional distress in such person with an intent to cause constrain on a person by using force or threat. Both the expressions used in the section clearly provides that the conduct of the person, which causes harassment must cause substantial emotional distress in such person whereas coercion contemplates that an act intended to put constrain by implying force or threat. Both the components must be satisfied before initiating any process under section 498-A IPC. The other component is that such harassment and coercion to meet unlawful demand must not be met by the woman or her relatives.

The word '*cruelty*' has been defined in Black's Law Dictionary as intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings. The suffering must lead to infliction of pain upon the body or the feeling and emotions, abusive treatment, inhumanity and outrage.

The conjoint reading of the act clearly contemplates that where a woman is subjected to harassment with an intent to coerce her to meet any unlawful demand, which is not met by the woman or her relatives, would constitute cruelty. The consequence of such a harassment must necessarily lead to mental or physical pain. Where a physical pain is contemplated, the same has to be reflected by a supportive evidence in the shape of a medical report. However, where the pain is only mental, it has to co-relate to constant pressure being built on the woman. It all depends upon the sensitivity of the person to bear such pressure. One act of harassment may not necessarily cause mental agony but it is constant pressure put on the woman that puts strain on her sensitivity. The act should be spread over a period of time.

Applying this principle in the present case, no such averments are contained in the complaint. All that is revealed in the complaint is that the dowry was demanded by the

applicant to bring a motorcycle, colour TV and Rs. 50,000/-. One singular act of demand of dowry can not subject the non-applicant to cruelty. It would not constitute harassment as defined here-in-above. It has to be constant process by which emotional distress is caused. Besides being vague in respect of the date and time, the contents of the complaint only reveals that dowry was demanded by the applicant, which caused cruelty to the non-applicant no. 2.

In the present case, the averments made in the complaint do not suggest that the course of cruel conduct was spread over a period of time. Thus, I do not find that the ingredients of section 498-A Cr.P.C. are satisfied in the present case after examining the contents of the complaint. In the matrimonial discord, there is general tendency more particularly to file cases under section 498-A Cr.P.C. to harass the other side. The courts are required to adopt a very cautious attitude before issuing process under this section. The complaint must clearly reflect that harassment was caused to the wife with a view to coerce her to meet unlawful demand. A single act of cruelty would not be sufficient to attract provision of this section unless such a cruel treatment is spread over a period of time. A single act of cruelty would also not be sufficient to cause mental agony to a person. In the present case, the complaint is deficient in this behalf. It would be advisable for the courts not to issue process in such cases without examining this aspect.

The second aspect of the matter is as to whether the allegations are so absurd and inherently improbable on the basis of which no prudent person could reach to the conclusion to proceed against the accused person. What is seen in the present case is that the demand of dowry was made from the complainant and on her refusal to do so, she was turned out of the house with a clear note of caution that if he would not bring the dowry, she would not be entertained in the present home. The complaint further goes to show that the applicant had gone to the parental house of the complainant and demanded dowry from her and on her failure

to do so, the accused physically caused her injuries. Once the complainant was turned out of the house for having failed to bring the dowry, there does not seem to be any logic that the applicant thereafter went to the parental house of the complainant to demand dowry and causing physical pain to her. The very nature of story is improbable and does not appeal to logic. There was no occasion for the applicant to go to the house of the complainant to demand dowry once she was turned out of the house and was told that she would come back in the house only when she brings the dowry.

The allegations looks so absurd and inherently improbable that no prudent person can ever reach to a just conclusion that there was sufficient ground to proceed against the applicant. It clearly emerges that the criminal proceeding has been initiated with a mala fide intention and has been lodged with ulterior motive to take revenge against the applicants.

What emerges from the aforesaid discussion is that the complaint does not satisfy the ingredients of section 498-A Cr.P.C. and the allegations made in the FIR are so absurd and inherently improbable on the basis of which it is not possible to proceed against the accused person. The trial court while issuing process has completely ignored this point while considering application under section 245(2) Cr.P.C. In my opinion, the charges are groundless.

I, therefore, allow the application under section 482 Cr.P.C. and the criminal proceeding in Criminal Complaint Case No. 2248 of 2010 (Rinki versus Umesh and others) pending in the Court of Ist Additional Civil Judge (J.D.)/Judicial Magistrate, J.P.Nagar under sections 498-A, 452, 323, 506 IPC & Section 3/4 D.P. Act, P.S. Nauganwa Sadat, District J.P. Nagar are hereby quashed.

(Sunil Hali,J.)

**Order Date :-** 31.8.2012  
SU.