

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)

Misc. Criminal Case No.10180/2012

Chandresh Shrivastava and others

Vs.

State of Madhya Pradesh and another

Shri Vijayendra Singh Choudhary, Advocate for the applicants.
Shri Manish Awasthy, G.A. for the respondent/State.
None for the respondent no.2 though served.

Whether approved for reporting : (Yes/No).

O R D E R
(22.02.2018)

This petition under section 482 of the Cr.P.C. has been preferred on behalf of the applicants seeking quashment of the proceedings pending before J.M.F.C. Satna in criminal case no.4017/2010 arising out of charge-sheet filed in Crime No.7/2010 registered at Mahila Thana, Satna, for the offence under sections 498-A read with sections 34 of the I.P.C. and sections 3 and 4 of the Dowry Prohibition Act.

2. Facts giving rise to the present case, briefly stated, are that marriage of applicant no.1 Chandresh was solemnized with respondent no.2 Smt.Preeti Shrivastava on 4.12.2005 as per Hindu rites and customs at Satna. On 7.5.2010 respondent no.2 Preeti lodged a report at Mahila Thana, Satna, against the applicant no.1 and his late father Shri Narottam Shrivastava alleging that applicant no.1 Chandresh is her husband, applicant no.2 is mother, applicant no.3 is brother and applicant no.4 is maternal aunt of the applicant no.1. It is alleged that father of applicant no.1. Narottam after three months of the marriage started demanding Rs.1 Lac in dowry and she resisted

continuously, therefore, she was subjected to mental cruelty and harassment. On 7.3.2010 when she went to meet his husband applicant no.1 he again demanded Rs.1 lac and he and his parents abused and assaulted her and threatened her that if she come back in their house they will kill her and also threatened to divorce her. After investigation, charge-sheet was filed before J.M.F.C. Satna, who took cognizance against the applicants and applicant's no.1 father Narottam. Applicant no.1's father Narottam has expired.

3. The aforesaid proceedings have been challenged by the applicants on the ground that the allegation with regard to demand of dowry is afterthought. The respondent no.2 left the house of the applicant no.1 on her own will and filed a petition before Parivaar Paramarsh Kendra, Satna, in the year 2007. The respondent no.2 and her father were present at Parivaar Paramarsh Kendra, Satna, on 20.8.2007 where they had disclosed that there was no demand of dowry and harassment on behalf of the applicants. The main cause of the dispute was that the respondent no.2 wanted to continue her service and does not want to live with the parents of the applicant no.1, which is recorded in annexure P/1. Thereafter, the applicant no.1 filed a petition before the District Court, Satna, under section 9 of the Hindu Marriage Act for restitution of conjugal rights on 26.9.2007. Thereafter, the said petition was withdrawn on 8.3.2010 and another petition under section 13 of the Hindu Marriage Act for divorce was filed before the District Judge, Satna, on 8.3.2010. On 16.4.2010 counsel for the respondent No.2 appeared before the Court and sought time to file reply and the case was fixed for further proceedings on 21.5.2010. Between the aforesaid period, i.e. on 7.5.2010 FIR was lodged by the respondent No.2 alleging the aforesaid facts with regard to demand of dowry and harassment.

4. The sequence of circumstances prima facie show that the allegations with regard to demand of dowry, harassment and torture made by the respondent no.2 are inherently improbable and absurd. The FIR has been lodged maliciously with an ulterior motive for wreaking vengeance on the applicants and with a view to spite him

due to private and personal grudge. It is further submitted that the Family court Satna vide order dated 11.3.2015 has allowed the divorce petition and rejected the respondent's plea with regard to harassment and torture in connection with demand of dowry by the applicants. In such circumstances, the continuation of the proceedings against the applicants is misuse of the process of the court and the FIR has been lodged as a counter blast after getting summons with regard to divorce petition filed by the applicant no.1.

5. On behalf of the respondent no.2 none has appeared.

6. Having considered the contention of learned counsel for the parties and on perusal of the record it is clear that the respondent no.2 was residing separately with the applicant no.1 since 2007. The proceedings of Parivaar Paramarsh Kendra dated 20.8.2007 make it clear that there was no dispute till that date with regard to demand of dowry and harassment. The respondent no.2 was interested to continue on her job and did not want to reside with the parents of the applicant no.1 and thereafter she started residing separately. The applicant no.1 filed a petition under section 9 of the Hindu Marriage Act and later on withdrew the said petition and filed a fresh petition under section 13 of the Hindu Marriage Act for divorce on 8.3.2010. In the aforesaid circumstances, the allegation with regard to demand of dowry and harassment are prima facie absurd and the aforesaid facts show that after getting summons of the petition for divorce filed by the applicant no.1, as a counter blast, she lodged the FIR maliciously with a view to take revenge with the husband and in-laws.

7. A Three-Judge Bench of the Apex Court in the case of ***Inder Mohan Goswami Vs. State of Uttaranchal (2007)12 SCC 1*** has observed in para 24 of the said judgment, which is as under:-

"24.Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justi-

fied in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

8. The Apex Court in the case of **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Sharaful Haque (2005)1 SCC 122** in para 8 observed as under:-

"8. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

9. The Apex Court has also observed in the case of **State of Karnataka Vs. L. Muniswamy (1977)2 SCC 699** has held as under :

"The wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution."

10. The Apex Court in **Bhaskar Lal Sharma & another vs. Monica** [(2009) 10 SCC 604] in which the Apex Court considering the judgment of the Apex Court in **Sushil Kumar Sharma vs. Union of India** [(2005) 6 SCC 281] it is held that :-

"10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'CrPC') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to mar-

ried women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

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19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of 'wolf' is made too often as a prank, assistance and protection may not be available when the actual 'wolf' appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

11. Further reliance has been placed upon the judgment of the Apex Court in **Preeti Gupta vs. State of Jharkhand** [(2010) 7 SCC 667] wherein it is held that:-

32. It is a matter of common experience that most of these complaints under Section 498-A IPC 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.

12. Learned counsel for the applicant further placed reliance on the judgment of **Geeta Mehrotra and another vs. State of Uttar Pradesh** [(2012)10 SCC 741] in which it is held :-

20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

13. Hon'ble the Apex court in the recent judgment, **Rajesh Sharma and ors. vs. State of U.P. And anr., passed in criminal appeal no. 1265/2017** dated 27.7.2017 as observed in para 14, as under :-

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression “cruelty” in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement”.

14. In view of the aforesaid enunciation of law and in the facts and circumstances of the case, in view of this Court, the instant petition deserves to be allowed as in the aforesaid circumstances if the proceedings continued against the applicants, it would amount to abuse of the process of the court and would cause grave injustice to the applicants.

In the circumstances, this petition is allowed and the proceedings of criminal case no.4017/2010 pending before J.M.F.C. Satna are hereby quashed.

15. A copy of this order be sent to the court concerned for information and compliance.

(J.P.Gupta)
JUDGE

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