

**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**SINGLE BENCH**

**BEFORE JUSTICE S.K.AWASTHI**

**Misc. Criminal Case No 2360/2014**

Kunaldev Singh Rathor and others

**Versus**

State of MP and another

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Shri Ajeet Singh Bhadoriya, learned counsel for the applicants.

Shri R.D.Agarwal, learned Panel Lawyer for the respondent No.1/State.

Shri R.K.Shukla, learned counsel for the respondent No.2.  
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**O R D E R**  
**(02.12.2016 )**

Applicants, vide instant application under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'CrPC') seek quashing of FIR bearing Crime No.614/2013 dated 18.12.2013 for commission of offences punishable under Sections 323, 294, 498-A and 506 of the Indian Penal Code (in short 'IPC') registered at police Station Kotwali District Bhind (M.P.). Further, the quashing of Criminal Case No.183/2014 has also been sought, which has been registered in furtherance to the said FIR.

**2.** The facts leading to filing of instant application are that a marriage was solemnized between the applicant No.1 and respondent No.2 on 21.11.2007 and a son has born out of the wedlock. According to the complaint made by respondent No.2, the present applicants were harassing her since the date of marriage for demand of Indica Car, however, she tolerated the harassment with a hope that one day the applicants will mend their ways

and will treat the respondent No.2 properly. Although, the situation did not improve and one day the respondent No.2 was thrown out of the matrimonial home along with her son, whereafter, she started living with her parents at Madho Ganj, Bhind. Respondent No.2 did not have any means to maintain herself and she did not want to burden her parents, an application for maintenance by her and the son was filed, in which the notices were issued, however the applicants did not accept the summons issued by the Court and on 8.9.2013 the applicants are alleged to have visited the house of parents of respondent No.2. During their visit, the applicants pressurized respondent No.2 to withdraw the case filed by her, failing which it was threatened that she will face dire consequences.

**3.** Due to the incident dated 8.9.2013 the respondent No.2 submitted a complaint before the police and requested to register the FIR against the applicants. Although, the police did not take any action prompting the respondent No.2 to file complaint case before the concerned Magistrate under Section 200 of the Code of Criminal Procedure, 1973, who, in turn, instructed police to submit report under Section 156(3) CrPC. The police informed the Magistrate that it is taking cognizance of the matter and will record the FIR for commission of offences punishable under Sections 323, 294, 506 and 498-A read with Section 34 of IPC. Consequently, on 18.11.2013, an FIR for the said incident was registered bearing Crime No.614/2013 at police Station City Kotwali District Bhind.

**4.** After completion of investigation, the police has

filed charge-sheet against all the applicants on 6.2.2014 before the concerned Magistrate for the offences mentioned in the FIR. In order to seek quashing of criminal proceedings, the instant application has been filed.

**5.** It has been stated before this Court that in respect to instant case, no other matter has been pending for similar relief. Further, it has been stated that the applicants have preferred instant application rather than invoking the revisional jurisdiction citing the reason that this Court under Section 482 CrPC has wider jurisdiction.

**6.** According to learned counsel for the applicants, the plain reading of the content of the FIR does not reveal commission of offences levelled against the applicants. Moreover, the FIR has been lodged in order to defeat the proceedings initiated by the applicant No.1 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. It has also been contended that the respondent No.2 herself has violated the law by siphoning the gold of the present applicants and fleeing away to her parental home. In support of the contention, learned counsel for the applicants placed reliance on the complaint (Annexure P/4) submitted before the police. Accordingly, it is contended that the prosecution has been launched to misuse the criminal justice system and it is a fit case for interference.

**7.** *Per contra*, learned counsel appearing on behalf of respondent No.1-State has supported the criminal prosecution on the ground that prima facie the allegations levelled against the applicants are made out, therefore, the application deserves to be dismissed.

According to learned counsel for respondent No.2, she had already moved application for maintenance and the application under Section 9 of HMA has been filed subsequently by the applicant No.1 which itself shows the intention of the applicants to cause delay in decision of application for maintenance filed by her. As per learned counsel for respondent No.2, the Supreme Court in the case of **Taramani Parakh vs State of M.P., 2015 (2) JLJ 1 (SC)**, has held that legitimate prosecution cannot be stifled by resorting to petition under Section 482 CrPC as there has to be a trial conducted to arrive at a conclusion about the participation of accused persons in the crime. Therefore, the application merits no consideration and liable to be dismissed.

**8.** I have considered the rival contentions raised on behalf of the parties and have perused the documents placed on record along with the present application.

**9.** The parameters on which the indulgence can be shown for exercising powers available under Section 482 CrPC with respect to matrimonial matters have been laid down by the Apex Court in the case of **Geeta Mehrotra vs State of U.P. (2012) 10 SCC 741** in the following manner :

*"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.*

*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 [(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: (SCC p. 698, para 12)*

*"12. There has been an outburst of matrimonial disputes 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 that matter was that the courts would not encourage such disputes."*

**10.** In another judicial pronouncement by the Supreme

Court in the case of **Ramesh Rajagopal v. Devi Polymers (P) Ltd., (2016) 6 SCC 310**, wherein the Hon'ble Court referred to the earlier decision, observed in the following manner :-

*"15. In Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 : 1988 SCC (Cri) 234] , this Court observed as follows: (SCC p. 695, para 7)*

*"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."*

**11.** In the context of the law laid down by the Apex Court, the plain reading of the complaint submitted by respondent No.2, which has been reproduced in the FIR dated 18.12.2013, goes to show that the allegations relating to commission of offence punishable under

Section 498-A of IPC are omnibus and do not refer to any specific act of the applicants. According to the complaint, the respondent No.2 was subjected to cruelty due to non-fulfillment of demand of Indica Car in dowry by the applicants. It is undisputed in the instant case that the marriage was solemnized on 21.11.2007. Although the complaint is silent about the fact as to when she left the matrimonial house. Further, with respect to this allegation, the applicants have brought on record the registration certificate issued by transport department on 10.1.2008 with respect to Indica Car. Moreover, the documents reflecting TATA Sumo in the name of applicant No.2 and other four-wheeler have also been brought on record. On cumulative consideration of these circumstances, it is revealed that the accusations regarding cruelty and harassment for demand of Indica Car are absurd and improbable. At this stage, it is important to note that the documents tantamount to material filed by the applicants in their defence and as per the judicial pronouncement by the Supreme Court on consideration of defence material at a preliminary stage in a criminal prosecution, such documents cannot be made basis for taking any decision. But, the Apex Court in the case of **Rukmini Narvekar v. Vijaya**

**Satardekar, (2008) 14 SCC 1**, has held as under:

"21. We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as Euclid's formula [vide *Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University* [(2008) 9 SCC 284 : (2008) 2 SCC (L&S) 887 : JT (2008) 8 SC 621] ]. As observed by this Court in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* (2004) 8 SCC 579 : AIR 2004 SC 4778, observations of courts are neither to be read as Euclid's formula nor as provisions of the statute.

22. Thus, in our opinion, while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge in view of *D.N. Padhi* case [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] , there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording

*Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi case (2005) 1 SCC 568 : 2005 SCC (Cri) 415 by the larger Bench therein to which the very same question had been referred.”*

**12.** Accordingly, the documents referred to by the applicants with regard to vehicles owned by them can be looked into. Furthermore, the offence under Section 294 of the IPC is not made out as the incident has taken place within the house of the complainant-wife. It appears that the prosecution has been initiated on account of scuffle which has taken place on 8.9.2013. However, in order to drag more offences against the applicants, the allegations with regard to demand of Indica car have been made. Further, the reliance has been placed by learned counsel for respondent No.2 on the judgment of Hon'ble Supreme Court in **Taramani Parakh's case (supra)**, wherein the Court in paragraph 11 has observed that if the allegations are absurd and do not make any case or if it can be held that there is abuse of process then the proceedings can be quashed. However, the Court has been cautioned from entering into the reliability of the evidence and to discuss about the version and counter version.

**13.** In the considered opinion of this Court, in the case at hand, as discussed above, the allegations are absurd and have been levelled to make the case more grave. Therefore, following the mandate of Hon'ble the Supreme Court, the powers under Section 482 CrPC are exercised for quashing the FIR to the extent it relates to the offences under Section 498-A and 294 of the IPC.

**14.** In this view of the matter, the present application under Section 482 CrPC is partly allowed. Accordingly,

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the FIR and the consequent proceedings so far as they relate to the offences punishable under Sections 498-A and 294 of the IPC are quashed. However, with regard to remaining offences, the proceedings shall continue.

**15.** It is made clear that the trial Court shall decide the case without being influenced by the observations made by this Court.

**(S.K.Awasthi)**  
**Judge.**

**(yogesh)**