

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.34376 of 2016

Arising Out of PS. Case No.-245 Year-2012 Thana- SHERGHATI District- Gaya

- =====
1. Md. Heyat, Son of Late Pir Mohamad Miyan.
 2. Md. Maksud Alam, Son of Md. Heyat
 3. Shah Jehan Khatoon, wife of Md. Heyat.

All resident of Village -Uprara, P.S- Uprara, District- Aurangabad. Bihar.

... ... Petitioners

Versus

1. The State of Bihar
2. Anjum Ara, daughter of Md. Manaur Hussain, Resident of Mohalla-Ramna, P.S.-Sherghati, District-Aurangabad, Bihar.

... ... Opposite Parties

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The code of criminal procedure, 1973 – Section 482 – quashing of order taking cognizance – section 498A – Section 34 – Indian Penal Code- 1860 - can vague, omnibus allegations suffice to sustain charges under Section 498A against extended family members – allegations against the petitioners general – omnibus – no specific instances of direct involvement or role in alleged act - misuse of section 498A and its implications on justice system (referred to :- **Abhishek vs. state of Madhya Pradesh 2023 SCC Online SC 1083**) – Separate residence and non – involvement in daily affairs negated any specific role in the alleged cruelty – criminal proceedings can be quashed in cases where allegations are absurd – inherently improbable – or manifestly attended with mala fide intent (relied on:- **State of Haryana Vs. Bhajan Lal (1992 Supp (1) SCC 335)** – order taking cognizance – quashed – application allowed.

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Appearance :
For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 04-04-2024

Heard learned counsel for the petitioners and
learned APP for the State.

2. The present application has been preferred
for quashing the order dated 21.01.2016 passed by
learned Additional Chief Judicial Magistrate, Gaya in
Sherghati P.S. Case No. 245 of 2012/GR No.1078 of
2012, whereby and whereunder the learned
Jurisdictional Magistrate has taken cognizance under
section 498-A read with 34 of the Indian Penal Code
(for short 'IPC') against the petitioners and others and



summoned them to face trial.

3. The prosecution case is based upon written report of informant, namely, Anjum Ara to the Officer-in-Charge of Sherghati Police Station stating therein that she was married with Md. Khurshid Alam on 05.12.2004 according to Muslim rites in which her father gave jewellery worth Rs.2.25 lakhs along with clothes and household articles. The informant further alleged that on the day after the marriage at 10:00 a.m., the petitioners and others demanded Rs.3 Lakhs as dowry and said that *Roksadi* will not be performed till their demand is fulfilled, whereupon the father of complainant gave Rs. 1 Lakh to petitioner no.1 Md. Heyat. She further alleged that she stayed in her *sasural* for 15 days and, thereafter, her mother-in-law snatched all her ornaments by threatening her with *talaq*. She further alleged that she was tortured regularly for rest of the amount of Rs.2 Lakhs and she was assaulted and abused also. She further alleged that after six months, her



husband left her at her *maika* (parental house) and went to Mumbai. Upon social pressure, the father-in-law of informant took her to Mumbai and after sometimes, she was again subjected to mental torture and pressurized to bring Rs. 2 lakhs from her father. She stayed anyhow at Mumbai for six months and after that, she left Mumbai, while she was pregnant of seven months. She further alleged that her *dewar* (brother-in-law) hit on her stomach to kill her child and upon bleeding, she was sent to her *maika*. In the year, 2010, the husband of the informant went to Arabia. Upon pressure, her husband called her to Riyadh on 08.10.2011, where behaviour of her husband was also not good. The informant was forced to remain naked and serve wine to his friends and upon refusal, she was beaten and given electric shock. She further alleged that on 01.07.2012, she was sent to Delhi and even after several requests, she was not taken to her *sasural*.

4. Learned counsel appearing for the petitioners



submitted that from the perusal of FIR, no *prima facie* case is made out against petitioners for the reasons that petitioner no. 1 is father-in-law, petitioner no. 2 is brother-in-law and petitioner no. 3 is mother-in-law. It is submitted that petitioners are living separately having no connection with daily and domestic affairs with opposite party no.2 and her husband. It is submitted that their implication only appears out of relations and with ulterior and oblique motive, suggesting harassing attitude. It is a classical case of malicious prosecution and misuse of provisions of Section 498-A of IPC. While concluding the argument, it is submitted that even from the perusal of FIR, the allegation *qua* petitioners is appearing very much general and omnibus and, as such, it is a fit case to quash proceedings.

5. In support of his submissions, learned counsel relied upon the legal reports of the Hon'ble Supreme Court as reported in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC**



OnLine SC 1083.

6. Though, a *vakalatnama* has been filed on behalf of opposite party no.2, after duly served notice but, no one appears on her behalf to oppose the application when matter was taken on board.

7. Learned APP while opposing the application submitted that petitioners being in-laws played active role towards alleged mental and physical cruelty to O.P. No. 2, by raising demand of dowry.

8. It would be apposite to reproduce relevant Paragraph Nos. 12 to 17 of **Abhishek Case (supra)**, which read as:-

"12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In *V. Ravi Kumar v. State* represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.



In Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur v. State of Punjab (AIR 1960 SC 866) and State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some



decisions of particular relevance. Recently, in Kahkashan Kausar alias Sonam v. State of Bihar [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.



14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving



Section 498A IPC.

16. Of more recent origin is the decision of this Court in Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and,



if need be, with due care and circumspection, to try and read between the lines.

17. In *State of Haryana v. Bhajan Lal*, [1992 Supp (1) SCC 335], this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should



be exercised.

(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 informant 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 persons 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 concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

9. In the view of aforesaid legal and factual submissions as petitioners appear in-laws, claimed to



had no connection with daily and domestic affairs with O.P. No.2, where allegation of cruelty also appears *prima facie* very much general and omnibus against them. Accordingly, in view of aforesaid factual background and by taking guiding note of **Abhishek case (supra)**, the impugned order taking cognizance dated 21.01.2016 passed by learned Additional Chief Judicial Magistrate, Gaya in connection with Sherghati P.S. Case No.245 of 2012/GR No.1078 of 2012 with all its consequential proceedings, *qua*, all above-named petitioners are, hereby, quashed and set aside.

10. This application stands allowed.

11. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.04.2024
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