

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 16th September, 2011

+ **CRL. M.C. NO. 3116/2011**

SHRI ARUN KAPUR AND OTHERS

....PETITIONER

Through: Mr. M.Dutta and Ms. Anju Kapoor,
Advocates.

Versus

THE STATE OF DELHI & ANR.

....RESPONDENTS

Through: Ms. Jasbir Kaur, APP.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Arun Kapur and others, the petitioners herein vide instant petition under Section 482 CrPC, are seeking quashing of FIR No. 157/2011, under Sections 406/498A/34 IPC, registered at P.S. Mianwali Nagar on the complaint of the respondent No.2.

2. Petitioner No. 1 is the husband of complainant Nidhi Kapur. Petitioners No. 2 & 3 are parents of petitioner No. 1 and the petitioners No. 4 & 5 are married sister-in-law and brother-in-law of the complainant. On 28th July, 2011, FIR No. 157/2011 was registered at P.S. Mianwali Nagar on the complaint of Nidhi Kapur,

the respondent No. 2. She claimed in her complaint that she was married to Arun Kapur on 25th October, 2007 at Delhi. In the said complaint, respondent No. 2 made specific allegations of dowry demand and harassment & cruelty meted out to her in connection with the said demand.

3. Learned Sh. M.Dutta, Advocate appearing for the petitioners has submitted that the FIR lodged by the respondent No. 2 is an abuse of process of law and it has been filed as a counter-blast to the divorce petition filed by the petitioner No. 1 in the matrimonial court. Learned counsel further contended that a careful perusal of the FIR would show that it does not disclose commission of any offence by either of the petitioners and the allegations made in the FIR are not worthy of credence. As regards the miscarriage suffered by the respondent No. 2/complainant, learned counsel for the petitioner has drawn my attention to the photocopies of medical record of the respondent No. 2 and submitted that aforesaid medical record belies the allegation of the complainant that she was given beating during pregnancy. Learned counsel further submits that the Supreme Court, in its judgment in the matter of **Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar and Another, (2010) 10 SCC 673** has observed: *"It is a matter of common experience that most of these complaints under Section 498A IPC are filed in the heat of moment over trivial issues without proper deliberation.*

We come across a large number of such complaints which are not even bona fide and are filed with oblique motive.” Learned counsel submits that the instant FIR is also an illustration of such abuse and is liable to be quashed. In support of this contention, learned counsel for the petitioners has also relied upon following judgments:

1. *Preeti Gupta and Another vs. State of Jharkhand and Another*, (2010) 7 SCC 667
2. *State of Andhra Pradesh vs. M.Madhusudhan Rao*, (2008) 15 SCC 582
3. *Kishan Singh (Dead) Through LRs vs. Gurpal Singh and others*, (2010) 8 SCC 775
4. *Asoke Basak vs. State of Maharashtra and Others*, (2010) 10 SCC 660
5. *Devendra and Others vs. State of Uttar Pradesh and Another*, (2009) 7 SCC 495
6. *V.Y.Jose and Another vs. State of Gujarat and Another*, (2009) 3 SCC 78
7. *Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others*, (1988) 1 SCC 692
8. *Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and others*, (1998) 5 SCC 749
9. *Manoj Mahavir Prasad Khaitan vs. Ram Gopal Poddar and Another*, (2010) 10 SCC 673

4. I have considered the submissions made on behalf of the petitioners and perused the record as also the judgments cited by the learned counsel for the petitioners.

5. Section 482 of the Code of Criminal Procedure provides for the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of law or otherwise to secure the ends of

justice. The inherent power of the High Court is in the nature of extraordinary power to be used sparingly with due care and caution for achieving the ends of justice.

6. The Supreme Court had an occasion to deal with the scope of inherent powers of the High Court under Section 482 CrPC in the matter of **State of Punjab Vs. Kasturi Lal & Ors., AIR 2005 SC 4135**, wherein it was observed thus:

“Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist”.

7. From the above enunciation of Section 482 CrPC, it is evident that though Section 482 confers wide powers on the High Court to

do substantial justice, yet the High Court is required to use this power sparingly with due care and caution only in deserving cases to ensure and promote substantial justice.

8. In the instant case, the petitioners are seeking quashing of FIR on two grounds. Firstly, that the FIR does not disclose commission of the offences under Sections 498A/406/34 IPC by the petitioners. In order to appreciate this contention, it would be appropriate to have a look on the FIR. Some of the specific allegations made against the petitioners in the FIR are reproduced as under:

"1. That from the very beginning after the marriage on 27.10.2007 on the occasion of Karva Chauth, my sister-in-law Arti Chopra and her husband Rajesh Chopra directed me to ring my parents to bring gold items, cloths and all the family members and on my refusal to convey the demand by my sister-in-law and her husband for bringing gold and costly dresses for the entire family including the sister and jija of my husband. They threatened me that I had made a call to my parents for fulfilling (sic) their demands on the occasion of Karva Chauth and on this, my sister-in-law Arti Chopra and her husband Rajesh Chopra had assaulted me. I narrated the above said episode to my husband to which, he had also joined hands with them and started abusing me and threatened me that in case I have to live in the matrimonial house, she had to get their demand fulfilled from her (sic) parents as I am the only daughter of my parents.

2. My husband and myself went for honeymoon on 02.11.2007 in Goa. After reaching in Goa, my husband pushed me from the bed and dragged me from the floor of the room and asked me to ring my parents and during the period for 2-3 days in Goa, my husband continuously harassed me and taunted me that my parents had not given the dowry articles as per their choice and the goods given were of inferior quality. Even after returning from Goa, my husband continuously passed taunting remarks about the dowry and other articles. With his parents who

has also joined hands with him and were not happy with the dowry given by my parents.

3. That on 13.01.2008 on the occasion of Lohri my husband, Father-in-law, mother-in-law demanded ₹ 1,00,000/- on the occasion of Lohri and after taking the said amount from my parents, neither my husband nor father-in-law or mother-in-law had invited my (sic) parents in the evening at the time of celebration of Lohri function and for dinner. As per the demands of my in-laws family my parents had come in the evening and had given the cash for ₹ 1,00,000/- and cloths for dinner and celebration of Lohri function after their leaving the matrimonial house. My father even had talked with my father-in-law who requested him about the assault and beatings given by them in association with their son but they had not mend their ways. I was continuously harassed and tortured by my husband and his parents continuously for 10 days. There after I remained with my parents house at Paschim Vihar and after 10 days, my husband came to my parents house for taking me back and assured that he will keep me happy in the matrimonial home and would not harass and will not drink in future and after the assurance given by my husband to my parents, I accompanied with my husband to live in my matrimonial house at old Rajinder Nagar, Delhi.

4. That on 26.01.2008 there was a function of Mehendi party of the cousin of my husband at Kalkaji in cocktail party. My husband after taking liquor started misbehaving with me and started shouting at me and created scene in the presence of guests and other relatives. Before the marriage I was told that my husband does not take drink and when I told my father-in-law about taking liquor by my husband my father-in-law categorically replied that what happened in case his son he had taken liquor in a function. After reaching home from the said function my husband, father-in-law and mother-in-law stated abusing me and manhandling me. My father-in-law had also misbehaved with me as he was also heavily drunk. My husband, father-in-law and mother-in-law compelled my to phone my parents during the night despite my repeated requests for not compelling her for the same as my parents had gone to grandmother's house. My grandmother had suffered a brain hemrage. On 05.12.2007 on coming to know about the maltreatment and harassments committed by my in-laws family but they had no listen to my advice and threatened me to ring my parents or I would be turned out of my matrimonial house. On my ringing them to my parents My Father from (sic) Paschim Vihar and my mummy from Mukherjee Nagar

with my maternal uncle reached the matrimonial house at about 1.00 a.m. (night) and on account of tension even my father met with an accident, on their coming at my matrimonial house and when I narrated the entire episode of maltreatment and harassment and after taking liquor of my husband and father-in-law, mother-in-law after giving abuses asked my father to take me in their house and they had given two pairs (sic) of clothes and was turned out of the house in the presence of Rajender Kapur, elder paternal uncle of my husband and Shobhna his daughter to whom they called in their house. My parents had no option but to take me with them at my residence.

5. That in the month of February 2008, after ten days of my stay in the matrimonial house, the drama and old behaviour, cruelty and torture by my husband and his parents started again and they started giving (sic) me taunts for demand of dowry and occasionally started even beating me.

6. In the month April 2008, when I picked up the telephone it was a call from Orissa and they were passing about whereabouts of my sister-in-law and her husband Rajesh as they have ran away after taking huge amount from them in Orissa and on my disclosing about the telephone call to my husband, they started quarrelling with me and started giving abuses to me and even they assaulted me as to why I had picked up the telephone and on the misbehaviour by the parents of my husband with me, my husband was laughing. Whenever, the telephone calls repeatedly coming from Orissa, my father-in-law and mother-in-law get the said telephone connection disconnected.

7. That on 21.04.2008 there was marriage in the family of Vibhuti Karu which was celebrated at Essex farm, at Delhi and when I refused to participate in the said marriage on account of harassment, maltreatment and abuses given my sister-in-law Arti Chopra and after that on 22.04.2008, my father-in-law threatened me to leave the matrimonial house and my husband took me out during the night and my husband was threatening me that my father-in-law had turned me out of the house on account of my failure and with great difficulty we both were allowed in the matrimonial house.

8. That in morning on 23.04.2008 and my sister-in-law Arti Chopra opened the door and she started quarrelling and gave abuses to me and enter in my bedroom by

categorically stated that the house belongs to her parents and she would live wherever she likes.

9. That on 26.04.2008 my husband and father-in-law accompanied me at my parents house at Paschim Vihar, Delhi and started taunted that my parents should keep me and my husband in my parental house as they had kept his daughter and son-in-law with them to which my father had stated that there is no tradition in our family to keep son-in-law in their house to which, I was giving beatings to my father and my husband after giving filthy abuses to me. My sister-in-law threatened me that she will not allow me to live in my matrimonial house.

10. That thereafter two days on account of settlement and compromise on account of intervention of the relatives, I was made to join the matrimonial house at my mother-in-law caught hold of my hand and pushed me as a result of which I fell down and in the evening when my husband returned from the office in the evening my father-in-law and mother-in-law and mother-in-law again quarrelled with me and started abusing (sic) me again. Both of them had categorically told me that I neither talk with my parents on telephone nor I was visit to meet them.

11. That in the month of October, 2008, on the occasion of my marriage anniversary my husband enforced me to meet my parents in order to bring gifts, cash and other costly items as per their demands and accordingly my parents had given ₹ 50,000/- in cash and gold ring to my husband and cloths and cash to father-in-law and mother-in-law.

12. That in the month of April 2009, when I returned from the school where I was working at my matrimonial house, my mother-in-law started crying and shouted that I should leave the house. My father-in-law had also started abusing me and both of them had turned me out of the house and I was harassed (sic) for such an extent that I was constraint to sit in the car for four hours continuously.

13. That in the next morning, my husband Sh. Arun Kapur before leaving for the office started quarrelling with me to which I requested him not to disturb as her condition is not well but he alongwith his mother started beating me. In the evening there was bleeding to me and my mother-in-law had not put any heed to my request for taking me to the hospital and finding no way out, I told my parents who had taken me to the hospital and on the next day, the doctors finding to other alternative got my operation done in order to save my life and thereafter, in order to shield their

misdeeds, they had taken me alongwith my parents and maternal uncle in the matrimonial house and Sh. Arun Kapoor had given two pairs of my cloths in a polythene bag (sic) and sent me to my parents house on the pretext that his mother is not able to do any work and after some time on 29.02.2011, my husband had taken me back to the matrimonial house but after 2 days, the member of inlaws family had (sic) called my parents and asked them to take me from the matrimonial house as I am not in a position to do any work".

9. On reading of the above noted allegations, a prima face case of commission of offences under Sections 498A/406 IPC is disclosed against the petitioners. As per the scheme of Code of Criminal Procedure, the police is required to investigate into the above allegations to come to the conclusion whether or not allegations are substantiated. If on conclusion of investigation, investigating agency comes to the conclusion that there is sufficient material on record to proceed against the petitioners, a charge sheet would be filed in the court. Otherwise, the police would file a final report seeking closure of the case. The petitioners, vide this petition under Section 482 CrPC, in effect, are seeking to frustrate and stifle the investigation, which is a legal obligation of the police as per the scheme of Code of Criminal Procedure detailed in Chapter XII. Section 482 CrPC is meant to prevent abuse of process of law and to promote justice. Stopping investigation at this stage by quashing the FIR would amount to preventing the police from doing its duty to investigate into the allegations made in the FIR. Such a course, in my

considered view, would amount to subverting the course of justice. It is well settled that normally, High Court would not interfere with the investigation into the allegations of commission of a cognizable offence unless there are exceptional circumstances disclosing the abuse of process of law. In my aforesaid view, I am supported by the judgment of Supreme Court in the matter of **State of Karnataka Vs. Pastor P.Raju, 2006 (6) SCC 728** and the judgment of Division Bench of this court in the matter of **Surinder Singh Ahluwalia Vs. Delhi Special Police Establishment & Ors., 1991 Cri.L.J. 2583.**

10. Second contention raised on behalf of the petitioners is that the FIR is an abuse of process of law as it has been filed as a counter-blast to the divorce petition filed by the petitioner No. 1 against the respondent No. 2. Expanding on the argument, learned counsel for the petitioners submits that if the version in the FIR is to be believed, then, the demand for more dowry and harassment to the respondent No. 2 started way-back in October, 2007. However, till 28th June, 2011, when the FIR was registered, respondent No. 2 did not lodge any complaint before any authority in respect of cruel treatment meted out to her or the demand for dowry. It is submitted that those allegations are made on an after-thought as a counter-blast to the divorce petition. It is further submitted that

there is an allegation in the FIR that the respondent No. 2 was tortured and beaten by the petitioners in February, 2011 despite of the fact that she was in advanced stage of pregnancy and as a consequence, she suffered miscarriage. It is contended that if this allegation was true, after her miscarriage, the respondent No. 2/complainant, under the natural course of circumstances, was expected to lodge a complaint with the police or some authority but she opted to keep silent and only after the filing of the divorce petition by the petitioner No. 1 against the respondent No. 2, she lodged the FIR. This clearly indicates that the contents of FIR are not true and it is filed as a counter blast to the divorce petition with a view to pressurize the petitioners.

11. I am unable to subscribe to the aforesaid view. Merely because the respondent No. 2 did not promptly file a complaint regarding harassment and cruelty meted out to her by the petitioners in connection with demand of dowry, it cannot be said that the allegations in the FIR are false and have been lodged as a counter blast to the divorce petition filed by the petitioner No. 1. It is well-known that in our society, marriage is put at a high pedestal and every effort is made on the part of the wife and her family members to make the marriage work. If the respondent No. 2, in the interest of preserving the marriage, kept silent and did not

report the acts of cruelty and torture to the police in order to protect and preserve her marriage, it cannot be taken as a reason to reject the allegations made in the FIR outright without any investigation. Just because the respondent No. 2 lodged the FIR after the filing of divorce petition, it cannot be inferred that the FIR is motivated and false. Thus, under the circumstances, at this stage, when the investigation is at the nascent stage, I find no reason to infer that the FIR lodged by the respondent No. 2 is an abuse of process of law.

12. As regards the judgments relied upon by the petitioners, I am of the view that aforesaid judgments are not applicable to the facts of this case for the reason that those judgments are based upon the facts peculiar to those cases and none of the judgments cited by the petitioners relate to a case where quashing of the FIR was sought at the initial stage of investigation.

13. In view of the discussions above, I do not find any merit in this petition. It is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 16, 2011/akb