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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 3750/2008

UDAI CHAND BHARDWAJ & ORS. Petitioners
Through: Mr. Anupam Tripathi, Advocate with
Mr. Sumit Kumar, Advocate.

versus

STATE GOVT. OF N.C.T. OF DELHI Respondent
Through: Mr. Manoj Ohri, APP for State with
ASI Ram Niwas, PS Sultan Puri, Delhi.
Mr. Piyush Prabhakar, Advocate for
respondent No.2.

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Date of Decision: 11th September, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

Crl.M.A. 16274/2012 (exemption) in Crl.M.C. 3750/2008

Allowed, subject to just exceptions.

Accordingly, the application stands disposed of.

Crl.M.A. 16273/2012 (u/s 340 Cr.P.C.) in Crl.M.C. 3750/2008

Keeping in view the judgment of the Supreme Court in *Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370*, learned counsel for petitioners wishes to withdraw the present application with liberty to file appropriate legal proceedings in accordance with law.

With the aforesaid liberty, present application stands disposed of.

Crl.M.C. 3750/2008 & Crl.M.A. 13997/2008

1. Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 1432/2004 registered with Police Station Sultanpuri, Delhi under Sections 498A/406/34 IPC.
2. Learned counsel for petitioners states that Section 498A IPC is not attracted to the facts of the present case as petitioner No.2 was never married to respondent No.2. He states that respondent No.2, prior to marriage to petitioner No.2, was already married twice over. He also states that as the respondent No.2 has alleged that petitioner No.2 was impotent, the present marriage was never consummated and consequently, no case under Section 498A IPC is made out.
3. Learned counsel for petitioners further states that there are inherent contradictions in the two complaints filed by respondent No.2 on 09th

September, 2004. It is pertinent to mention that the first complaint was filed under Section 323 IPC and the second complaint was filed under Sections 498A/406 IPC.

4. Learned counsel for petitioners submits that on the date of incident, petitioner No.7 was not a relative, but only a friend of brother of the petitioner No.2. According to him, as petitioner No. 7 was not a relative, no case under Section 498A IPC is made out against her.

5. Learned counsel for petitioners submits that only allegation against petitioner No.8 is that she had misbehaved with respondent No.2. According to him to attract Section 498A IPC, the accused have to be guilty of cruelty and not cruelty in the omnibus sense or as understood under the Hindu Marriage Act. In this connection, he places reliance upon a judgment of this Court in ***Savitri Devi vs. Ramesh Chand & Ors., 2003 Cr.L.J. 2759*** wherein it has been held as under:-

“16. For the purpose of Section 498A IPC which is peculiar to Indian families victim spouse is always the 'wife' and guilty is the husband and his relatives-near or distant, living together or separately. Ingredients of 'cruelty' as contemplated under Section 498A are of much higher and sterner degree than the ordinary concept of cruelty applicable and available for the purposes of dissolution of marriage i.e. Divorce. In constituting 'cruelty' contemplated by Section 498A IPC the acts or conduct should be either such that may cause danger to life; limb or

health pr cause 'grave' injury or of such a degree that may drive a woman to commit suicide. Not only that such acts or conduct should be "willful" i.e intentional. So to invoke provisions of Section 498A IPC the tests are of stringent nature and intention is the most essential factor. The only test is that acts or conduct of guilty party should have the sting or effect of causing grave injury to the woman or are likely to cause danger of life, limb or physical or mental health. Further conduct that is likely to drive the woman to commit suicide is of much graver nature than that causing grave injury or endangering life, limb or physical or mental health. It involves series of systematic, persistent and willful acts perpetrated with a view to make the life of the woman so burdensome or insupportable that she may be driven to commit suicide because of having been fed up with marital life."

6. According to him, present proceedings are an abuse of process of Court. In this connection he relies upon a judgment of the Supreme Court in ***Preeti Gupta vs. State of Jharkhand & Anr., 2010(8) Scale 131*** wherein it has been held as under:-

"19. This court in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699 observed that 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. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be

administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.”

7. Learned counsel for petitioners lastly submits that as the parties have already been divorced, no fruitful purpose would be served by allowing the present criminal proceedings to proceed.

8. On the other hand, learned counsel for respondent No.2 specifically denies that respondent No.2 was earlier married to anyone else. He points out that divorce has been granted by an ex parte order passed in a petition filed by the petitioner No.2 and an application for recall of the said order has already been filed.

9. He further states that petitioner No.7 was on the date of incident engaged to petitioner's brother namely petitioner No.6 and she has subsequently married him in the month of December, 2004.

10. Mr. Manoj Ohri, learned APP for State, has drawn attention of this Court to the charge sheet filed by the police.

11. Having heard the parties at length, this Court is of the view that it is first essential to outline the parameters of the exercise of the extra-ordinary power under Article 226 as well as the inherent powers under Section 482 of the Code with regard to quashing of an FIR. The Supreme Court in *State of*

Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp (1) SCC 335, has held

as under:-

“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 extra-ordinary 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 Information Report and other materials, if any, accompanying the F.I.R. 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 F.I.R. 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 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.”

12. A Division Bench of this Court in **W.P. (Crl.) 80/2010 Shri Anur Kumar Jain vs. Central Bureau of Investigation** while answering a reference has observed as under:-

“33. xxx xxx xxx

(e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional

*circumstances be exercised keeping in view the law laid down in **Siya Ram Singh** (supra), **Vishesh Kumar**(supra), **Khalil Ahmed Bashir Ahmed** (supra), **Kamal Nath & Others** (supra) **Ranjeet Singh** (supra) and similar line of decisions in the field.*

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a “cloak of an appeal in disguise” or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice.

34. Reference is answered accordingly....”

13. After having perused the charge sheet, this Court is of the view that there are specific allegations of dowry demand, physical abuse, cruelty and mental harassment against the petitioner No.1 and his family members. The relevant portion of the charge sheet filed reads as under:-

“On 27.06.2004 my marriage was solemnized according to Hindu Rites and Ceremonies with Kishan Kumar, son of Udai Chand Bhardwaj, Resident of E-5, Budh Vihar, Phase-I. My husband is working as senior programmer with Escort Hospital. In my marriage my mother who is a widow, who gave dowry beyond her capacity and wishes. After two or three days of my marriage, my husband told me that I should bring a santro car from my mother, who had given a motor cycle in my marriage. I have told him that my mother is a widow and from where she can give a car. After five to seven day. My father in law Udai Chand, mother in law Chandrawati, husband Kishan Kumar, brother in law Kamal, Prem and Rahul and sister in law Preet @ Rahul and the friend of my brother in law Ruchika etc. in collusion with each other started demanding dowry and

when I told that from where my brother can bring this money then my mother in law misbehaved with me and my husband gave merciless beatings to me and my brother in law and father in law also misbehaved with me. I have kept tolerating all these things because my mother is a widow and nobody to save and my brother is also very small, so I kept tolerating all these things. After 10-12 days my husband after giving a false excuse that he wants to take me for outing took me to my parental house and thereafter he returned back after leaving me. My husband kept all my jewellery items with him in almirah and after leaving me at my mother's home told that I should live here for 2-4 days and thereafter he will bring me back. I kept waiting for him till date and I am regularly requesting him over phone to bring me back but all the time he assured me that he will bring back me after 2-4 days. Today 08.09.2004 it has come to my knowledge that my mother in law fell down due to which her leg is broken. I have reached my matrimonial house for seeing her then my father in law, brothers in law after seeing me started abusing in filthy language and told that "why you come here, nothing remains you're here" and thereafter I was thrown out from my matrimonial House by my sister in law Preeti and the said girl Ruchika and my sister in law. My father in law and brother in law gave me merciless beatings and told me that "there is nothing remains of your here, either you should bring a car otherwise we will see you in court."

14. The aforesaid allegations are certainly not omnibus allegations as suggested by the petitioners. Though the veracity of the allegations can only be tested at the stage of trial, yet they raise a strong suspicion against the respondents. Accordingly, this Court in the facts of the present case is of the opinion that to allow the proceedings to continue would not constitute an abuse of process of Court.

15. Moreover as the petitioner No. 2 has himself obtained a decree of divorce, this Court will have to draw a presumption at this stage that there was a valid marriage between petitioner No. 2 and respondent No. 2. Consequently, it is not possible to quash the FIR.

16. As far as the contention that Petitioner No.7 cannot be arrayed as an accused, this Court is of the opinion that the trial Court while framing charges should consider her argument for discharge. This Court is confident that the trial Court at that stage would keep in mind the observations of the Supreme Court in *Sunita Jha vs. State of Jharkhand & Anr., (2010) 10 SCC 190* wherein it has been held that neither a girlfriend nor concubine is a relative of husband within meaning of Section 498A IPC. Needless to say, any observation in this order would not be an expression on merit and trial Court would take an independent view of the matter.

17. Before parting with this matter, the Court would like to observe that today in nearly all criminal matters, as a matter of routine, at least at three stages, namely, at the time of filing of FIR, framing of charges and an interlocutory stage of the trial, petitions for quashing and stay of the trial are being filed under Section 482 Cr.P.C. and Articles 226 and 227 of the

Constitution of India. This is not only an unhealthy practice, but is burdening the Courts with unnecessary litigation. The litigants must realise that the power vested in this Court under Articles 226 and 227 of the Constitution of India and Section 482 Cr.P.C. is to be used sparingly and for rare and compelling circumstances as mentioned in *State of Haryana & Ors. vs. Bhajan Lal & Ors.* (Supra).

18. With the aforesaid observations, present petition and pending application are dismissed.

MANMOHAN, J

SEPTEMBER 11, 2012

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