

GAHC010180212023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./864/2023

PRATIK AGARWAL AND 2 ORS.
S/O AMAR KUMAR AGARWAL,
R/O BUILDING NO. 344, FLAT NO 1003-1004 KALPATARU SRISHTI
COMPLEX, NEAR SURYA SHOPPING CENTRE MIRA BHAYENDER MIRA
ROAD EAST, THANE MAHARASHTRA 401107.

2: AMAR KUMAR AGARWAL
R/O BUILDING NO. 344
FLAT NO 1003-1004 KALPATARU SRISHTI COMPLEX
NEAR SURYA SHOPPING CENTRE MIRA BHAYENDER MIRA ROAD EAST
THANE MAHARASHTRA 401107.

3: SAVITA AMAR AGARWAL
W/O AMAR KUMAR AGARWAL

R/O BUILDING NO. 344
FLAT NO 1003-1004 KALPATARU SRISHTI COMPLEX
NEAR SURYA SHOPPING CENTRE MIRA BHAYENDER MIRA ROAD EAST
THANE MAHARASHTRA 401107

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PUBLIC PROSECUTOR.

2:ANURADHA AGARWAL
D/O RAMAVATAR LAHOTY

R/O OLD BALIBAT
P.O. AND P.S.- JORHAT
DIST.- JORHAT
ASSAM

Advocate for the Petitioner : MR. S KASHYAP

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 22-08-2023

1. Heard Mr. S Kashyap, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Addl. PP, Assam appearing for respondent No.1.
2. The present application is filed under section 482 Cr.P.C., 1973 for quashing and setting aside the FIR dated 23.11.2021 registered as Jorhat PS Case No.2577/2021 under section 498 A IPC.
3. The learned counsel for the petitioner assails the aforesaid FIR on the following grounds:
 - I. That the FIR was filed after 6 (six) months of the alleged incident. Therefore, the same is nothing but an attempt to harass the petitioners resulting in abuse of the process of the court.
 - II. The accusations are vague and baseless inasmuch as there is no proper date time and place is mentioned in the FIR when such dowry was demanded. Thus on the basis of such general and omnibus statement the investigation cannot proceed.
 - III. Though there was an allegation of physical torture but

there is no medical report to prove such kind of torture inasmuch as no specific date and time is mentioned in the FIR of such torture.

4. The Hon'ble Apex Court after considering numerous cases in ***Sushil Kr. Sarma Vs. Union of India*** reported in **(2005) 6 SCC 281** held that many instances have come to light where complaints u/s 498 A are not bona fide and have been filed with oblique motive and in such cases acquittal does not in all cases wipe out the ignominy suffered during and prior to trial. It was also held that the provision u/s 498 A is intended to be as shield and not as an assassins weapon though this court held that mere possibility of abuse of legal provision does not invalidate the Section 498 A. Taking a similar view of abuse of the provision of Section 498 A the Hon'ble Apex Court in the case of ***Arnesh Kumar Vs. State of Bihar*** reported in **(2014) 8 SCC 273** issued certain guidelines in respect of arrest u/s 498 IPC. Subsequently in case of Social ***Action Forum for Manab Adhikar Vs. Union of India*** reported in **(2018) SCC ON LINE SC 1501**, the Hon'ble Apex Court issued further direction however clarified that such directions will not apply in case of tangible physical injuries or death.

5. Law is also well settled that the inherent power of High Court u/s 482 Cr.P.C can be exercised; to prevent of abuse of process of court and where allegation in First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged, when there is abuse of process of court

etc.

6. It is also by now well settled that in a case of 498A IPC mere omnibus statement shall not suffice to make out a case under 498 A inasmuch as the court is also look into where a case filed under Section 498 A is actually being abused of the process of the Court.

7. The reading of the FIR discloses that the father in law and mother in law and the husband of the victim lady had demanded a cash amount of Rs.2,51,000/- and gold jewelery and electronics items before the marriage and such demand was fulfilled by the parents of the petitioner. It is also stated that after few months of marriage the petitioners i.e, husband and the in laws started demanding various articles including gold ornaments, however, the parents of the victim lady refused to meet such demand though the victim conveyed such demand to her parents over telephone and in view of such refusal, according to the victim girl/informant, the petitioner started torturing her physically and mentally since 2018. It was specifically stated in the FIR that she was confined and thereafter on 28.05.2021 she left the matrimonial home and somehow managed to come to Kolkata and took shelter at her brother's house who helped her to send her to her parents house at Jorhat and she arrived at Jorhat on 24.07.2021. thereafter FIR was lodged on 23.11.2021 and an explanation was given in the FIR for the delay in filing the FIR and according to the informant her parents had been trying to resolve the issue however the petitioners instead of resolving the issue threatened her as well as her parents with dire consequences.

8. The aforesaid statement which discloses demand of specific amount of dowry, month of demand and allegation of physical torture on failure to satisfy the dowry demands, in the considered opinion of this court cannot be termed as an omnibus statement. She specifically alleged that the petitioners tortured her physically and mentally.

9. Therefore in the considered opinion of this court from the aforesaid, it is clear that the allegations, if they are taken at their face value and accepted in their entirety prima facie case of 498 A is made out.

10. Coming to the argument of the learned counsel for the petitioner that there is a delay in lodging the FIR, this Court is of the view that the delay has properly been explained by the informant.

11. It is by now well settled that the FIR cannot be an encyclopedia inasmuch as in the case of ***M/s Niharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and Ors*** reported in ***(2021) SCC Online SC 315***, it was observed by the hon'ble Apex Court that the high court in exercise of inherent power should not stall the investigation inasmuch as it is the investigation which will bring out actual facts when prima facie case has been made out in the FIR.

12. This court for the reasons as discussed hereinabove does not find that the lodging of the FIR in question is an abuse of the process of the court. Therefore, ends of justice can be secured by allowing the investigation to continue during which the truthfulness of the allegations can be brought out. Therefore, since a prima facie case

under section 498 A is made out, this court is not inclined to quash the FIR in exercise of its power under section 4982 Cr.P.C., Accordingly the present criminal petition stands dismissed.

JUDGE

Comparing Assistant