

GAHC010270082018



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

Case No. : Crl.Pet./1227/2018

VIMAL AGRAWAL AND 3 ORS.
S/O LATE MADANLAL AGRAWAL
RESIDING AT PLOT NO. 337, MP CHRISTIAN COLLEGE ROAD,
KAILASH NAGAR
INDUSTRIAL AREA,
BHILLAI, DIST. DURG, CHATTISGARH.

2: SMT. MAMTA AGRAWAL

W/O SHRI VIMAL AGRAWAL
RESIDING AT PLOT NO. 337
MP CHRISTIAN COLLEGE ROAD

KAILASH NAGAR
INDUSTRIAL AREA

BHILLAI
DIST. DURG
CHATTISGARH.

3: NEERAJ AGRAWAL

S/O SHRI VIMAL AGRAWAL
RESIDING AT PLOT NO. 337
MP CHRISTIAN COLLEGE ROAD

KAILASH NAGAR
INDUSTRIAL AREA

BHILLAI
DIST. DURG
CHATTISGARH.

4: POOJA AGRAWAL

D/O SHRI VIMAL AGRAWAL
RESIDING AT PLOT NO. 337
MP CHRISTIAN COLLEGE ROAD

KAILASH NAGAR
INDUSTRIAL AREA

BHILLAI
DIST. DURG
CHATTISGARH

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:AANHA AGRAWAL
W/O SHRI NITIN AGRAWAL
D/O ANVESH KUMAR GOYAL
RESIDING AT HOUSE NO. 6

UTTAR ANAND NAGAR
GANESH MANDIR PATH

NOONMATI

GUWAHATI - 781020

ALSO AT
C/O SHRI ANVESH GOYAL
AMBA VIHAR COLONY
GANGOHI
NEAR STATE BANK OF INDIA
GANGOHI

DIST. SAHARANPUR
UTTAR PRADESH
PIN - 787341

Advocate for the Petitioner : MR D DAS

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.Pet./1230/2018

NITIN AGRAWAL
S/O SHRI VIAL AGRAWAL
R/O PLOT NO. 337
MP CHRISTIAN COLLEGE ROAD

KAILASH NAGAR INDUSTRIAL AREA
BHILLAI
DIST. DURG
CHATTISGARH.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP
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2:AANHA AGRAWAL
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AMBA VIHAR COLONY
GANGO
NEAR STATE BANK OF INDIA

GANGO
DIST. SAHARANPUR
UTTAR PRADESH PIN - 247341.

Advocate for : MR D DAS
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

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

Date of pronouncement : 20.2.2023

JUDGMENT AND ORDER(CAV)

- 1 Heard Mr. D. Das, learned Senior counsel assisted by Mr. H. Nath, learned counsel for the petitioner. Also heard Mr. D. Das, learned Addl. P.P. for the State respondent and Mr. A. Goyal, learned counsel appearing for the respondent No.2.
- 2 As agreed to by the learned Counsel for the parties, these two petitions are taken up together for final disposal together inasmuch as both the petitions are filed u/s 482 Cr.P.C. challenging FIR dated 16.11.2018 registered as Noonmati P.S. Case No.700/2018 lodged by the informant respondent No. 2 u/s 498-A/ 323 /327 /384 /400/ 506 IPC.
- 3 The petition No. 1227 is filed by the four petitioners, who are father-in-law, mother-in-law and sister-in-law of the respondent No.2/ informant and the petitioner in Petition No.1230 is the husband of the respondent No.2.
- 4 One of the basic grounds on which the FIR is assailed is that the Noonmati Police Station is not having jurisdiction to register such FIR.

However, such ground is not being argued by Mr. D. Das learned Senior Counsel, in view of the decision of the Hon'ble Apex Court laid down in ***Ms. Rupali Devi vs. State of U.P.*** reported in ***(2019) 5 SCC 384*** wherein it has been held that FIR can be registered for commission of offence u/s 498(A), at the place, where the victim has taken shelter. Therefore what remains for this court is to consider whether this is a fit case for quashing of the FIR on the basis of the allegation levelled in the FIR.

5 **SUBMISSION ON BEHALF OF THE PETITIONERS**

Mr. D. Das, learned Senior Counsel in support of quashing of the FIR dated 16.11.2018 urges the following points:

- (i) On perusal of the allegations of the FIR, it becomes clear that the same is bereft of any ingredients to constitute offence, under Sections 498(A) /323 /327/ 384/406/506 IPC.
- (ii) Mere mentioning of relevant Sections and language of those Sections is not sufficient to bring the criminal law into motion. Particulars of offence committed by each of the accused person and role played by them in committing that offence need to be specifically mentioned in the FIR. In the instant case there is no specific allegation leveled against the petitioners herein, in other words, even if the allegation 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 petitioners herein.
- (iii) It is trite in law that where the allegations in the FIR do

not constitute a cognizable offence the same is liable to be quashed. In the instant case the facts disclosed in the complaint do not make out any contravention of the provisions of the Indian Penal Code, 1860 and as such no offence is made out.

- (iv) The present proceeding is vexatious and harassing in nature. A completely false implication by way of general omnibus statement made in the course of matrimonial dispute and thus the continuation of the proceedings would be misuse of the process of law.
- (v) There is not a single whisper of allegation in the First Information Report against the petitioners in Criminal Petition No. 1227 herein for commission of offence under Sections 323 / 327 / 384/ 406 /506 of the Indian Penal Code. Therefore this Hon'ble Court may be pleased to quash the FIR arising out of a matrimonial dispute, wherein all family members had been roped into the matrimonial litigation.
- (vi) The continuation of the instant proceeding any further than the stage it has already reached will be a gross abuse of the process of court as the allegations when taken in their entirety do not disclose the commission of any offence by the petitioners.
- (vii) Relying on the judgment of the Hon'ble Apex Court in the case of ***Kahkashan Kausar alias sonam Vs State of Bihar and others*** reported in ***(2022) 6 SCC 599***, the learned Senior Counsel argues that the present is a case where the provision of Section 498 A IPC has been misused by implicating the relatives

of the husband of the informant and the implication of such FIR will have long time ramifications of a trial inasmuch as a bare reading of the FIR will go to show that the implications are false and no individual role has been attributed to the present petitioners. The learned Senior Counsel contends that in absence of any role attributed to the family members, it would be unjust, if the petitioners are forced to go through the tribulations of the trial inasmuch as the allegations made against the relatives are general and omnibus allegations. Therefore they should not be forced to undergo trial.

- (viii) Mr. Das, learned Senior Counsel further relies on the judgment of the Hon'ble Apex Court in ***Geeta Mehrotra and another Vs State of Uttar Pradesh and another*** reported in ***(2012) 10 SCC 741*** in support of his contentions and a judgment of Bombay High Court in ***Mrs Shamim Bashir Dhalla & ors Vs State of Maharashtra & another*** reported in ***2018 SCC Online Bombay 6821***

6. SUBMISSION ON BEHALF OF RESPONDENT No.2

Mr. A. Goyal learned counsel for the respondent submits that:

- i. As Mr. Das, learned Senior counsel has abandoned his argument on the point of jurisdiction of Noonmati P.S. to register the FIR, he will not advance any argument on that point inasmuch as the Hon'ble Apex Court in ***Ms. Rupali Devi*** (supra) has already laid down the principles of law that in case of commission of offence u/s 498 A , FIR can be lodged in a place

where the victim wife has taken shelter and in the present case the petitioner was taking shelter at her uncle's place at Guwahati and her father has also is having some property at Guwahati.

- ii. The bare perusal of the FIR will go to show that there are specific allegation that the relatives also joined the husband of the informant in commission of the offences under Sections 498 A /323 /327/ 384/406/506 IPC inasmuch as at paragraph 5 it is specifically stated by the victim that she has been scolded and beaten on being coaxed by the other petitioners and instead of saving her, the inlaws joined her husband in physically assaulting and hurling abuses at her.
- iii. At paragraph 11 of the FIR it is specifically stated that she was mercilessly beaten by her husband, his mother and sister and brother, while his father continued verbal tirade against her. Therefore it cannot be said that the FIR has not disclosed any offences as registered by the Noonmati P.S.
- iv. While relying on the decision of ***Neeharika Infrastructure Pvt Ltd Vs State of Maharastra and others*** reported in ***2021 SCC Online SC 315*** submitted that FIR cannot be encyclopedia and this court in exercise of its power should not stall the investigation inasmuch as the investigation will bring out the actual facts when prima facie case has been made out in the FIR.
- v. Relying on the judgment of Hon'ble Apex Court in ***State of Bihar and another Vs Md Khalique and another*** reported in

(2002) 1 SCC 652, Mr. Goyal contends that there is no abuse of process of law and prima facie case being made out, this court may not like to interfere with the investigation inasmuch as such power of quashing of criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of the rare cases.

- vi. Mr. Goyal further contends that except when the complaint or FIR broadly read does not disclose any offence can only be termed as abuse of process of law. In the present case there are specific allegation and specific role attributed to the present petitioners in the FIR which need to be investigated to bring out the actual truth and therefore at this stage the FIR should not be quashed. In support of such contention, Mr. Goyal relies upon the judgment of Hon'ble Apex Court in ***S.M Dutta vs State of Gujarat and another*** reported in **(2001) 7 SCC 659**.

7. The determination:

This court has given anxious consideration to the argument advanced by the learned counsel for the parties. Also perused the FIR and the annexures annexed to the petitions and the following are the findings of this Court:-

- I. The Hon'ble Apex Court after considering numerous cases in **Sushil Kr. Sarma Vs. Union of India** reported in **2005 6SCC 281** held that many instances

have come to light where complaints u/s 498 A are not bonafide and have been filed with oblique motive and in such cases acquittal of the cases 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 report 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.

- II. 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 do not constitute the offence alleged, when there is abuse of process of court etc.

III. 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.

IV. In the back drop of aforesaid settled proposition of Law, let this court now consider the present case:-

V. Reading of the FIR discloses that allegations are basically against the husband and the relevant portions containing such allegations are quoted below:

- (1) Only one month after her marriage, that is on an about 20th May, 2015 when she refused to consume liquor at his friend's house at Bhopal, she was severely reprimanded for being old fashioned. After two days, when she had applied lemon juice on her face, she was thrown out of the house and she had to pass the night at a park in the colony.
- (2) That very night thereafter, informant was beaten and scolded for bringing in insufficient dowry.
- (3) Cruel and inhuman behaviour of husband continued against her and finally she was thrown out of her matrimonial home at Bhilai on 11 November, 2018.

VI. The relevant paragraphs wherein the relatives of the husband are implicated are quoted below :

“ 5. That the husband of the informant scolded and beat her on being coaxed by his mother, father, brother and sister. Instead of saving her these relatives joined her husband in physically assaulting and hurling abuses at her”.

“7. At Indore also the informant was mercilessly beaten by her husband several times. In the meantime, the relatives of the informant’s husband also went to Indore. In the last week of August, 2015 Vimal Agarwal, father-in-law of the informant phoned her father to take her away otherwise she will face dire consequences. Having been thus forced, she came back to her parental home on 23rd September, 2015”.

“11 It was just a ruse by her husband to bring her home to inflict more injuries on her. He and his relatives above named started harassing her so that she bring more dowry in the form of jewellery and cash from her parents. She was mercilessly beaten up by her husband, his mother, sister and brother while his father continued a verbal tirade against her.”

“13. That in course of her stay at her matrimonial home the informant has been subjected to physical assault whereby she suffered grave injuries to her life, limb and

health. She also suffered mental torture in the form of abuses directed at her and her parents for not bringing sufficient dowry”.

- VII. In the case in hand, the offences registered are u/s 498 A /323 /327 /384/ 406 /506 IPC. In so far as the allegations made against the relatives it is specifically alleged that Instead of saving the informant from merciless beating of husband, these relatives joined her husband in physically assaulting and hurling abuses at her. Such statement cannot be termed as an omnibus statement inasmuch as specific role has been attributed to them.
- VIII. At paragraph 11 it is specifically alleged that she was mercilessly beaten up by her mother-in-law, her brother-in-law and sister-in-law. Though she has not stated what was the hurt that was inflicted upon her however, that can be verified during the process of investigation inasmuch it is well settled that each and every facts need not be narrated in details in FIR.
- IX. It is also specifically alleged that in the last week of August, 2015 Vimal Agarwal, father-in-law of the informant phoned the father of the informant to take her away otherwise she will face dire consequences. And she further alleges that she was forced to come back to

her parental home on 23rd September, 2015.

- X. There are specific allegation that the relatives i.e Mother, Father, Brother and sister joined her husband in scolding and beating
- XI. It is also an allegation made in the FIR that the husband scolded the informant and beat her on being coaxed by her relatives and that the relatives started harassing her so that she brings more dowry in the form of jewellery and cash inasmuch. Such allegation cannot also be treated as an omnibus statement and specific allegation of demand of dowry in terms of jewellery and harassment on the part of the petitioners are made.
- XII. From the aforesaid, it is clear that the allegations if they are taken at their face value and accepted in their entirety, prima facie constitute the offences alleged.
- XIII. The bare reading of the content of the FIR discloses that serious allegation is levelled against the husband and prima facie case is made out.
- XIV. The fact situation leading to passing of the decisions relied on by Mr. Das, learned Senior Counsel are different to that of the factual matrix of the present case. In those cases, no specific role were attributed to the relatives of the victim and therefore such decisions are not applicable in the given facts of the present cases

inasmuch as the allegation levelled in the FIR can't be termed as "Omnibus Statement" in present case.

- XV. This court, for the reasons discussed hereinabove don't find that the lodging of the FIR in question is an abuse of process. Therefore, ends of justice can be secured by allowing the investigation to continue, during which the truthfulness of the allegations can be investigated. Therefore, since a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, this court is not inclined to quash the F.I.R in exercise of power under Section 482 Cr.P.C. Accordingly, The CrI. Pet. 1227/2018 and CrI. Pet No. 1230/2018 are dismissed.

JUDGE

Comparing Assistant