

Judgement Reserved on 20.09.2023

Judgement Delivered on 10.10.2023

Neutral Citation No. - 2023:AHC-LKO:65872-DB

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 4813 of 2022

Petitioner :- Saurav Raj Singh And Others

Respondent :- State Of U.P Thru. Prin. Secy. Home And Others

Counsel for Petitioner :- Ravendra Prasad Misra, Jitendra Kumar Singh, Manoj Kumar Mishra, Sachchidanand Mishra, Shashi Kant Tripathi

Counsel for Respondent :- G.A., Girish Kumar Pande, Manoj Kumar Dwivedi, Prashant Pandey

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

1. This petition has been filed praying for quashing of F.I.R. dated 15.06.2022 lodged by the opposite party no.4 against the petitioners in Case Crime No.0180 of 2022 under Sections 498A/323/504/506 of the I.P.C. and Section 3/4 of the Dowry Prohibition Act, P.S. Aliganj, District Lucknow. A further prayer has been made for a direction to the respondents not to harass the petitioners in pursuance of the impugned F.I.R.

2. The allegation in the F.I.R. dated 15.06.2022 is that the respondent no.4 solemnized his daughter Sonakshi Verma's marriage with the petitioner no.1 on 15.02.2021. The expenses incurred in the engagement and the wedding were around 70 to 75 lakhs. He had given 35 to

40 Tolas of ornaments as a Wedding Gift to his daughter but soon after marriage the petitioner no.1 Saurav Raj, his father Dilip Kumar Sinha from his mother Nutan Sinha and his two brothers Nischal Raj and Pushkar Raj and her sister-in-law Anupriya Raj started misbehaving with his daughter Sonakshi only because she had brought less dowry. Anupriya Raj pulled the hair of Sonakshi and also took away all her ornaments but the in-laws did not say anything to stop her from harassing Sonakshi. Sonakshi used to talk about the harassment being faced by her to her mother but her mother kept on telling her that with passage of time every thing would be alright. However, the petitioner no.1 grew more and more aggressive. On 09.02.2022 when the petitioner no.1 was in Lucknow, he misbehaved with his daughter Sonakshi in front of several people and also beat her up. When the respondent no.4 and his wife tried to stop him, he became aggressive with them also. When the incident was communicated to the parents of petitioner no.1 they told him that such things happen all the time and in case respondent no.4 had some problem with it, he could buy a new house for his daughter and son-in-law in Patna. The respondent no.4

was shocked as he had given more than he could afford as dowry in the wedding of his daughter. He being a senior citizen had repeatedly requested his son-in-law and his parents to treat his daughter Sonakshi properly but the parents-in-law of Sonakshi keep on harassing and torturing her and accusing her of bringing less dowry. The respondent no.4 further alleged that they want the marriage to break up so that the petitioner no.1 can again get married and procure more dowry in the process. A request has been made to the police to take cognizance of the conduct of the petitioners and ensure that his daughter Sonakshi gets justice in the process.

3. It has been stated in the writ petition that petitioner No.1 was married to Sonakshi Verma daughter of opposite party no.4 on 15.02.2021 at Lucknow. As soon as the daughter of opposite party no.4 came to live in the matrimonial home she started misbehaving with the petitioners. The petitioner No.1 moved an application under Section 39 of the Cr.P.C. before the Chief Judicial Magistrate Saharsa Bihar on 04.04.2022 mentioning the unbearable physical and mental cruelty and abnormal behaviour of his wife as the wife of the petitioner No.1

continued to accuse him of illicit relationship with other woman and she beat the petitioner No.1 both within and outside the house.

4. The petitioner No.1 also filed an application under Section 13-A of the Hindu Marriage Act before the Principal Judge Family Court Patna registered as matrimonial Case No. 653 of 2022: *Sourav Raj versus Sonakshi Verma* on 21.05.2022. When the wife of the petitioner No.1 came to know about the application under Section 13-A for divorce, she became annoyed and the opposite party no.4 created a false and fabricated story and lodged the impugned F.I.R. on 15.06.2022. The opposite party no.4 is a highly connected person and is abusing his power with the police to harass the petitioners.

5. It has been further stated that the petitioner No.1 is a Government Servant posted at Saharsa Bihar. The daughter of opposite party no.4 is also working in Bihar as a Judicial Officer. Petitioner Nos.2 and 3 are the brothers of the petitioner No.1. Petitioner no.4 is his father, petitioner No.5 is his mother and petitioner No.6 is his sister-in-law and married to petitioner No.3. All of the family members of the petitioner No.1 are living in Patna.

The opposite party no.4 has made a false allegation of demand for dowry whereas the petitioners are themselves quite well off and have never demanded any dowry from the opposite party no.4.

6. Initially when the writ petition was taken up on 13.07.2022, this Court looking into the fact that the dispute was matrimonial in nature and likely to be resolved through mediation had directed stay of arrest of the petitioners and directed petitioner No.1 and the daughter of the opposite party number 4 to try and settle the dispute with the help of Mediation and Conciliation Centre.

7. A supplementary affidavit was filed by the petitioner in August, 2023 stating that petitioner no.4 has moved an application to the Superintendent of Police, Muzaffarpur Bihar regarding an incident which occurred on 06.06.2022 wherein Sonakshi Verma his daughter-in-law had beat the petitioner No.1 and his mother and requested for lodging of F.I.R. against Sonakshi Verma. In the said application mention was made of apprehension that the opposite party no.4 and his daughter will use various Sections of the I.P.C. and the Dowry Prohibition Act to falsely

implicate the petitioners. It is only thereafter that on 15.06.2022, an F.I.R. was lodged by the opposite party no.4 as aforesaid. On the very next day, i.e. on 16.06.2022 F.I.R. No. 345 of 2022 under Section 354-A I.P.C. was lodged in P.S. Madiyaon, North Lucknow against the petitioner No.1. Section 376 was added during the course of investigation and the petitioner No.1 challenged the same before this Court in writ in a petition under Section 482 Cr.P.C. titled as *Sourav Raj Singh vs State of U.P. and others*, where this court was pleased to pass an interim order on 14.07.2023 while referring to the interim order dated 13.07.2022 sending the matter to mediation.

8. The mediator suggested the petitioner No.1 and daughter of opposite party no. 4 to live together at Muzaffarpur for sometime to sort out their differences. The petitioner no.1 got his posting done at Muzzafarpur in January, 2023. On 26.03.2023 petitioner No.1 was discharging his official duty as a Magistrate and looking after the arrangements in the circuit House for the Governor of Bihar's visit. On the same day at around 10:30 AM Sonakshi Verma came to the Circuit House Muzaffarpur and started abusing the petitioner in front of

other officers and employees. She slapped the petitioner and tore his shirt. The petitioner informed of the incident to the District Magistrate Muzaffarpur Bihar on 27.03.2023 and also gave an application to S.H.O. of P.S. Kazi Mohd, District Muzaffarpur.

9. It has also been alleged that on 09.02.2022 Sonakshi Verma and the petitioner No.1 stayed in a hotel to attend the wedding of a friend and went back to Bihar and while deboarding the train Sonakshi Verma had again beaten up the petitioner No.1. The petitioner No.1 went back to Saharsa District, Bihar and got his medical examination done on 11.02.2022, a copy of the medical report has been filed as Annexure to the supplementary affidavit. In the supplementary affidavit it has also been stated that the ingredients of 498-A I.P.C. are not made out. In fact Sonakshi Verma has been cruel towards the petitioner and has beaten him up on several occasions.

10. It has also been stated that petitioner No.2 is working as an Office Assistant in Purvanchal Bank Branch at Siddharth Nagar U.P. and living separately, petitioner no.3 is working in a private company and he was not living in the matrimonial home and was in fact out of the country

with effect from 13.03.2021 to 02.05.2022. Petitioner no.4 and 5 are mother and father of petitioner No.1, and they live separately from the petitioner No.1 in Patna in their flat. Petitioner No.6 is living with her husband that is the petitioner no.3 in Patna along with her children and never stayed in the matrimonial home during the time that Sonakshi Verma was present there. It has been stated further that there are no specific allegations against petitioner no. 2 to 6 regarding any incident which occurred allegedly on 09.02.2022.

11. In response the counsel for the respondent no. 4 has filed a counter affidavit, wherein it has been stated that opposite party no.4 spent around 70 to 75 lakhs in the wedding of his daughter Sonakshi verma. Sonakshi Verma was not informed by her father regarding dowry being demanded by the petitioners. He kept quiet only to ensure a peaceful married life for his daughter and provided all articles demanded by the petitioners for the sake of his daughter to be treated properly in her matrimonial home but the greed of the petitioners kept on increasing. The Deponent's daughter never misbehaved with either the petitioner No.1 or his family members. The petitioners

demanding a new Home to be arranged by the respondent no.4 for the petitioner No.1 and his daughter to live and banished her from her matrimonial home even though the respondent no.4 was short of money. It has been stated that the petitioners moved an application under Section 39 of the Cr.P.C. unnecessarily before the Chief Judicial Magistrate as a Magistrate did not have any jurisdiction with regard to matrimonial disputes. The petitioner No.1 only tried to create evidence by lodging such application.

12. In the counter affidavit filed by the opposite party no.4 various allegations have been made regarding the conduct of the petitioners especially the petitioner No.1. It has been stated repeatedly that the petitioner No.1 filed a divorce petition behind the back of the deponent's daughter and also gave her Lucknow address, although she lived in Muzaffarpur in her official residence being Sub-Divisional Judicial Magistrate. The wrong address was given in the divorce petition by the petitioner No.1 so that notice could not be received and the Deponent's daughter is kept in the dark. Further the petitioner No.1 on 30.05.2022, accompanied the Deponent's daughter for Vat Savitri puja at her residence. He kept in constant touch

with the deponent's daughter via video calls and voice calls and also agreed to stay with her during mediation proceedings while at the same time kept a spy camera and recorded the Mediation proceedings quietly and without disclosing anything to either the mediators or the deponent's daughter so that he could collect evidence against her.

13. The Deponent's daughter could not come to know the filing of divorce petition under Section 13-A of the Hindu Marriage Act till the filing of this writ petition where a copy of the application under Section 13-A of the Hindu Marriage Act has been filed as Annexure. The petitioner No.1 in connivance with his family members filed a Complaint Case No. 739 of 2022: *Sourav Raj versus Sonakshi Verma and others* at Saharsa, Bihar, against the deponent, his wife and his daughter under Sections 323, 341, 379, 307, 120-B I.P.C. and pursued the same simultaneously while the mediation proceedings were going on before Mediation Centre of this court. In January, 2023 the petitioner No.1 consented to stay with the deponent's daughter in her official residence in the Civil Court Campus, Muzaffarpur Bihar, and also got his posting

in Muzaffarpur. During the said period the petitioner No.1 constantly tortured the deponent's daughter. The Deponent's daughter discovered two spy audio and video recorders and one charger from the bedroom and on opening the same she was shocked to hear all the conversation of the High Court mediation proceedings, and personal conversations of the deponent's daughter being recorded privately. When the Deponent's daughter objected to the same on 28.03.2023 the petitioner No.1 beat her badly and left her residence. With regard to the same incident F.I.R. was lodged in Muzaffarpur namely F.I.R. No. 295 of 2023, a copy of which has been filed as Annexure to the counter affidavit. When the said matter was reported by the deponent's daughter in the Mediation Centre the Mediation Centre Incharge took cognizance and asked the petitioner to submit an apology letter in respect to the same. It has been stated further that the mediator has brought the petitioners conduct on record and the audio recorder has been kept in a sealed cover by the Incharge of Mediation Centre. A copy of the complaint along with receipt of the High Court Mediation and

Conciliation Centre has been filed as an Annexure to the counter affidavit.

14. It has further been stated in the counter affidavit that the petitioner No.1 has done his best to tarnish the image of the deponent's daughter by sending complaints regarding her conduct to the Chief Justice of Patna High Court and to the District Judge. Copies of such complaints have been filed as Annexures to the petition. Mediation proceedings failed only because the petitioner did not want to settle the case and only prolonged the same to enjoy the interim protection granted by this Court. The learned counsel for the respondent no.4 has pointed out page no.30 of the counter affidavit which is a copy of the official website of District Courts in Bihar. It shows the filing of complaint case by the petitioner No.1 against the opposite party no.4 and his daughter on 13.07.2022. The petitioner No.1 on the very same day prayed for an Interim Order which was granted by this Court sending the parties for mediation.

15. In the rejoinder affidavit filed by the petitioner he has reiterated the contents of the writ petition and supplementary affidavit, it has also been stated that

during the pendency of Writ Petition No. 4813 of 2022, respondent no.4 along with his wife and his daughter had come to the residence of the petitioner No.1 and had beaten him up for which complaint case No. 739 of 2022: *Sourav Raj versus Sonakshi Verma and others*, has been filed by him in Saharsa, Bihar under Sections 323, 341, 379, 307 I.P.C. It has also been alleged that in the F.I.R. dated 15.06.2022, the respondent no.4 has referred to an incident which occurred on 09.02.2022 when the petitioner No.1 allegedly had beaten the daughter of the opposite party no.4 in front of him at his home, whereas the truth of the matter is that Sonakshi Varma and the petitioner No.1 had stayed in a hotel and attended the wedding of the friend of the petitioner No.1 on 09.02.2022 and before coming to Lucknow Sonakshi Verma had beaten up the petitioner on 08.02.2022 while travelling in the train and therefore instead of going to Sonakshi Varma's house, the petitioner No.1 had preferred to stay in a hotel. While going back to Bihar, Sonakshi Verma had again beaten him up on 10.02.2022 for which after returning to Saharsa the petitioner No.1 got his medical examination done on 11.02.2022.

16. It has been argued by Sri Murli Manohar Srivastava that the petitioners' counsel did not disclose the filing of the complaint case in the court of C.J.M. Saharsa, Bihar by the petitioner No.1 against the opposite party no.4 and his daughter on 13.07.2022 even while posing to amicably settle the dispute as suggested by this Court in this petition. He also did not disclose this to the Court in the petition under Section 482 Cr.P.C. filed by him for quashing of order dated 28.06.2023 passed by the Chief Judicial Magistrate Lucknow in Misc. Case No.2 of 2023 arising out of F.I.R. No. 345 of 2022 under Sections 354-A ,376 I.P.C. at P.S. Madiyaon Lucknow North. This Court in the aforesaid petition under Section 482 noted that there was a matrimonial dispute between the parties which had resulted in the maid of the respondent no.4 lodging the complaint of molestation and rape against the petitioner and granted interim protection to him by its order dated 14.07.2022. The Court noted in its order that Petition No.4813 of 2022 had been filed by the petitioner challenging the F.I.R. in Case Crime No.0180 of 2022 filed under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act in which an interim order

was granted by the Court on 13.07.2022 while sending the matter to the Mediation and Conciliation Centre of the Court.

17. The Writ Petition No. 5719 of 2022 was also filed by the petitioner for quashing of F.I.R. No. 345 of 2022 under Section 354-A I.P.C., Police Station Madiyaon District Lucknow. The Court while noting the interim protection granted in Writ Petition No. 4813 of 2022 where the dispute had been sent to the Mediation and Conciliation Centre directed stay of the arrest of the petitioner Sourav Raj Singh in pursuance of F.I.R. No. 345 of 2022 also by its order dated 08.08.2022.

18. In response to such submission, the learned counsel for the petitioner has pointed out page-31 of the counter affidavit, which is a copy of F.I.R. No.295 of 2023 filed in Muzaffarpur by Sonakshi Verma on 15.04.2023 for alleged incident of 28.03.2023, wherein Sonakshi Verma had complained that Sourav Raj posted as Deputy Collector Muzaffarpur, was living with her in her official residence in the Civil Court Campus Muzaffarpur, with effect from 01.02.2023, as suggested by the mediators in proceedings initiated against F.I.R. No. 0180 of 2022 under Section

498A, 323, 504, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act registered at Police Station Aliganj District Lucknow, and argued that the father had filed the F.I.R. against him at Lucknow while the daughter has filed F.I.R. against petitioner no.1 at Muzaffarpur, Bihar, making similar allegations.

19. However, when this Court has carefully considered the application dated 28.03.2023 made to the Police Station concerned by Sonakshi Verma, it appears that it relates to manhandling by the petitioner Sourav Raj of his wife and threatening her of dire consequences including of taking her life, which had resulted in Sonakshi Verma making an application to the Police Station concerned that she lived alone in her official residence and was afraid that the petitioner no.1 would cause her physical harm and, therefore, requested for security to be provided to her.

20. This Court has carefully gone through Annexure to the counter affidavit which is a letter sent by Sonakshi Verma on 07.04.2023 to the organizing Secretary of Mediation and Conciliation Centre High Court Lucknow with copy to the Registrar of this Court, mentioning about discovery of one spy video camera recorder along with spy

audio recorder in the petitioner no.1's wardrobe by her which she opened to find all her personal conversations and mediation Proceedings being recorded privately. When she confronted her husband, she was beaten up by him and he left the residence on 2.03.2023. The spy video recorder along with voice recorder were forwarded to the Mediation and Conciliation Centre and they were directed to be put in a sealed envelope and kept on record of the mediation proceedings by the Secretary. A copy of the written apology submitted by the petitioner for his action of privately recording mediation proceedings has been requested to be given by the daughter of the deponent but has not yet been provided by the Mediation and Conciliation Centre.

21. This Court sitting in extraordinary writ jurisdiction which is an equitable jurisdiction finds the conduct of the petitioner no.1 reprehensible, and even otherwise cognizable offence committed by the petitioner no.1 is clearly made out. Therefore, this Court finds no good ground to quash the impugned F.I.R. in so far as petitioner no. 1 is concerned. This

writ petition is *dismissed* in regard to petitioner no.1- Saurav Raj Singh.

22. In relation to petitioner nos. 2 to 6, this Court has duly considered the law as settled by the Supreme Court in the case of *Sushil Kumar Sharma versus Union of India* 2005 (6) SCC 281, the Supreme Court while upholding the provisions of Section 498-A of the I.P.C. had also observed that remedial measures should be taken to prevent abuse of a well-intentioned provision. Merely because the provision had been adjudicated as constitutional and ultra vires it did not give any licence to unscrupulous persons to wreck personal vendetta or unleash harassment and that it has become necessary for the legislature to find out ways to prevent frivolous complaints or allegations against innocent persons. In *Neelu Chopra and another versus Bharti*, AIR 2009 SC supp 2950, the Supreme Court observed that the complaint did not show as to which of the accused had committed which offence and what was the exact role played by the accused, it would be an abuse of process of law to allow prosecution to continue specially against aged

parents, on vague and general complaints made by the Respondent.

23. In *Manju Ram Kalita versus State of Assam* 2009 (13) SCC 330, where the Court had defined cruelty in the context of Section 498-A of the I.P.C.; it has been observed that cruelty should be of such serious nature as would lead to likelihood of the aggrieved woman committing suicide. It should also be evident from the perusal of the F.I.R. itself that the woman has been subjected to cruelty on a continuous basis, or at least in close proximity of lodging the complaint. Petty quarrels would not come under the purview of cruelty.

24. In *Preeti Gupta and another versus State of Jharkhand*, 2010 (7) SCC 363; the Supreme Court had observed that there is a widespread tendency of implicating not only the husband but all members of his immediate family and the Courts have to be extremely careful and cautious in dealing with these complaints. The courts must consider the pragmatic realities while dealing with matrimonial cases and the allegations of harassment by the husbands close relations who had been living in different cities and had never visited or rarely visited the

place where the complainant resided should be considered as valid ground for quashing F.I.R. against such relations.

25. In *Kahkashan Kausar and another Versus State of Bihar and others, 2022 live law (SC) 141*, the Supreme Court expressed concern over the misuse of Section 498-A I.P.C. and the increased tendency of implicating relatives of the husband in matrimonial disputes without analysing the long-term ramifications of such a trend. If left unchecked such a tendency would result in misuse of the process of law.

26. In *Geeta Mehrotra versus State of U.P. and others, 2012 (10) SCC 741*; the Supreme Court had observed that mere casual reference of the names of family members in the matrimonial dispute without allegation of any active involvement in the matter would not justify taking cognizance against them, overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel.

27. In *K. Subbarao vs State of Telangana 2018 (14) SCC 452*, it was observed that the Court should be careful in proceeding against distant relatives in crimes pertaining to matrimonial disputes and dowry deaths.

28. So far as the petitioner nos.2 to 6 are concerned, the writ petition is ***disposed of*** with a direction that till submission of police report under Section 173(2) Cr.P.C. or till credible evidence is collected against any of these petitioner nos.2 to 6, if any, before the Competent Court, the arrest of the petitioners, namely, **Nischal Raj, Pushkal Raj, Dilip Kumar Sinha, Nutan Singh and Anupriya Raj**, in pursuance to the impugned First Information Report dated 15.06.2022, in FIR No.0180 of 2022, under Sections 498-A, 323, 504 and 506 of the I.P.C. and Section 3/4 of the Dowry Prohibition Act, Police Station - Aliganj, District Lucknow, shall remain stayed, of course, subject to the restraint that the petitioner nos. 2 to 6 shall fully cooperate with the investigation and shall appear as and when called upon to assist in the investigation.

Order Date :- 10/10/2023

Rahul

[Justice Narendra Kumar Johari] [Justice Sangeeta Chandra]