

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 779 of 2013

1. Chitrasen Pradhan @ Laxminarayan S/o Shri Ravilal Pradhan, aged about 30 Years, Caste Kolta, R/o. Baradoli, P.S. & Tah. Saraipali, Civil & Rev. Distt. Mahasamund (C.G.).
2. Smt.Malti Pradhan W/o Ravi Lal Pradhan, aged about 60 Years Caste Kolta, R/O. Baradoli, P.S. & Tah. Saraipali, Civil & Rev. Distt. Mahasamund (C.G.)
3. Rajkumari Wd/o Late Rajendra Pradhan, aged about 60 Years Caste Kolta, R/O. Baradoli, P.S. & Tah. Saraipali, Civil & Rev. Distt. Mahasamund (C.G.)

---- Petitioners

Versus

1. State Of Chhattisgarh And Anr. Acting Through: Officer-In-Charge, P.S. Saraipali, Civil & Rev. Distt. Mahasamund (C.G.)
2. Sushma Pradhan W/O Chitrasen Pradhan Aged About 23 Years D/O Chandrahas Patra, R/O. Vill. Toshgaon, P.S. Bashna, Tah. Saraipali, Civil & Rev. Distt. Mahasamund (C.G.)

---- Respondents

For the Petitioners	:	Mr. K. A. Ansari, Sr. Advocate with Mr. Vipin Singh, Advocate
For Respondent No.1	:	Ms. Mudali Asha, Panel Lawyer.
For Respondent No.2	:	Mr. Abhishek Saraf, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

26/08/2015

1. This is a petition under section 482 of the Code of Criminal Procedure seeking quashment of FIR and the charge sheet filed in Criminal Case No.280 of 2013 pending before the JMFC, Saraipali.
2. Briefly stated facts are that Petitioner No.1 Chitrasen Pradhan @ Laxminarayan was married to respondent No.2 Sushma on 22.05.2010 at village Toshgaon. It is the case of the petitioners that after the marriage, the daughter-in-law was looked after with utmost affection while she lived at her matrimonial home.

It is stated that no dowry was demanded by the petitioners either before marriage or during marriage as the custom do not warrant the same in their community. It is further case of the petitioners that out of wedlock, a child was born on 12.08.2011 and the respondent remained at her matrimonial home only for some time. The petitioners have stated that the sister of the petitioner No.1 delivered a baby at village Baradoli in Nov. 2010 and respondent no.2 was informed about this and she came to village Baradoli. Thereafter, the complainant called her father and went back to her parental house on 28.11.2010 and thereafter she did not return. It is further case that when she did not return, despite attempts made by the petitioners, a meeting of community was convened in parental village of respondent No.2 Toshgaon initially on 22.7.2011 and in such meeting, the complainant had agreed to the fact that whatever had happened for which complainant herself was liable.

- (ii) Thereafter, things did not improve and again a meeting was convened and thereafter, the respondent came back to the matrimonial home and lived there from March 2011 to the middle of July 2011 and again went back to the parental house in the middle of July, 2011. It is further contended that during the period, she lived with the petitioners and there was no change in her attitude. On the contrary after the birth of child, she developed arrogance and showed disrespect towards elders and extended threat to implicate petitioner No.1 and his family members in criminal case. In the meanwhile, she consumed poison, therefore, on receiving information Petitioner No.1 who was at Raigarh has rushed to the village Baradoli and the incidence was informed to the mother and father of respondent No.2 and thereafter, she was taken away by her parents to their village.

(iii) Subsequently, again a community meeting was held on 27.5.2012 and the meeting was convened at village Manki on 07.6.2012 wherein it was decided by the elders that respondent wife should live with Petitioner No.1 at Raigarh but despite that she did not return back to the petitioner. Subsequently, again a meeting was held on 24.11.2012 and in such meeting, considering the *inter-se* relation between the parties, it was decided in the meeting that respondent No.2 and petitioner No.1/ husband shall reside separately for a period of two years and the alimony of Rs.4000/- was decided to be paid towards maintenance to the wife. It is further contended that this was not accepted by the respondent wife and she refused to give her consent. Ultimately, when further relations did not improve, the petition was filed before the family Court at Raigarh for judicial separation by the husband. The said application was filed u/s 10 of the Hindu Marriage Act, 1955 on 02.02.2013. After service of notice of such petition, a report was lodged. According to the petitioner, a false report was lodged at Bashna police station raising allegations of cruelty upon which the FIR was registered on 01.03.2013.

3. Shri K.A. Ansari, learned Senior Advocate appearing on behalf of the Petitioner assisted by Shri Vipin Singh would submit that the case is an outcome of counter blast after the application for judicial separation was filed. It is contended that according to the FIR, no case u/s 498-A is made out as it would not come within the definition of section 498-A. He further submits that the stage of the case would show that after receiving of the notice of such application from the family court for judicial separation, the FIR has been lodged. He further referred to the community meeting and would submit that nothing was narrated in such meeting and it was admitted by the wife that

she herself was responsible. Consequently, it is writ large that false averments have been made.

4. Learned counsel has placed reliance on a decision rendered in ***Criminal Appeal No.1277/2014 (Arnesh Kumar Vs. State of Bihar)*** decided on July 2, 2014 and would submit that Section 498-A cannot be used as a weapon to humiliate the persons as it has been done in this case. He further placed his reliance in a case law reported in ***(2005) 6 SCC – Sushil Kumar Vs. Union of India*** and would submit that the object of provision in prevention of dowry cannot be misused when the complaint is not bonafide. He would also contend that the circumstances would point out that the complaint so made is not bonafide. He further placed reliance in case of ***Preeti Gupta Vs. State of Jharkhand (2010) 7 SCC 667 = 2010 AIR (SCW) 4975*** and submits that according to the principles laid down in such case, the FIR and statement in the present case would not lead to establish prima facie commission of offence. Therefore, it is prayed that the FIR and the criminal case may be quashed.
5. Per contra, Shri Abhishek Saraf, learned counsel appearing on behalf of respondent wife would submit that in the FIR the name of petitioners have been categorically mentioned and at this stage, it will be not permissible for the Courts to go into the veracity of the statement and on perusal of FIR and the statements if prima facie case is made out, then according to the case law laid down in ***Homi Rajvansh Vs. State of Maharashtra (2014) 12 SCC 556*** while exercising the powers under Section 482 Cr.P.C., it is not necessary to consider as to whether on allegations made in the complaint prima facie case is made or not. It is further contended that

the court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial. It is therefore contended that the petition would be liable to be dismissed.

6. Learned Panel Lawyer Ms. M. Asha also supports the arguments of counsel for respondent No.2.
7. The FIR in this case is placed on record as Annexure P-6. Reading of FIR would show that it was lodged by Sushma Pradhan on 01.03.2013 against her husband Chitrasen Pradhan, mother-in-law Malti Pradhan and *Kaki Sas* Raj Kumari Pradhan. The FIR speaks that the complainant was married to Chitrasen Pradhan and after marriage for some time, she was kept well uptill 4 months. Thereafter, she was being tortured for the reason that Car was not given in the dowry, consequently she was subjected to cruelty by her husband, mother-in-law and Kaki Sas and eventually she was evicted from matrimonial house on 16.12.2011. The statement of Sushma Pradhan is also enclosed. She has repeated the fact that she was subjected to cruelty and on being asked the reasons for cruelty it was stated that until the car is given, she would be subjected to the same treatment. Similar statements have been given by witnesses Chandrahas and Prafull Kumar Bhoi that the complainant was subjected to torture because of the fact that the car was not given. The documents of community meeting dated 27.2.2011 and 24.11.2012 are not part of the charge sheet which have been attached to the petition. Reading of these documents would show that difference of opinion was existed between husband and wife which was subject of settlement in the society. The documents are not evident of fact that on what issue the dispute was

existing. Rest of the statements of witnesses i.e., respondent and other prosecution witnesses hold the field till date unless facts come in rebuttal in cross-examination.

8. The Supreme Court in ***Binod Kumar Vs. State of Bihar (2014) 10 SCC 663*** has reiterated that exercise of power u/s 482 is limited for quashment of the proceeding. In para 10 of its judgment, after considering various case laws the Court has laid down the principles relevant for the purpose of quashment. Para 10 is reproduced herein below :

10. *In Indian Oil Corporation vs. NEPC India Ltd. And Ors., (2006) 6 SCC 736, this Court has summarized the principles relating to exercise of jurisdiction under Section 482 Cr.P.C. to quash complaints and criminal proceedings as under:-*

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre (1988) 1 SCC 692, State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335; Rupn Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194, Central Bureau of Investigation v. Duncans Agro Industries Ltd (1996) 5 SCC 591; State of Bihar v. Rajendra Agrawalla (1996) 8 SCC 164, Rajesh Bajaj v. State NCT of Delhi, (1999) 3 SCC 259; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd (2000) 3 SCC 269 [pic] Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, M. Krishnan v. Vijay Singh (2001) 8 SCC 645 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a

meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

9. Likewise in a case law reported in **(2015) 1 SCC 788 – P.S. Meherhomji Vs. K.T. Vijay Kumar and others**, the Court while reiterating the guidelines, laid down that summoning of accused in a criminal case is a serious matter as also at the same time to quash the complaint the inherent power u/s 482 Cr.P.C., can be exercised only in cases where the complaint

does not disclose any offence or is vexatious or oppressive.

Paras 14 & 16 are relevant here and quoted below:

“14. It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.”

16. *In Dhanalakshmi v. R. Prasanna Kumar, 1990 Supp SCC 686* a three-Judge Bench of this Court held :

“3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.”

10. Likewise in a case law reported in **(2014) 12 SCC 556 – *Homi Rajvansh Vs. State of Maharashtra*** the Supreme Court has laid down the principle to quash the complaint and has stated that for exercising powers u/s 482, it is necessary to consider as to whether the allegations *prima facie* make out a case or not. At Para 16 it has been held thus:

“16. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint *prima facie* make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are likely to be upheld in trial.”

10. Therefore, on perusal of FIR and Statements made by the petitioners, at this stage, it cannot be branded that if the statements are accepted as a whole it will lead to acquittal of the petitioners. While exercising the power under Section 482 Cr.P.C, this Court will not meticulously go into the fact that whether such statements would end in acquittal ? Prima facie, it appears that the allegations have been levelled and the same are to be tested at the floor of trial Court during evidence by virtue of examination and cross examination.
11. Considering the facts and circumstances and in view of the above position of law, at this stage, I am not inclined to invoke jurisdiction of Section 482 Cr.P.C., to quash the proceeding.
12. In the result, the petition is dismissed.

Sd/ -
GOUTAM BHADURI
JUDGE