

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No. 741 of 2015**

1. Hitesh Shrivastav S/o Ramswaroop Shrivastav Aged About 34 Years R/o Village - Shyamnagar, Kiran Kunj, Gandhi Chowk, Raipur, Civil & Revenue District - Raipur Chhattisgarh
2. Saurabh Shrivastava S/o Ramswaroop Shrivastav Aged About 29 Years R/o Village - Shyamnagar, Kiran Kunj, Gandhi Chowk, Raipur, Civil & Revenue District - Raipur Chhattisgarh
3. Smt. Kiran Shrivastav W/o Ramswaroop Shrivastav Aged About 58 Years R/o Village - Shyamnagar, Kiran Kunj, Gandhi Chowk, Raipur, Civil & Revenue District - Raipur Chhattisgarh
4. Ramswaroop S/o Late Onkar Shrivastav Aged About 61 Years R/o Village - Shyamnagar, Kiran Kunj, Gandhi Chowk, Raipur, Civil & Revenue District - Raipur Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The District Magistrate - Rajnandgaon Chhattisgarh
2. Smt. Sarita Shrivastava Wife of Hitesh Shrivastava aged about 33 years, R/o Ward NO. 8. Turkaripara Khairagarh Civil and Revenue District Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioners: Shri Malay Kumar Bhaduri, Advocate
 For Respondent No.1/State: Shri Neeraj Jain, Government Advocate
 For Respondent No.2: Shri Praveen Dhurandhar, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.07.2016**

1. The present Cr.M.P. has been preferred challenging the order dated 20.05.2015 passed by the Additional Sessions Judge, Rajnandgaon in Criminal Revision No. 13/2014. By the said impugned order the Court below has discharged the Petitioner No.2 from the offence under Section 3 & 4 of the Dowry Prohibition Act but

framed the charge of the offence under Section 498-A of IPC. So far as other Petitioners are concerned the Court below has framed charges under Section 498-A of the IPC as well as Section 3 & 4 of the Dowry Prohibition Act.

2. Learned Counsel for the Petitioners assailing the said framing of charge submits if we look into the nature of the allegation levelled by the Respondent No.2 in her written complaint, it would clearly reflect that there were extraneous consideration which have cooked in the mind of the complainant for lodging the complaint against the present Petitioners. He further submits that it is a case where subsequent to the Respondent No.2 getting an employment with the State Government as a Siksha Karmi, Grade-III she was not interested to stay with her husband at her matrimonial home, therefore she has chalked out a story and filed the complaint.

3. He further submits that even otherwise the nature of the complaint levelled by Respond No. 2 also would not fall within the ambit of definition of "dowry" as has been defined in the Dowry Prohibition Act, 1961 and prays that this Court may quash the order dated 20.05.2015 holding that there is no case made out against the present Petitioners.

4. Learned State Counsel as well as Counsel for Respondent No.2 both vehemently opposed the Petition and submit that prima facie reading of the complaint itself would reflect that there have been serious allegation levelled by the Respond No. 2 in writing against the present Petitioners and this was precisely the reason

which have been taken by the Court below while framing of the charges.

5. Learned Counsel for the Respondent No.2 further submits that so far as the power under Section 482 of Cr.P.C. is concerned, the scope of interference of the High Court at the stage of framing of charge is very limited. All that the Court has at this juncture to see is whether in the complaint which has been lodged by the Respond No. 2 prima facie materials are available or not in constituting the offence for the charges which has been framed. The plain perusal of the written complaint submitted by the Respondent No.2 evidently shows that there are serious allegations against each of the Petitioners so far as both the offences under Section 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act are concerned.

6. Whether these averments made by Respondent No.2 does not constitute offence or not, or whether there are material on the part of Respondent No.2 to establish these charges are all the facts which are to be taken note of during the course of trial, where the parties would get an opportunity to establish their respective case by leading cogent evidence. This Court would not at this stage consider the evidence which has come on record threadbare.

7. So far as the law under Section 482 CrPC is concerned is by now a well settled proposition, that while considering the case for quashing of the Criminal proceedings the court should not "kill a stillborn child" and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some

substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegation as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.

8. The Supreme Court in case of **N. Soundaram Vs. P.K. Pounraj and Another** reported in **(2014) 10 SCC 616** in paragraph 13 has categorically held that : -

“13. it is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

9. For the foregoing legal position as a sans it to do, this Court is of the opinion that there have been sufficient materials brought by the complainant before the Court below, on the basis of which charges have been framed and as such it can not be said to be

contrary to the evidence or bad in law in any manner nor can it be said to be a perverse finding of the facts by the Court below.

10. For the aforesaid reasons the present Cr.M.P. being devoid of merit, the same is dismissed.

Sd/-

(P. Sam Koshy)
JUDGE