

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P No. 701 of 2015**

1. Smt. Sarala Gupta W/o Shri Radhekrishna Gupta, aged about 72 years, R/o Ward No. 02, Jangalpara, Nagri, Tah. and Thana - Nagri, District Dhamtari, Chhattisgarh.
2. Abhishek Gupta S/o Shri Radhekrishna Gupta, aged about 37 years, R/o Ward No. 02, Jangalpara, Nagri, Tah. and Thana Nagri, District Dhamtari Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh through Chief Judicial Magistrate Durg, Thana Kotwali Durg, Tah. and District Durg, Chhattisgarh.
2. Smt. Harsa Gupta D/o Shri Om Prakash Sharma R/o Ishika Beauty Parlor, Near Alka Typing Institute, Ward No. -32, Jain Mandir Road, Baniya Para Durg, Tah. and District Durg, Chhattisgarh.

---- Respondents

For Petitioners : Shri R. S. Patel, Advocate
 For Respondent no.1/State: Smt. M. Asha, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/08/2016**

The present petition has been filed seeking for quashment of the FIR dated 30.06.2013 registered in Crime No. 593/2013 at Police Station Durg whereby the Police Authorities have registered an offence under Section 498A/34 of IPC against the petitioners.

2. Counsel for the petitioners assailing the said FIR and the criminal proceedings initiated thereafter submits that it is a case where on 10.02.2013, as is evident from Annexure P-2, the petitioner no.2 had already made a report to the Police Station Nagri anticipating a false and fabricated case against the petitioners because of the relations between the two i.e. petitioner no.2 husband and respondent no.2 complainant got strained. He submits that after about five months from the said

complaint made by petitioner no.2, the present FIR has been lodged by the respondent no.2 against the petitioners which shows malafides on the part of the respondent no.2 wife. It is submitted that on an earlier occasion respondent no.2 had also lodged a report at Mahila Thana, Durg which was investigated upon and it was found that there was not much substance in the said complaint lodged by respondent no.2 and accordingly, the matter was closed. Subsequently, the present FIR dated 30.06.2013 has been lodged.

3. Counsel for the petitioners submits that the entire averments and contentions made in the said FIR are totally false and baseless. According to the petitioners, the respondent no.2 had stayed with them only for a period of about 10 days and subsequently she left the matrimonial home of her own. Therefore, there was no occasion for the offence under Section 498A of IPC to have been committed by the petitioners. It is also the contention of the counsel for the petitioners that it is a case where the allegations made against the petitioners stand disproved on the very fact that the respondent no.2 had initiated a proceeding under Section 125 CrPC seeking maintenance from petitioner no.2 husband which was rejected by the Family Court, Durg. This itself prima facie shows that there was no sufficient ground for respondent no.2 to have left the matrimonial home. In addition, the case of respondent no.2 also stands falsified on account of the fact that the proceedings under Section 9 of the Hindu Marriage Act initiated by petitioner no.2 husband has also been allowed which also goes against respondent no.2. Therefore, counsel for the petitioners prays that this Court invoking the extraordinary powers conferred upon it under Section 482 CrPC should quash the impugned FIR and the subsequent criminal proceedings.

4. State counsel opposing the petition submits that the complaint made by the complainant has only been registered by the Police Authorities and for which they are duty bound. Whether the allegations made against the petitioners are correct or not are all matter of evidence which at this stage cannot be thrashed out in a proceeding under Section 482 CrPC. State counsel referred to the statement of the complainant on the basis of which FIR has been lodged wherein she has made specific allegations against both the petitioners of having subjected her to cruelty, ill treatment and torture. In addition, she has also specifically made allegations of demand of dowry and harassment on the issue of not providing sufficient dowry at the time of marriage. According to the State counsel, this being the prima facie averments made in the complaint, the Police Authorities could not have refused registration of the offence. He further submits that all other contentions which the petitioners have made are all matter of evidence which would be considered at the appropriate stage and not at the present stage. Therefore, the petition as of now is premature and deserves to be rejected.

5. Having heard the contentions and submissions put forth by the counsel on either side and on perusal of the record what clearly reflects is that there are serious allegations levelled by respondent no.2 against the petitioners and it is not a case where the allegations made against the petitioners are fake and omnibus. Rather specific allegations of cruelty, torture and harassment have been made by respondent no.2 against the petitioners. Hence, in the light of the judgment of the Supreme Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1** the Police authorities have not committed any infirmity or illegality.

6. Under the given circumstances, the submissions and contentions which have been put forth by the counsel for the petitioners would be all matter of their defence which at this initial stage of lodging of FIR cannot be thrashed out by going into the merit of the case. Therefore, at this juncture, it would not be proper for this Court to invoke the powers under Section 482 CrPC for quashing the entire criminal proceedings itself even before the parties to the dispute are permitted to lead evidence in this regard more particularly when there are specific allegations made in the complaint.

7. Another aspect which has to be borne in mind that there is a specific statement made by the counsel for the petitioners that till date the charge itself has not been framed in the instant case that also is an added ground for not entertaining the petition under Section 482 CrPC. The submissions and contentions which the petitioners have made before this Court are all the matter of facts which the petitioners can bring to the notice of the Court below at the time of argument before framing of charge which the Court below shall also keep in mind while framing the charge.

8. Thus, in the opinion of this Court, it would not be appropriate at this juncture for this Court to enter into the merits of the case and decide the veracity of the allegations levelled by the respondent no.2 against the petitioners.

9. Accordingly, the present CrMP being devoid of merit stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE