

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 988 of 2016**

1. Naveen Sahu S/o Ram Prasad Sahu Aged About 33 Years R/o Village Ranai, Police Station- Patna, District- Korea, Chhattisgarh.
2. Ram Prasad Sahu S/o Late Ram Dayl Sahu Aged About 64 Years R/o Village Ranai, Police Station- Patna, District- Korea, Chhattisgarh
3. Smt. Durgawati Sahu W/o Ram Prasad Sahu Aged About 62 Years R/o Village Ranai, Police Station- Patna, District- Korea, Chhattisgarh
4. Dr. Vivek Sahu S/o Ram Prasad Sahu Aged About 31 Years R/o Baikunthpur, Near Mahalpara Road Police Station- Baikunthpur, District- Korea, Chhattisgarh.
5. Smt. Prabhavi Sahu W/o Dr. Vivek Sahu Aged About 28 Years R/o Baikunthpur, Near Mahalpara Road Police Station- Baikunthpur, District- Korea, Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station- Patna, District- Korea, Chhattisgarh.
2. Sandhya Sahu W/o Naveen Sahu Aged About 30 Years Presently Residing At Kabir Ward No.44, Ambikapur, Police Station- City Kotwali, District- Surguja, Chhattisgarh.

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For Petitioners	:	Mr. Praveen Das, Advocate
For Respondent-State	:	Mr. Bhaskar Pyasi, Panel Lawyer
For Respondent No.2	:	Mr. D.K. Gwalre, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**C.A.V. Order****Reserved on 29.11.2016****Delivered on 14.12.2016**

1. The present Petition under Section 482 of the Cr.P.C. has been filed seeking

for quashment of Criminal Case No. 515/2016 instituted against the Petitioners before the Court of Chief Judicial Magistrate, Baikunthpur arising out of F.I.R. No. 44/2016 registered at police station Patna district Korea.

2. A brief fact relevant for adjudication of the present Petition is that an F.I.R. in Crime No. 44/2016 was registered at Police Station, Patna District Korea against the present Petitioners filed by Respondent No.2 for the offence under Section 498-A/34 of the IPC. On the basis of the said F.I.R. and after preliminary investigation the charge sheet was filed and a case i.e. Criminal Case No. 515/2016 has been registered.
3. The fact in brief is that Respondent No.2 Sandhya Sahu was married to Petitioner No.1 Naveen Sahu on 08.06.2003. In year 2004 a son was born from the wedlock. Subsequently, after a gap of more than 13 years i.e. on 23.01.2016 complainant for the first time lodged the report to the police authorities alleging physical torture and cruelty at the hands of the Petitioners. The Petitioner No.1 is the husband of Respondent No.2, Petitioner Nos. 2 & 3 are father-in-law and mother-in-law of Respondent No.2 and Petitioner No.4, a Doctor by profession is the brother of Petitioner No.1 as such brother-in-law of Respondent No.2 and Petitioner No.5 is wife of Petitioner No.4 as such she is sister-in-law of Respondent No.2.
4. According to Respondent No.2 in year 2005 Petitioner No.1 got selected in Police Department in the State of Chhattisgarh as a constable and was sent for training at Rajnandgaon. He used to visit his home town at regular intervals. According to her, Petitioner No.1 never tried to take her along with him to the place where he was posted and always forced her to stay at the

matrimonial home forcing her to serve the parents of Petitioner No.1. Subsequently, he was transferred from Rajnandgaon to Chirmiri where it is said that Petitioner No.1 came in close contact with one lady constable namely Sunita Paikara. Again in year 2011 Petitioner No.1 got transferred to police station Charcha, district – Korea. Incidentally the same lady constable Sunita Paikara also got transferred to Charcha and in due course of time Petitioner No.1 is said to have developed intimacy with this lady constable Sunita Paikara. Later on the said intimacy further developed into an illicit affair. It was further alleged in the said complaint that whenever Respondent No.2 asked to Petitioner No.1 to take her along with him to the place where he was posted he used to decline and would make excuses that he does not have an official quarter allotted to him and as soon as he gets an official quarter he would take her along with him. Then, one day when she had gone to meet him at his house at Charcha she found certain photographs of Petitioner No.1 which he had clicked along with the lady constable Sunita Paikara and she also found certain objectionable articles in the house. In addition the neighbours where the Petitioner No.1 was staying at Charcha also informed her that Petitioner No.1 was staying with the lady constable in the said house as husband and wife. When she shared this fact with her in-laws Petitioner Nos. 2-4 they were not surprised but they informed that they were all aware of this fact, and in case if the Respondent No.2 has any difficulty on the said fact, she may go back to her matrimonial home and stay with her in-laws. It was also alleged that thereafter the in-laws i.e. Petitioner Nos. 2 to 5 started harassing her, both physically and mentally and this fact she had informed to her parents.

5. Later on Petitioner No.1 is said to have come to the place where Respondent No.2 was staying with her in-laws and said to have assaulted her with fist and feet. Later on Respondent No.2 is said to have called upon some prominent figures in the society and in presence of whom a meeting was held and there the Petitioners is said to have given an assurance that they shall not ill-treat her any further. It was also assured that Petitioner No.1 shall take Respondent No.2 along with him immediately on his new place of posting which was expected very soon. Till he gets new place of posting it was agreed that Respondent No.2 shall stay at her parental home. It was also contended by the complainant that subsequently Respondent No.2 started living at her matrimonial home. In the month of October – November, 2014 Petitioner No.1 took Respondent No.2 along with him to the place where he was residing. There also fight took between them and Petitioner No.1 assaulted Respondent No.2. It was alleged that Respondent No.2 had objected Petitioner No.1 calling her friend lady constable Sunita Paikara to his house and that the two of them after entering into the room close the door from inside. Later on Petitioner No.1 is said to have got a promotion as head constable, he had to go for training and during which period it was agreed that Respondent No.2 shall stay at her parental home. Petitioner No.1 did not call upon Respondent No.2 all these period while he was on training and when on 31.01.2015 when she learnt that the Petitioner No.1 has come to his parental home she along with her brother had came to her matrimonial home and there they found Petitioner No.1 sitting outside his house and immediately on seeing her coming he started abusing her and also informed that he has already instituted a case for divorce and then the

other family members also joined him and started abusing her. A scuffle between them took place and Respondent No.2 was not permitted to enter into the house. She immediately went to Police Station Patna to lodge a report but for the fact that Petitioner No.1 was a head constable the police authorities initially refused to lodge complaint and then she had to come back to Ambikapur along with her brother. Again it is alleged in the year 2015 she was informed that her father-in-law met with an accident, when she had gone to meet him at her matrimonial home she was again not permitted to enter into the house and again a scuffle took place wherein Petitioner Nos. 4 & 5 also participated. It was informed by the Petitioner No.1 that very soon he is going to get divorce from the Court at Baikunthpur and he will marry the lady constable Sunita Paikara. Therefore she cannot now be permitted to stay with him and forced her to go back to Ambikapur i.e. her parental home. Alleging the cruelty on part of the Petitioners Respondent No.2 lodged a complaint seeking for appropriate action against the Petitioners.

6. On receiving the said complaint the police authorities registered the complaint as Crime No. 44/2016 and after investigation charge-sheet also was filed and the case has been put before the Court of Baikunthpur where the case has been registered as Crime No. 515/2016. It is this registration of complaint which has been assailed by the Petitioners in the present case.
7. Learned Counsel for the Petitioners submits that if we read the entire contents of the complaint what clearly figures out is the fact that the marriage between Petitioner No.1 and Respondent No.2 took place in the year 2003 and the complaint in respect of cruelty and ill-treatment for the first time was

lodged by Respondent No.2 on 23.01.2016. That in all these 13 years in between there was no complaint whatsoever lodged before police or before any authorities. Thus allegation made in the complaint seems to be highly improbable. According to the Counsel for the Petitioner a plain reading of the complaint highlights the fact that grievance of complainant Respondent No.2 was more against Petitioner No.1 and there was not much which has been alleged against the other Petitioners. Likewise reading of the entire contents of the complaint what is reflected is that Respondent No.2 was more annoyed with Petitioner No.1 for his illicit relationship that he was maintaining with a lady constable. Also, the entire dispute in the family arose because of that. All other averments made against Petitioner Nos. 2 to 5 are totally bald and omnibus and does not seem to be even close to truth anywhere.

8. According to the Petitioners the instant complaint was lodged by Respondent No.2 was an act of vengeance by Respondent No.2 on account of Petitioner No.1 maintaining intimate relationship with another lady constable. Referring to the complaint the Counsel for the Petitioners submits that the allegation so far as Petitioner Nos. 2 to 5 are concerned are hard to believe and has been inserted in the complaint only for making out a case under Section 498-A IPC. Otherwise the grievance of the Respondent is that of only the illicit relationship of the Petitioner No.1 with the lady constable Sunita Paikara. For rest of the Petitioners the contents of the complaint so far as it deals with Petitioner Nos. 2 to 5 are concerned is highly improbable, on account of the fact that from year 2003 to 2016 there was no complaint lodged against any of the Petitioners before any authority by Respondent No.2. Further, it is also reflected that whenever name of the Petitioner Nos. 2 to 5 have been

referred in the complaint it is in furtherance to the act of the Petitioner No.1 of having illicit relationship with Sunita Paikara. As such there is no separate incident stated by Respondent No.2 in her complaint of their being specific instances anywhere in between from the time of marriage to till filing of the complaint. In addition, Counsel for the Petitioners submits that the entire complaint and registration of the case is nothing but misuse of process of law as well as misuse of process of Court.

9. According to the Counsel for the Petitioners, Petitioner No.4 is the brother of Petitioner No.1 and is a doctor by profession. He and his family are staying separately and is doing his private practice. It was further contended that before starting his private practice he has undergone his medical course at Bangalore. Subsequently, was employed at different locations and therefore was staying separately for quite some time. Petitioner No.5 is wife of Petitioner No.4 and there was hardly any occasion of the Petitioner Nos. 4 & 5 going to his parental home and even whenever they came it was not on regular intervals therefore, the allegation made against Petitioner Nos. 4 & 5 are totally false and fabricated, only made with an intention to put undue pressure and coercion upon the Petitioners.

10. According to the Petitioners a reading of the complaint itself would reflect that a meeting was held before the village elders. Even that was not for the cruelty on part of the Petitioner Nos. 2 to 5 but was more on the conduct of Petitioner No.1 having illicit relationship or the extra marital affair that he had with a lady constable Sunita Paikara.

11. Thus for the aforesaid reasons Counsel for the Petitioners prays for rejection

of the complaint case as also the FIR lodged against the Petitioners.

12. Learned Counsel for Respondent No.2 submitted that the contention raised by the Counsel for the Petitioners are all baseless and without any substance and therefore the action against the Petitioners does not warrant any interference invoking extraordinary jurisdiction by this Court under Section 482 of the Cr.P.C. According to the Counsel for the Respondent the powers under Section 482 has to be sparingly used, not in a case where there are allegation of cognizable offence levelled in complaint. The police authorities are duty bound to initiate proceeding on the said complaint at the same time if the complaint is lodged before the Magistrate also even then the Magistrate also would be under judicial compulsion obliged to taken cognizance of the offence.

13. According to the Counsel for the Respondent-State the matter has been duly investigated by the Police authorities and the challan has also been put before the concerned Court of law and there it is established that sufficient materials were available in the charge-sheet for prosecuting the Petitioners and for this reason also the Petition deserves to be rejected. It was further contended by the State Counsel that the whatsoever contentions which the Petitioners have raised in the present Petition can also be raised by the Petitioners at the time of argument before framing of charge. The Court below would definitely be considering the entire materials that are if in the charge-sheet so as to reach to the conclusion whether charges are made out against the Petitioners or not. Thus, on these grounds the Counsel for the Respondents prays for rejection of the Petition.

14. Taking into consideration rival contention put forth on either side and perusal of record in order to see whether the Petitioners have made out a case or not? What primarily would be required is to scrutinize the contents of the complaint. A perusal of the complaint gives us certain details in respect of Petitioner No.1 and Respondent No.2 complainant. The marriage between the two took place on 08.06.2003 at Ambikapur. Barely after one year of time a son was born to Respondent No. 2 from the marriage that she had with Petitioner No.1. In year 2005 Petitioner No.1 got selected as constable and had to leave his parental home and joined the Police Department initially for training at Rajnandgaon and thereafter he was posted at different places in different districts in the state of Chhattisgarh and finally in the year 2011 he was posted at the Police Station Charcha in District – Korea.
15. If we read contents of the complaint from the date of marriage in year 2003 to till 2011 before he was posted at Charcha, District – Korea there has been no allegation of ill-treatment, cruelty or harassment on Respondent No.2 at the hands of any of the Petitioners. Further when we read the complaint what is also reflected is that the entire dispute arose after Petitioner No.1 had joined duties at Charcha and where he came in contact with one lady constable namely Sunita Paikara. It is alleged that he had developed some intimacy and in due course of time it is alleged that they were into an extra-marital affair. It is also reflected that when Respondent No.2 had visited house of Petitioner No.1 at Charcha she found some objectionable articles and certain photographs that he had clicked with the said lady constable and it is then that Respondent No.2 informed the same to her parents and other family members including family members of Petitioner No.1.

16. Another aspect which can not be brushed aside is the fact that Respondent No.2 in the instant case right from year 2003 to 2011 never at any point of time had lodged any complaint against any of the Petitioners before any authority or village elders or other family members. Thus, it gives an indication that the dispute of Respondent No.2 is primarily against Petitioner No.1 who has started neglecting Respondent No.2 and who had in between developed intimacy with a lady colleague. Further perusal for the complaint would reveal that Respondent No.2 complainant has not been able to give specific instances on which date and at which place, what was the occasion and also what was the overt act on part of each of the Petitioners in the alleged allegation of torture, harassment and cruelty which the Petitioners have made upon Respondent No.2. The entire complaint is bald, general and omnibus in nature. The entire complaint would reveal that from 2003 i.e. the date of marriage till the date of lodging of the complaint in between she has not made any other complaint to any other authority.

17. The Hon'ble Supreme Court in case of **Arnesh Kumar v State of Bihar and Another**¹ in paragraph 4 has held as under:-

“4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite

¹ (2014) 8 SCC 273

number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.....”

18. The mothers and the sisters of the husband are liberally included in the list of accused persons. In Indian society arrest brings humiliation, curtails freedom and casts scars forever.
19. What is necessary to consider is the fact that just because Respondent No.2 or for that matter a wife files complaint by itself should not be taken into consideration as gospel truth and case be registered and the accused persons should not be forced to undergo trauma of trial and also humiliated or face disgrace in the society. This was precisely the reason behind the Hon'ble Supreme Court passing decision in the case of Arnesh Kumar (Supra). So is the condition in the present case. From the contents of the complaint in the present case also it reflects that right from 2003 till the date of complaint there was no dispute whatsoever in between in the family, thus there was no complaint made at any level by the Respondent No.2. Further from the complaint what is also reflected is that the grievance of Respondent No.2 primarily was against the Petitioner No.1 and the allegation right from start is revolving around Petitioner No.1. Only at a couple of places is the allegation of assault, ill-treatment, cruelty and harassment at the hands of the other Petitioners made and all are general in nature, omnibus and without specific details whatsoever so far as the date of incident, place of incident, specific overt act by each of the Petitioners on each of the occasion etc. These are some of the relevant factors which normally would be required for registration of a case under Section 498A of the IPC. In the absence of any

such detailed information in the complaint coupled with the fact that from year 2003 to till 2011 till Petitioner No.1 developed an intimacy with his colleague, there was no any grievance, nor any dispute whatsoever. Thus in the given factual matrix of the case this Court has no hesitation in reaching to the conclusion that whatever allegations are made in the complaint were all revolving around Petitioner No.1 against whom there are serious allegation and complaints available. But so far as Petitioners No.2 to 5 there does not seem to be much and the allegations also are bald in nature, general and omnibus which all the more weakens the complaint so far as the Petitioners No. 2 to 5 are concerned.

20. Another factor which goes in favour of the Petitioners No. 2 to 5 is the fact that right from the year 2004 onwards the Petitioner No.1 have been staying separately from the Petitioners No. 2 to 5. So far as Petitioners No. 4 & 5 are concerned again indisputably Petitioner No.4 is a doctor by profession and has been out of the house for the last many years initially for his studies at Bangalore and thereafter working in different medical institutions / hospitals. Since, he was staying out of house there is no chance of having interaction with Respondent No.2 or for that matter having had occasion of staying with Respondent No.2 giving rise to cruelty, harassment or ill-treatment. In the given factual matrix of the case this Court is of the opinion that the registration of the F.I.R and the complaint case thereafter so far as the Petitioner No.1 is concerned does not warrant interference. Further so far as the Petitioners No. 2 to 5 are concerned in the peculiar facts and circumstances of the case as has been narrated in the preceding paragraph there isn't much substance in the complaint against these persons nor does it

gives any specific instance of the Petitioners No. 2 to 5 subjecting Respondent No. 2 to cruelty.

21. The registration of the complaint and the initiation of criminal case against Petitioners No. 2 to 5 therefore is totally unwarranted and uncalled for and the Petition to that extent is allowed. It is ordered that the registration of the complaint so far as the petitioners No. 2 to 5 deserves to be and is accordingly quashed and they are discharged from the said charges. However, the complaint case would continue so far as the case of Petitioner No.1 is concerned.

22. In view of the above the Cr.M.P. stands partly allowed.

23. No order as to costs.

Sd/-

(P. Sam Koshy)
JUDGE