

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 28/08/2017

Order Passed on : 11/09/2017

CR.M.P. No. 1081 of 2013

1. Devaki Bai, W/o. Ram Shankar Mahto, aged about 50 years,
2. Ram Shankar Mahto, S/o. Baleshwar Mahto, aged about 57 years,
Both R/o. R.H. No.6, Lunkad Avenue, Viman Nagar, Pune – 411014
Maharashtra.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through : The District Magistrate, District
(Civil and Revenue) Raipur, Chhattisgarh
2. Smt. Abha Kishtwar, aged about 29 years, W/o. Neeraj Mahto, R/o.
Flat No.405, 4th Floor, Golcha Complex, Besides Maruti Residency,
Amlidih, Raipur

-----Respondents

AND

CR.M.P. No. 421 of 2017

Neeraj Kumar, aged about 32 years (wrongly mentioned as Neeraj Mahto
in FIR), S/o. Shri Ram Shankar Mahto, R/o. RH No.1, Lunkad Avenue,
Viman Nagar, Pune (M.H.)

---- Petitioner

Versus

1. Abha Kastwar, aged about 33 years, W/o. Neeraj Kumar, D/o. Shri
Yogendra Kastwar, R/o. H.No. 408, 4th Floor, Golcha Enclave,
Amlidih, Raipur, (C.G.)
2. State Of Chhattisgarh, Through : Police Station – Mahila Thana,
Raipur, District – Raipur (C.G.)

---- Respondents

For Petitioners	: Mr. Palok Basu, Sr. Advocate with Mr. Shiv Ram Pandey and Smt. Aparna Diwan, Advocates
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate
For Respondent No.2	: Mr. Arvind Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

11/09/2017

1. Both the petitions are heard together and decided by this common order, as the facts and issues involved are similar in nature.
2. These petitions under Section 482 of Cr.P.C. have been brought with prayer to quash the criminal proceeding against the petitioners, pending before the Court below.
3. Brief facts of the case are that the petitioners in Cr.M.P. No.1081/2013, are mother-in-law and father-in-law of the victim Abha Kastwar. The victim – Abha Kastwar was married to their son Neeraj Kumar, the petitioner in Cr.M.P. No.421/2017. As per the allegation made by the victim in complaint, that after performance of marriage on 06.07.2011, she resided with her husband in Pune, thereafter in Hyderabad, where she was subjected to torture and cruelty by her husband – Neeraj Kumar, petitioner in Cr.M.P. No.421/2017. The complainant and her husband came back to Pune, she told about her plight to her in-laws, who did not support her and advised her to submit to cruel treatment of her husband – Neeraj Kumar. Soon after that, husband of the victim got job in Canada, where the victim went to reside with her husband in Canada, where she was again subjected to torture and cruelty by her husband. After coming back to India, when she wanted to visit her mother, she was pressurized to leave her ornaments with the petitioners. Thereafter the victim is residing with her parents.

4. Learned counsel for the petitioners in Cr.M.P. No.1081/2013 submits that there is no specific allegation against the petitioners in complaint made by the respondent No.2 about their being any part of subjecting the respondent No.2 to cruelty. Similarly, the statement given by the respondent No.2 and witnesses also do not disclose any specific allegations with respect to the torture or cruelty by the petitioners.
5. The counsel for the petitioner in Cr.M.P. No.421/2017 submits that respondent No.1, his wife has lodged a false complaint against him making various allegations about subjecting her cruelty in various manner and in various process, which are totally false. Respondent No.1 is woman of independent nature and wants to have her own career. Respondent No.1 accompanied the petitioner to the places he had to stay and there had been no dispute between them. When the mother of respondent No.1 became ill, she returned to her maternal home at Raipur and has not come back to live with petitioner. Petitioner was compelled to send a legal notice under Section 9 of Hindu Marriage Act, 2012 and tried to contact the respondent No.1 on various occasion but failed, thereafter, all of a sudden he came to know about the FIR lodged against him.
6. Reliance has been placed on the judgment passed by the Hon'ble Supreme Court in case of **Arnesh Kumar Vs. State of Bihar**, reported in **(2014) 8 SCC 273**, in which it was observed by the Hon'ble Supreme Court that provisions of Section 498A of Indian Penal Code is used as weapon to harass the husband and his relatives, hence, direction were given regarding arrest of accused in

such cases. Reliance has also been placed in case of **Rajesh Sharma & Ors. Vs. State of U.P. & Ors.** reported in **2017 (8) SCALE 313**, in which it was again observed that provision under Section 498-A of I.P.C. is being misused.

7. Reliance has also been placed on the judgment of Supreme Court in case of **Swapnil & Ors. Vs. State of Madhya Pradesh**, reported in **(2014) 13 SCC 567**. Reliance has also been placed in case of **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.** reported in **(2010) 7 SCC 667 and** in case of **Nand Kishore & Ors. State of M.P. & Ors.** decided on 16.10.2015, in case No.10199/2012.
8. Counsel for the State submits that charge-sheet has already been filed and on the basis of the statement given by the victim, prima-facie case is made out against the petitioners according to which they had been party to the offence of cruelty and torture committed against the victim. Hence petitioners have no case.
9. Counsel for the respondent/victim submits that charges have already been framed on 20.05.2013. He would further submit that FIR and the statement available on record are sufficient against the petitioners to make out a case for trial against them. The counsel has placed reliance on the judgment passed by the Hon'ble Supreme Court in case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp. (1) SCC 335**, and submits that these petitions are without any substance and it may be dismissed accordingly.

10. I have heard the learned counsel for the parties and perused the documents placed on record.
11. The fact that petitioners in both the cases were charged with offence under Section 498A, 34 of the Indian Penal Code on 20.05.2013 is relevant as the petitioners in both the cases had opportunity to file a revision petition before the Sessions Court. There is no submission on behalf of the petitioners, whether any such revision petition has been filed by them or not. Hence bypassing the remedy available under the law, these petitions have been filed before this Court on 09.12.2013 and 17.03.2017 respectively. After considering all the submissions made by the counsel for the petitioners and the respondents, it appears that the grounds raised in these petitions are in fact the grounds of defence and if the, petitioners in both the cases succeed to prove the defence, before the trial Court, they may get the remedy from the trial Court itself. Hence, after closely scrutinizing all the documents on record, it appears that petitioners in both the cases have not made out a case for interference by this Court using extra ordinary jurisdiction under Section 482 of CR.P.C. Hence for these reasons, the petitions have no merit and are dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge