

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 385 of 2014

Sunil Lath, S/o. Late Durga Prasad Lath, aged about 36 years, R/o. Bargarh, Civil and Revenue District – Bargarh, Tehsil and District – Bargarh, P.S. Bargarh, District – Bargarh, Odisha.

---- Petitioner

Versus

1. State of Chhattisgarh, Through : Police Station Incharge, Jute Mill Police Station, Raigarh, District – Raigarh (C.G.)
2. Mahadev Prasad Agrawal, S/o. Late Ramkaran Agrawal, R/o. Archana Traders, Jute Mill Road, Police Station – Jute Mill Police Station, Civil and Revenue District – Raigarh, District – Raigarh (C.G.)

-----Respondents

For Petitioner	: Mr. Ankit Singhal, Advocate
For Respondent No.1/State	: Mr. Lav Sharma, Panel Lawyer
For Respondent No.2	: Mr. Alok Pandey, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/09/2017

1. This petition has been brought under Section 482 of Cr.P.C. with prayer to quash the proceedings against the petitioner in the complaint case bearing No. 860/2012, pending before the Court of Chief Judicial Magistrate, Raigarh, District – Raigarh.
2. It is submitted by the counsel for the petitioner that marriage of the petitioner with late Archana Lath was performed on 06.02.2003, thereafter, they were residing at Bargarh (Orissa). Unfortunately, wife of the petitioner was diagnosed with Cancer in the year 2009. Petitioner got his wife treated in Apollo Gleneagles Hospital, Kolkata

and thereafter, she was treated in B.P Poddar Hospital & Medical Research Ltd., Kolkata, which is a hospital for treatment of Cancer. Petitioner also took opinion of the doctors in Bombay and he was advised that Cancer detected to the wife of the petitioner was in the last stage, which could not be cured. Wife of petitioner died on 17.09.2009 at Kolkata. Petitioner made his best effort to get treatment of his wife for the ailment, which she was suffering with. After passing of 19 months from the death of wife of the petitioner, respondent No.2, the father of the deceased-wife of petitioner filed a complaint case against petitioner for trial of offence under Section 498-A, 304-B of Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act along with application under Section 156(3) of Cr.P.C.. The Court of Chief Judicial Magistrate vide order dated 05.03.2011 ordered the Police Station – Jute Mill, Raigarh to register FIR and investigate the case, on the basis of which, FIR No.285/2011 was registered.

3. The police after investigation submitted closure report on 14.09.2011. The learned Chief Judicial Magistrate, Raigarh has despite the submission of closure report by the police, taken cognizance against petitioner for trial of offence under Section 498-A of Indian Penal Code by order dated 08.08.2012 (Annexure P/6). It is submitted by the learned counsel for the petitioner that trial Court has passed order taking cognizance mechanically without application of mind. Hence, the order passed is erroneous and illegal. It is further submitted that no complaint was ever made by the private respondent during the lifetime of the wife of petitioner. Hence, the complaint has been filed with ulterior motive for the purpose of falsely implicating the petitioner, which is on the basis of concocted grounds, which is an abuse of

process of law. Hence prayed that criminal proceedings against the petitioner be quashed.

4. In reply counsel for the respondent submits that the case was admitted and the interim order was passed in favour of the petitioner staying the proceedings of the case against the petitioner. On application made by the respondent No.2, for vacating the stay order, this Court was pleased to pass an order dated 28.03.2016, allowed the application and vacated the interim stay order. It is submitted that the complaint made against the petitioner has allegation that the petitioner had tortured and subjected to cruelty his wife along with demand of Rs.5.00 Lakhs by way of dowry, which has been appreciated by the trial Court and in the meanwhile, the trial against the petitioner is also completed before the trial Court, in which only passing of final order/judgment is pending. In this situation, there is no requirement for this Court to exercise inherent jurisdiction, as, if the petitioner has a case, he can get relief from the trial Court itself. Hence, prayed that petition be dismissed. The counsel has relied on the case law reported in **2013 Cri.L.J. 3644** in case of **Chandralekha & Ors. Vs. State of Rajasthan & Anr.**, in which the FIR was lodged by the complainant wife after lapse of six years since she left her matrimonial home, in which it was held that only for the reasons of delay, the FIR can not be quashed.
5. In reply, counsel for the petitioner submits that while considering the anticipatory bail application bearing M.Cr.C. No.1166/2012, this Court vide order dated 15.01.2013 has observed that though complainant has stated that he filed a complaint before the Police Station on 29.09.2009 but the copy of the same was not produced before the

Court. It is submitted that copies of some report has not been produced before this Court by the respondent No.2. Hence after sleeping for more than one year, respondent No.2 all of a sudden activated himself to implicate the petitioner. Hence it is a fit case for exercise of inherent jurisdiction. Counsel has placed reliance on the case law reported in **(2016) 9 SCC 1** in case of **Manoj Kumar Sharma & Ors. Vs. State of Chhattisgarh & Another**. In the case, before Hon'ble Supreme Court, wife of the petitioner committed suicide in her matrimonial home in the year 1999, after conducting morgue enquiry, the case was closed. After passing of five years, FIR was lodged by brother of deceased against the petitioner alleging in it, that death of his sister, the wife of the petitioner had been pre-planned murder, on the basis of which offence under Section 304 -B and 498-A read with Section 34 of I.P.C. were registered. It was observed by the Supreme Court in Para-30, which is as follows :-

“30. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent No.2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent No.2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following

decision of this Court in *Jai Prakash Singh Vs. State of Bihar*, wherein it was held as under : (SCC p-383, Para 12)

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eyewitnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first-hand account of what has actually happened and who was responsible for the offence in question.”

6. Reliance has also been placed in the case law reported in **(2009) 13 Supreme Court Cases 330** in case of ***Manju Ram Kalita Vs. State of Assam***, wherein it was held that in what manner, the complaint under Section 498A of I.P.C. is to be appreciated.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. After due consideration on the material on record and the case law cited by both the parties, a minute difference is made out. In case of belated FIR, when the lodger of FIR particularly in the case of offence

under Section 498A of I.P.C., the complainant of the case is available to support the case of the prosecution, the situation would be different and the matter of delay can not be made ground for quashment of the criminal proceeding under Section 482 of Cr.P.C. but in cases where the victim of the offence under Section 498-A or Section 304-B of I.P.C. is not alive and complaint is filed or FIR is lodged after inordinate delay without sufficient explanation of the delay in that case, the principle laid down in case of *M.K. Sharma & Ors* (Supra) shall be followed.

9. Respondent No.2 though has stated in complaint before the Court that soon after the death of his daughter, he filed a written complaint on 29.09.2009, before the Superintendent of Police, Raigarh, but no copy of such complaint made by him was presented on record and neither there is any statement in the charge-sheet, that respondent No.2 had earlier made any complaint against the petitioners, even then respondent No.2 waited up to 26.02.2011 to file a complaint before the Court of Chief Judicial Magistrate, Raigarh. In further development, the police has after investigation has submitted closure report. Thereafter simply on the basis of the statement given by the complainant and witnesses on the complaint before the trial Court, cognizance has been taken by the trial Court.
10. There are some undeniable and undisputed facts about the case that deceased Archana Lath, the wife of the petitioner died due to Cancer. It is also not denied that petitioner has made available to the deceased treatment from hospitals in Kolkata, which are recognized for treatment of the Cancer. There is no need to mention that disease of Cancer detected at last stage is incurable. The allegation made by the respondent No.2 and the witnesses may be true in this respect, that

petitioner did not take sufficient care or ignored the failing health of the deceased to get her treatment sooner and when she was provided the treatment and the disease of cancer was diagnosed. Such an action of the petitioner can be regarded as his failure in responsibilities and care towards his spouse, but it can not be regarded as criminal act under any of the law in force for the time being.

11. Another undeniable and undisputed fact is this that no allegation was made by the respondent No.2 during the lifetime of the deceased-wife of the petitioner, even there is no substance to show that such allegation or complaint was made by respondent No.2 soon after the death of wife of the petitioner. Hence these are the circumstances, which can be regarded as fatal to the prosecution against the petitioners. After considering all the submissions and the material placed on record, it is concluded that the trial against the petitioner in the case against him is an abuse of process of law.
12. In the result, the proceedings against the petitioner before the Court of Chief Judicial Magistrate, Raigarh in Complaint Case No. 860/2012, for the offence under Section 498A of Indian Penal Code is hereby quashed. The petitioner is acquitted of the charges.
13. Accordingly the petition is allowed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge