

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M- 5244 of 2008 (O&M)
Date of decision : 25.05.2018**

Salil Chadha

.....Petitioner(s)

Versus

State of U.T., Chandigarh and anr.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Tanu Bedi, Advocate and
Mr. Vibhu Agnihotri, Advocate
for the petitioner.

Mr. J.S. Toor, APP, U.T., Chandigarh,
counsel for respondent no.1.

Mr. L.S. Chahal, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No. 178 dated 26.04.2007, registered under Section 498-A IPC and Section 31 of the Domestic Violence Act at Police Station Sector 17, Chandigarh (Annexure P-4) lodged at the instance of respondent no.2.

The brief facts which are necessary for disposal of this petition as recapitulated by the petitioner is being delineated. The petitioner was married to Priya Chadha on 29.05.1988. The petitioner is a Chartered Accountant. At the time of marriage respondent no.2 was a student in Home Science College, Chandigarh. The couple was blessed with two daughters. The eldest was 16 years old at the time of filing of the petition. The younger

one was 12 years old. Respondent no.2 after completing her graduation in Home Science did her Post Graduation in Nutrition and Dietetics, besides post graduation and Mass Communication from Punjab University and Kurukshetra University respectively after marriage. All went well for next 10 years. The petitioner claims that the wife along with two daughters left his company in early 1997. He filed an application under the Guardian and Wards Act, firstly at Gurdaspur which was not entertained for want of jurisdiction and then in the Guardian Court at Panchkula. Interim custody of the elder child was given to him. The reason disclosed was that the child was constantly absent from school and the school had threatened to strike off her name. A revision was preferred against the interim order in the High Court in 1998. An amicable settlement took place. The agreement bound both the sides and a judicial order was passed. The terms and conditions were made part of the interim order dated 20.02.1998, which was subsequently made absolute on 10.08.1998. Both the parties agreed to bury their differences and withdraw all allegations against each other in order to save the matrimonial home. The petitioner claims that the family lived together in a house at Sector 16, Chandigarh but due to the reprehensive behaviour of respondent no.2 and verbal abuses in front of the servants and neighbours he was forced to leave the house in September 2006 after being together for 8 years. It was pleaded that he had never abdicated his duties nor shirked his duties and never left his family in any financial lurch. Though respondent no.2 had never worked till December 2006, there was enough money in her bank account by way of FDRs, deposits in post office and a personal car whose installments he was paying. It was pleaded that the

petitioner moved out of the house and respondent no.2 broke open the locks of his room and destroyed his official documents, certificates, expensive heirlooms and artifacts. It was pleaded that the High Court had directed in its order of 1998 that his room would remain locked and the order was violated. It was pleaded that the petitioner all throughout had been supporting the family of respondent no.2 which was not financially sound as the sole male earning member of the family i.e. her brother had been dismissed from service. It was pleaded that respondent no.2 started filing criminal complaints and made up stories as if she was a victim of torture and cruelty in 19 years of marriage when there was not even a whisper of any allegation prior to September 2006. It was pleaded that the motivation for registration of the FIR was when the younger daughter came to stay with him and respondent no.2 in order to wreck personal vengeance concocted a story. It was pleaded that the younger daughter moved with him in February 2007 and respondent no.2 filed the first complaint on 18.02.2007, followed by a second complaint on 28.02.2007 and she made improvements and the third complaint was made on 05.03.2007 on which FIR (Annexure P-4) was registered.

Petitioner's plea is that vague allegations have been made of cruelty, harassment and allegations of abortion soon after their marriage were hollow and concocted and respondent no.2 had resorted to the provisions of the Indian Penal Code to settle personal scores. It was pleaded that the police had recorded the statements of neighbours and some of them had made a statement in his favour which were not filed along with the challan and the proceedings were a mis-use of law and the case had been

registered to gain unethical advantage in the matrimonial dispute and was barred by limitation as well. It was pleaded that the police did not file any complaint under Section 31 of the Domestic Violence Act and challan had only been presented under Section 498-A of IPC, which was liable to be quashed.

Respondent no.1 filed short reply pleading that the petition was not maintainable as challan had already been presented.

Respondent no.2 denied the allegations. It was pleaded that the daughters had been dragged into unfortunate litigation and they had been subjected to cruelty, humiliation and the petitioner had intentionally flouted the orders passed by the Court. It was pleaded that she was well qualified and gold medalist from Kurukshetra University and had been writing columns for national dailies. It was pleaded that she had tried her level best to save the matrimonial home keeping the welfare of the children in mind but she was unable to bear the cruel treatment. It was pleaded that taunts were thrown at her for being unable to produce a male child. It was pleaded that their marriage was solemnized at Hotel Mount View which was attended by more than 500 guests and huge expenditure was made by her family. It was pleaded that the petitioner had pleaded that he had provided a chauffeur driven car but now her daughters were grown up and they used a rickshaw or walked to their place of tuition as the car often remained out of order. It was pleaded that the petitioner was habitual of deliberately deserting them for months and staying with his parents leaving them to suffer humiliation. It was denied that there was money in her bank accounts in FDRs. It was pleaded that the house in which the respondent was living,

was a old construction, dilapidated and needed urgent repairs. It was pleaded that the petitioner failed to comply with the orders of the Court in letter and spirit and left them in financial lurch. It was pleaded that petitioner pressurized her father and used to ask for money for the property in which they were residing and he made false income-tax inquiry against her father which led to a heart attack and consequently his death.

In the supplementary reply filed by respondent no.2, she had referred to the OPD card of 1989 to show that she had undergone MTP. Another OPD card of 2001 was attached to show that she was beaten up in 2001.

It is now necessary to notice the contents of the complaints made by respondent no.2 . The first complaint was made on 18.02.2007 (Annexure P-3). Respondent no.2 had complained that her mother-in-law, father-in-law, sister-in-law and the husband used to taunt her for not giving birth to a male child. She made a reference to the petition filed by the husband seeking custody of the child. The complaint thereafter refers to desertion on the part of the husband which had affected education of her children. It was pleaded that the husband had lured the younger daughter and had taken her along with him promising that she would return the next day but the daughter did not come back and he was trying to win her over and he had finally refused and she prayed for action for causing physical and mental torture and for giving constant taunts for not bringing expected dowry articles and for not giving birth to a male child and lastly for recovery of the younger daughter.

Ten days later the second complaint (Annexure P-3 Colly) was given where the allegations about the younger daughter being taken away were repeated. It was stated that it was causing mental tension to the elder daughter whose Board examination were nearing. The complainant made a request for production of the younger daughter as there were male servants and drivers in the house of the petitioner and he was poisoning her young mind against them and the child was not in a safe environment.

The third complaint was made on 05.03.2007, on the basis of which the FIR was registered. The main allegations can be tabulated as follows:-

- a. Allegations of forcible abortion after marriage,
- b. Desertion by the husband,
- c. Incident of beating in 1991,
- d. The sister-in-law not coming to see when the second daughter was born,
- e. Abusive behaviour of the husband in 1995,
- f. Her father gifted a gold set, gold chain, tops and bangles to both the daughters but despite that they were not respected,
- g. In 1996 the complainant had suffered injury on the neck with hot water from the cooker but the husband failed to get her treated and instead sent her to her sister's place to spend the holidays,
- h. Incident of beating after consuming liquor,
- i. He was an alcoholic, chain smoker and a gambler,

It would now be necessary to quote verbatim the last lines of the complaint and its read as under:-

“.....My younger daughter's 10 class examination is ahead but she has got mentally disturbed and is not concentrating on her studies. My husband is poisoning the mind of my younger daughter against us. She has started misbehaving with us. My husband may kindly be persuaded and our matrimonial house may kindly be saved. If my husband does not want to live with us then he should return my younger daughter to me because he is addicted to drinking, gambling and satta and my daughter is not safe there. A legal action may kindly be taken against my husband Salil Chadda. I have got recorded my statement, heard, which is correct.”

I have heard counsel of both the sides.

The submission on behalf of the petitioner is that there was no justification for lodging an FIR as the narration thereof in the three set of complaints would show that the dispute arose between the couple with respect to the custody of the child which after a round of litigation was amicably settled in the revision in the High Court and thereafter, the couple stayed together from 1998 till September 2006 for eight long years. It was urged that the complaint was made as the younger daughter who then was 13 years old, came to stay with the father and it agitated the complainant and she lodged the first complaint on 18.02.2007 and as the police did not take any action, a second statement was given on 28.02.2007 and lastly on 05.03.2007, upon which the FIR was lodged. It was urged that the registration of the FIR was an abuse of the process of law and it has been registered with a *malafide* intention and oblique motives and not for genuine reasons. It was urged that the petition should not be dismissed simply because police had filed the challan and the Court can go into the question to see if the parameters laid down in number of judgments have been met. It was urged that the complainant was still living in the matrimonial home while the husband was out of his house and the moot question would be as to which side has suffered. It was urged that the main allegations throughout were that the husband was not financially supporting them and the complainant wanted the daughter to come back and there are no allegations of harassment, beating or any conduct driving the wife to commit suicide during this time. It was urged that vague allegations of dowry demand have been levelled without specifically mentioning what demand was made. It

was urged that all the allegations were judicially struck off in 1998 when the parties made a statement in the Court and all the conducts prior thereto stood condoned. It was urged that the allegations are in contradiction and belied by her own statement and the written documents when the complainant had mentioned that the husband had booked the tickets for her and asked her to leave for Delhi whereas at another place the father says that the husband gave merciless beatings and threw her out. It was urged that incoherent allegations of taunts of not producing a male child have been made with a view to poison the minds of the daughters and the first round of litigation was when the father noticed that the studies of the elder daughter were suffering and the litigation was ill-advised and had affected the emotional growth and psyche of the children. It was urged that the allegations made in the third complaint relates to incident of abortion that was soon after marriage in 1989 and then to an incident of beating of 1991 whereas there is no reference to being beaten in the medical record and these allegations are barred by limitation. It was submitted that the FIR would show that during the period of these 8 years, the couple had lived together there are no allegations of dowry demand or beating. It was urged that the complainant had undergone abortion out of her own choice as she was studying then and the petitioner had not compelled her to undergo the abortion nor this plea was ever raised earlier and the case is weak and on a shaky foundation. It was urged that the FIR contains allegations which are bickerings between the husband and wife. It was urged that during the years, the couple lived together, they had been going abroad and the petitioner had helped the complainant to complete her education after marriage and all the education

was funded by him. It was urged that the complainant could not be on her own for 19 years as she was not working and it was the husband who was paying all the expenses and the petitioner has single-handedly funded the education of both the daughters including the elder one who is in United Kingdom without any contribution from the complainant and the allegations are stale and it was a fit case where the FIR and the subsequent proceedings should be quashed. Reliance was placed upon *M. Mohan Vs. State, (2011) 3 SCC 626*, *Vineet Kumar & Ors. Vs. State of U.P. & Anr., 2017 SCC 316*, *Manoj Kumar Sharma Vs. State of Chhattisgarh, (2016) 9 SCC 330*, *Rajiv Thapar Vs. Madan Lal Kapoor (2013) 3 SCC 330*, *Ashok Chaturvedi & Ors. Vs. Shitul H. Chanchani & Anr., (1998) 7 SCC 698*, *Manju Ram Kalita Vs. State of Assam, (2009) 13 SCC 330*, *Smt. Sarla Parbhakar Vs. State of Maharashtra, (1990) CrLJ. 407 (BHC)*, *Preeti Gupta & anr. Vs. State of Jharkhand, (2010) 10 SCC 667*, *Sushil Kumar Sharma Vs. Union of India, (2005) 6 SCC 281* and *Girdhar Shankar Tawade Vs. State of Maharashtra, (2002) 5 SCC 177*.

The State counsel urged that there are allegations of cruelty and since the challan had been filed, therefore, it should be left to the trial Court to record evidence and then decide whether the prosecution was able to prove the charges.

The submission on behalf of the complainant is that though the challan has not been put under Section 323 IPC but there was a head injury and the counsel refers to Annexure P-10 (Colly). It was urged that in the OPD card the diagnosis is referred as head injury and this incident took place on 23.04.2001. It was urged that the petitioner failed to support the family and that amounts to cruelty and the acts of cruelty would not stand

condoned. It was urged that the complainant was forced to start working as there was no financial support and the complainant started working as a Guest Lecturer in 2007 and all these are disputed questions of fact and challan has been filed and it is for the trial Court to examine the merits of the case. It was urged that since cruelty is a continuous offence, therefore, Section 468 Cr.P.C. would not come into play. Reliance was placed upon *Sanapareddy Maheedhar and another Vs. State of Andhra Pradesh and another 2008(1) RCR (Criminal) 293, Koppiseti Subbharao @ Subramaniam Vs. State of A.P. 2009(2) RCR (Criminal) 860, R. Kalyani Vs. Janak C. Mehta 2009(1) SCC 516, Maksud Saiyed Vs. State of Gujarat & Ors. and Kesri Devi Vs. State of Punjab and others 2012(5) RCR (Criminal) 28.*

The legal principles in regard to quashing of FIR has been settled and we may notice some of the judgments.

In *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, the Supreme court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In State of Haryana & Ors. v. Bhajan Lal & Ors. [1992 Supp.(1)

SCC 335], it was held :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In [State of Karnataka v. L. Muniswamy & Others](#) (1977) 2 SCC

699 observed that the wholesome power under [Section 482](#) Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases.

In [Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others](#) (1988) 1 SCC 692 it was observed in para 7 as under:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the un-controverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

It is now necessary to notice [Section 498-A](#) of IPC, which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband

of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, 'cruelty' means:-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

It is a matter of common experience that most of the complaints under Section 498-A IPC are filed over trivial issues without proper deliberations and this case is a classic example. The first two complaints do not disclose any allegations and therefore, the police did not take cognizance of them. It is for that reason that the third statement was made by the complainant to bring the case within the four corners of Section 498-A of IPC.

The ultimate object of justice is to find out the truth and punish the guilty and to protect the innocent. The tendency of implicating the husband is not uncommon and at times even, after a conclusion of the criminal trial, it is difficult to ascertain the real truth and the Courts have to be extremely careful and cautious in dealing with these complaints and they have to take realities into consideration while dealing with matrimonial cases. The Hon'ble Supreme Court was pained with protracted criminal trials between the couples and the acrimony and bitterness in the relationship between the parties and had called upon the legislature to have a serious re-look into the provisions of Section 498-A IPC in *Preeti Gupta & anr. Vs. State of Jharkhand, (2010) 10 SCC 667*.

The Supreme Court in *Girdhar Shankar Tawade Vs. State of Maharashtra (2002) 5 SCC 177* held that cruelty has to be understood having a specific statutory meaning provided in Section 498-A of IPC and it should be a case of continuous state of affairs of torture by one to another.

It would be relevant to quote from the judgment reported in *Manju Ram Kalita Vs. State of Assam, (2009) 13 SCC 330* and para 21 reads thus:-

"Cruelty" for the purpose of [Section 498-A](#) I.P.C. is to be established in the context of [S. 498-A](#) IPC as it may be a different from other statutory provisions. It is to be determined/inferedby considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of [Section 498-A](#) IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

The instant case requires to be examined taking into consideration the aforesaid settled legal provisions as well as the principles laid down in *Bhajan Lal's* case (supra). It is not in dispute that the parties were married in 1988. Nine years later the wife left the matrimonial home. A dispute arose regarding custody of the children. It was the petitioner who approached the Gurdaspur Court first but his petition was dismissed for want of jurisdiction. The second petition was filed in Panchkula Courts. The matter came before the High Court in revision filed by the wife aggrieved by the interim order in favour of the husband. During those proceedings, a settlement took place and at that point, there were no allegations of cruelty, demand of dowry, harassment,

beatings or abortion. The settlement was reduced into writing. The parties made their sincere efforts to stay together again and which they did up to September 2006. During this period of eight long years, there was no complaint, no FIR. No petition was filed in the High Court. A contempt petition was filed by the wife later, which was dismissed.

Respondent no.2 filed an application seeking maintenance in 2011 and interim maintenance of Rs.5,000/- was ordered, which was later increased by the Additional Sessions Judge to Rs.10,000/-. A criminal revision was filed in the High Court, ultimately final maintenance of Rs.6,000/- per month was allowed to the wife alone.

The argument raised on behalf of the complainant primarily was that there are disputed questions of fact whereas it is not so. There is no dispute regarding the facts as all facts are documented in the Court proceedings or hospital records which both the parties cannot deny. The allegations which have been tabulated above would show the main allegations in the FIR in the third complaint. The complainant was referring to an abortion which had taken place after her marriage. The document is available on record which does not refer to any complaint or forced MTP. The complainant was 20 years old then and was studying. The complainant has failed to give any explanation as to why no complaint was made earlier and why after 19 years of marriage, the complainant has referred to an incident of abortion. The OPD card of 1991 is available on record, which does refer to head injury but it also speaks about fall during clash. The two daughters had also appeared in the dispensary that day and the mother and daughters were advised 'stemetil' and 'domstal' respectively as there were two episodes of vomiting. The only complaint was headache. There was no visible injury on the head.

The two main incidents pertain to 1989 and 1991, which have come after a delay of almost two decades. After the compromise was effected in the High Court and the couple started living together, those incidents even if assumed to be true, stood condoned and could not be re-agitated after such a long delay and are barred by limitation. The complainant did not elaborate about the incident when she suffered injury on the neck. No accusation were made against the husband that he had poured hot water on her neck. It appears to be an accident. The main grievance was that the husband failed to get her treated. There is hardly any legal evidence for which the petitioner should be asked to face trial. It would not be a legitimate prosecution as it is not every kind of cruelty which falls within the scope of Section 498-A IPC.

In *Raj Rani Vs. State (Delhi Admn.) AIR 2000 SC 3559*, the Supreme Court held that while considering the case of cruelty in the context of the provisions of Section 498-A IPC, the Court must examine that allegations/accusations are of very grave nature and should be proved beyond reasonable doubt.

On perusal of the definition of Section 498-A IPC it is evident that the harassment or the mental torture should be a wilful conduct which drives a woman to commit suicide or cause grave injury or danger to life and where the harassment is with a view to coerce her to meet the unlawful demand of a property or a valuable security on account of failure, by her or any person related to her, to meet such demand. In the present case, the allegations of demand of dowry are not there. So far as Clause (a) of Section 498 is concerned, it is not applicable. We are only concerned with Clause (b). There is no demand of dowry nor there are allegations that the harassment was to meet a unlawful demand, therefore, the case did not and could not fall under

Section 498-A IPC. There is no allegation of physical or mental torture after 1998. Moreover, it is delayed and Section 468 Cr.P.C. would come into play.

There are general and sweeping allegations, which would indicate only a failed marriage and bickerings between the couple. The Investigating Officers have an extra responsibility to reach out to the truth to rule out legal terrorism as referred in *Sushil's* case (supra). It was not done in this case. The closing paragraph of the complaint gives the demand, she wanted the husband and daughter to come back. None of the witnesses examined by the police in their statements under Section 161 Cr.P.C. speak about cruelty related to demand of dowry. The complaint to the police was used as a weapon to threaten and coerce the husband to live with the complainant. The allegation that the husband was addicted to gambling, did not give her money, left home and took the daughter away would not fall within the frame work of Section 498-A IPC. It is not every kind of cruelty which attracts Section 498-A IPC. Harassment must be to compel the wife to fulfil the illegal demands. There had to be an allegation that the harassment and dowry demand were connected. There are no such allegations. The case had been registered on trivial issues. It would be unfair to compel the petitioner to undergo the rigmarole of a criminal trial. In the interest of justice, I deem it appropriate to quash the FIR and the subsequent proceedings.

The petition is allowed.

25.05.2018

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No