

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 4-7-2019****DELIVERED ON 5-7-2019****CRMP No. 598 of 2015**

1. Smt. Anjum Aara W/o Mohd. Hadis Aged About 54 Years

2. Md. Hadis S/o Late Mohd Gazi Aged About 61 Years

Both R/o M I G 1/2575 Madhya Pradesh Housing Board, Post- Bhilai,
P.S. Jamul, Tehsil Durg, Revenue And Civil Court Durg, Chhattisgarh**---- Petitioner****Versus**1. State of Chhattisgarh S/o Through Secretary Home Affairs,
Mahanadhi Bhawan, Naya Raipur, Revenue and Civil District- Raipur, CG2. Director Of General Police, Police Headquarter, Raipur, Revenue
And Civil District- Raipur, CG3. Superintendent of Police Durg, Revenue and Civil District- Durg,
CG4. Station House Officer Police Station- Mahila Thana Durg, Revenue
And Civil District- Durg, CG5. Smt. Saifiya Fatima Qureshi D/o Islam Qureshi Aged About 30
Years R/o Quarter No. 193, Near Kelabadi Masjid, Kelabadi, Post And
Tahsil Durg, P.S. City Kotwali, Revenue And Civil District- Durg, CG**---- Respondents****CRMP No. 742 of 2015**Ashfaque Ahmed S/o Mohd. Hadis Aged About 25 Years R/o M.I.G.
1/2575 Madhya Pradesh Housing Board, Post - Bhilai, P.S. Jamul, Tehsil
Durg, Revenue And Civil District Durg , Chhattisgarh**---- Petitioner****Versus**1. State of Chhattisgarh Through Secretary, Home Affairs Mahanadi
Bhawan, Naya Raipur, Revenue And Civil District - Raipur Chhattisgarh ,2. Director Of General Police Police Headquarter, Raipur, Revenue
And Civil District - Raipur Chhattisgarh

3. Superintendent of Police Durg, Revenue and Civil District Durg CG

4. Station House Officer Police Station - Mahila Thana Durg,
Revenue And Civil District Durg CG5. Smt. Saifiya Fatima Qureshi D/o Islam Qureshi Aged About 30
Years R/o Quarter No. 193, Near Kelabadi, Masjid, Kelabadi, Post And
Tehsil Durg, P.S. City Kotwali Revenue And Civil District Durg CG**---- Respondents**

For petitioners : Shri Surfaraj Khan, Advocate
For respondents No.1 to 4 : Shri Vikram Dixit, Govt. Advocate
For respondent No.5 : Shri Navin Shukla, Advocate in CRMP
No.742 of 2015
For respondent No.5 : None in CRMP No.598 of 2015.

Hon'ble Shri Sharad Kumar Gupta, Judge

CAV ORDER

1. Both the above CRMPs are being disposed of by this common order as both of them arise out of same crime number and same FIR.
2. Petitioners have preferred these CRMPs under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the FIR No. 5/2015 dated 7-6-2015 registered at Women Police Station, Durg against them for the offences punishable under Sections 498-A/34 of the Indian Penal Code (In short I.P.C.) and Section 4 Dowry Prohibition Act, 1961(In short Act, 1961), which may culminate in filing of charge sheet.
3. In brief the petitioner's case is that petitioner Smt. Anjum Ara is mother in law, petitioner Mohd. Hadis is the father in law, petitioner Ashfaq Ahmad is the brother in law (Devar) of respondent No. 5. Marriage (nikah) of respondent No. 5 was solemnized with Irshad Ahmad on 26.04.2014. One month after the nikah she went to her maternal house but did not return back. They also approached to Pariwar Paramarsh Kendra, Durg but no fruitful result could come. On 29-5-2015 Irshad Ahmad gave her Talak. Thereafter on 7-6-2015 she lodged an FIR against them and also Irshad Ahmad. The FIR does not depict the involvement of petitioners. The allegations are improbable. FIR is lodged in counter of Talak proceedings.

4. In brief case of the respondents No. 1 to 4 is that respondent No. 5 was physically and mentally tortured by petitioners and her husband on account of demand of dowry and bringing insufficient dowry. After completion of the investigation a charge sheet has been filed.

5. Counsel for the petitioners argued that from the face of FIR no case is made out against them. It was lodged with an ulterior motive for wreaking and vengeance on account of Talak given by the husband of respondent No.5. After the Talak when FIR was lodged, there was no relationship between them and respondent No. 5, thus, Section 498-A I.P.C. and Section 4 of Act, 1961 do not attract in the case in hand. Thus, impugned FIR and its consequential proceedings may be quashed.

6. Counsel for the respondents no. 1 to 4 and 5 argued that prima facie allegations levelled against petitioners in impugned FIR, are sufficient to proceed against them. Alleged allegations relate to the time when respondent No.5 was the wife of Irshad Ahmad, at that time relationship was in existence.

7. In the case in hand, impugned FIR transpires that allegedly third day from the marriage petitioners, her husband started harassing her physically and mentally. At the time of her engagement applicants Mohd. Hadis, Ashfaq Khan had demanded cash and articles. Petitioners were taunting her that she is inauspicious. They told her to bring Rs.10,00,000/- from her father otherwise they will not send her along with her husband to Ahmedabad where he does job.

8. Counsel for the petitioners placed reliance in the matter of **Mohd. Miyan and ors. -v- State of UP and another** [2018 SCC OnLine SC 1976] wherein Their Lordships of Supreme Court held that, Section 498-

A, IPC opens with the words 'whoever being the husband or the relative of the husband of a woman....' therefore, where the complainant approaches with a case that there has been a divorce long back i.e. 4 years ago before filing of the FIR Section 498-A of IPC in terms would not be attracted. We accordingly consider it appropriate to quash the prosecution against all the accused persons under Section 498-A, IPC and Section 3 and 4 of the Dowry Prohibition Act, 1961.

9. In the matter of **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, Hon'ble Supreme Court has observed in para 108 as under:-

“108. 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 channelised 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 FIR 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 uncontroverted 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 concerned Act (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 concerned Act, 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.”

10. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, wherein in para 6, the Full Bench of Hon'ble Supreme Court has held as under :-

“Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

11. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482

CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) xxx xxx xxx

12. In the matter of **Umesh Kumar v. State of A.P.** [(2013) 10 SCC 591], Their Lordships have held as under in para 20 :-

“**20.** it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial.”

13. In the matter of **Harshendra Kumar D. v. Rebatilata Koley**, [(2011) 3 SCC 351], Their Lordships have held in para 25 that :-

“**25.**It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations.”

14. In the matter of **Asmathunnisa v. State of A.P.**, (2011) 11 SCC 259, Hon'ble Supreme Court has held in para 12 that :-

“12. This Court, in a number of cases, has laid down the scope and ambit of the High Court's power under Section 482 of the Code of Criminal Procedure. Inherent power under Section 482 CrPC though wide has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. The authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the statute.

15. In the case in hand as per the impugned FIR aforesaid alleged allegations are concerned with the alleged incidents which occurred before the divorce. There is a very small gap between the date of divorce i.e. 28-5-2015 and date of lodging impugned FIR i.e. 7-6-2015. Thus the petitioner does not get any help from the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Mohd. Miyan** (supra).

16. Delay in lodging impugned FIR and saying that allegedly it was lodged with ulterior motive for wreaking and vengeance as a reaction of talak, are the subject matter of scrutiny of evidence and relates to the defence. Looking to these facts and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Harshendra Kumar D.** (Supra), this Court finds that mere delay in lodging impugned FIR, and saying that it was lodged to take wreak and vengeance, are not sufficient to discard aforesaid allegations depict in impugned FIR.

17. If the aforesaid allegations made in the impugned FIR are taken at their face value and accepted in their entirety prima facie, they constitute the offences punishable under Section 498-A, IPC and Section 4 of the Act, 1961 which are the cognizable offences. In the case in hand, from the impugned FIR this Court is prima facie satisfied that sufficient ground is in existence for initiating proceeding against the petitioners. In the case in hand there is no express legal bar engrafted in

any of the provisions of the Code or the IPC or Act, 1961 to the institution and continuance of the proceeding. Looking to these circumstances and aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Choudhary Bhajan Lal** (supra) and **R.P Kapur** (supra) and **Umesh Kumar** (supra), **Parbatbhai Aahir** (supra), this Court finds that impugned FIR cannot be thrown down.

18. In the case in hand, it does not appear that there is an abuse of process or intervention is necessary to secure ends of justice. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matters of **Asmathunnisa** (supra) and **Parbatbhai Aahir** (supra) this court finds that on the ground of abuse of process and to secure ends of justice, this Court cannot intervene.

19. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Consequently, the instant CRMPs are dismissed at motion stage without entertaining them for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge

Pathak/-