

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.135 OF 2018

Subhash s/o Barkaji Wadbude and others .vs. The State of Maharashtra and one

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.A. Bagde, Advocate for the applicants,
Shri C.A. Lokhande, APP for respondent no.1-State,
Shri R.J. Shinde, Advocate for respondent no.2.

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CORAM : SUNIL B. SHUKRE AND
MADHAV J. JAMDAR, JJ.

DATED : 17th FEBRUARY, 2020.

Heard the learned counsel for the parties.

By this application, the applicants are seeking quashing of FIR No.64/2017, dated 26.4.2017 registered on the basis of the complaint of respondent no.2, vide charge sheet no.29/2017, whereby the offence punishable under section 4 of the Dowry Prohibition Act, 1961 and Section 34 of the Indian Penal Code, 1860 came to be registered against the applicants and also the father of the groom. The father of the groom has not filed this application, however, the groom himself i.e. Manish Lahabar, his mother, his sister Priti, husband of Priti and Bhagyashree, the wife of elder brother, have filed this application.

It is the contention of the learned counsel for the applicants that there are no specific allegations made in the FIR made against these applicants and, therefore,

no offence whatsoever of dowry punishable under section 4 of the Dowry Prohibition Act is made out. He relied upon the judgment of the Hon'ble Apex Court in the case of **Preeti Gupta and another .vs. State of Jharkhand and another**, reported in **AIR 2010 SC 3363**. He also submits that this application is maintainable because filing of the charge-sheet on no evidence is nothing but abuse of process of law.

Learned APP, disagrees with the contentions made on behalf of the applicants on merits, submits that this application is not maintainable as the effective remedy in the nature of discharge application is available to the applicants, which remedy has not been availed of by them. The same argument is adopted by the learned counsel appearing on behalf of the respondent no.2. So far as concerned the objection regarding the maintainability of this application, we must say that remedy available under Section 482 of the Code of Criminal Procedure being extra ordinary in nature is to be resorted to sparingly to secure the ends of justice or to prevent abuse of process of law or for execution of any order passed by criminal court. When an equally efficacious remedy is available, the applicants must be relegated to that remedy but whether alternate remedy available in law is effective or not would depend upon the facts and circumstances of each case. It would then follow that the applicants desirous of invoking remedy under Section 482 of the Code of Criminal Procedure would have to demonstrate before this court that their

case falls in exceptional category and that it is necessary for this court to invoke its inherent powers under Section 482 of the Code of Criminal Procedure to secure the ends of justice or to prevent abuse of process of law.

The learned counsel for the applicants has not demonstrated that this case falls in such exceptional category. The applicants would have been successful, however, in demonstrating the same, had there been no *prima facie* case made out against them i.e. the case here and that continuation of proceedings would have amounted to gross abuse of process of law.

On going through the FIR, dated 26.4.2017, we find that specific allegations have been made against all these applicants in the third paragraph. It has been stated that the engagement ceremony was held at the residential house of the complainant, the father of the bride on 14.3.2017, when all these applicants along with other relatives were present. It has been further alleged that these persons, who were from the side of the bridegroom, made specific demand of motor vehicle, band and the amount towards video recording of the whole function which was of Rs.1,50,000/-. It is further alleged that this amount was actually paid by the complainant to these persons.

Of course, in the subsequent paragraph, it has also been stated by the complainant that the amount of Rs.1,50,000/- was returned to him, but such return of

the amount was not owing to the fact that there was any repentance on the part of the applicants, but it was out of indignation and an effort to emotional blackmail the complainant. This is evident from the fact that the applicants and the other persons are alleged to have made a further demand of Rs.2,50,000/- and it was dictated that if this further demand was not met by the complainant, they would return the earlier amount received by them which was of Rs.1,50,000/- and call off the marriage ceremony.

The afore-stated allegations squarely fall within the definition of dowry given in Section 2 of the Dowry Prohibition Act, 1961. It lays down *inter alia* that whenever any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of said parties, it would be dowry within the meaning of this section. *Prima facie*, the aforesaid allegations are covered by the definition of dowry and, therefore, we do not think that any continuation of the proceeding before the trial court would amount to gross abuse of the process of law.

The learned counsel for the applicants has placed reliance upon the law laid down by the Hon'ble Apex Court in the case of **Preeti Gupta** (supra), wherein

prima facie it has been held that no specific allegations in complaint were made against appellants, sister-in-law and unmarried brother-in-law of complainant and nor was there any allegations regarding visit of in-laws to the place of incident nor they having lived with complainant and her husband also, it was found that no case under the provisions under Section 4 r/w 3 of the Dowry Prohibition Act was made out.

The learned counsel for the applicants submits that the applicant nos.1, 2 and 5 have never visited the place of incident nor was there is any question of them of living together with applicant no.3 Manish – bride and, therefore, the facts of this case would be covered by the ratio of **Preeti Gupta** (supra).

The learned APP for respondent no.1 and learned counsel for respondent no.2 submit that the facts in the present case are entirely different. We find that he is right. The allegations made against the applicants and others have been summarized by us earlier and if those facts are considered, it would be obvious that they distinguish themselves from the facts involved in the case of **Preeti Gupta** (supra). There were no specific allegations made against the accused persons and there was no material showing that in-laws had visited place of incident or lived with the complainant and her husband. Here, the prime allegation of demand of dowry made against the applicants. It has also been alleged that during engagement ceremony, the applicants and all the

relatives were present at the place of the incident and were party to the demand of amount made by them in connection with the marriage. Therefore, the case of **Preeti Gupta** (supra) would render no assistance to the applicants at this stage.

In the result, we find no merit in this application. The application is dismissed.

JUDGE

JUDGE