

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.375 of 2012

P. Jagannath Rao and others* *Petitioners

-versus-

State of Orissa and another* *Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

18.04.2022

Order

No.

05.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order of cognizance dated 15th April, 2010 passed by the learned S.D.J.M., Chhatrapur in G.R. Case No.33 of 2007 as well as the entire criminal proceeding.
3. Heard Ms. Deepali Mohapatra, learned counsel appearing for the Petitioners and the learned counsel for the State-Opposite Party No.1.
4. It is the submission of the learned counsel for the Petitioners that the Petitioners, who are in-laws of the Informant-Victim are never stayed with the Informant-Victim and her husband, who are residing outside and when the husband of the Informant-Victim left U.S.A. for a job by deserting her in India, the Informant-Victim came and stayed in

her parents' house along with her child. When her husband had kept no relation with her, an allegation has been made indicating that there was tortured mentally as well as physically by her husband and her in-laws for non-fulfillment of their demand of dowry. Pursuant to the same, a case was registered and investigation was taken over. Consequently, charge sheet has been filed against the husband and in-laws of the Informant-Victim. It is further submitted that in the meanwhile, the husband has obtained a decree of divorce from the U.S.A. court and coming to know the same, the allegation of the prosecution has been launched against the Petitioners after 14 years of marriage that all the allegations against the in-laws are omnibus in nature and entire allegation is against the husband. In such premises, it is submitted that the proceeding against the Petitioners, who are the in-laws of the Informant-Victim, is liable to be quashed in view of the fact that the Petitioners are required to face the ordeal of trial without being materials on record and also without any specific allegation by the Informant-Victim against them, so also the fact that in-laws are falsely roped in such cases.

5. Learned counsel for the State does not dispute that no specific allegation is there against the Petitioners, so also it is submitted that only allegation has been made that they stated to have tortured the Informant-Victim for non-fulfillment of illegal demand of dowry and the husband did not take care of her wife and children, who left for U.S.A., the wife when came

to the house of the parents-in-law, the parents-in-law did not accept her and also demanded dowry. But, it is stated that was after the decree of divorce was obtained from U.S.A. court by the husband.

6. The Apex Court in the case of ***Kahkashan Kausar @ Sonam & Ors. v. State of Bihar & Ors.*** [Criminal Appeal No.195 of 2022, arising out of S.L.P. (Crl.) No.6545 of 2020 disposed of on 8th February, 2022] have held at paragraphs-13 to 18 as follows:-

13. *This Court in its judgment in Rajesh Sharma and Ors. Vs. State of U.P. & Anr.⁴, has observed:-*

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant.

Uncalled for arrest may ruin the chances of settlement.”

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr.*⁵, it was also observed:-

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in *Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*⁶, it has also been observed:-

“32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They

must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to

be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr.⁷, it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that

the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

17. Recently, in *K. Subba Rao v. The State of Telangana*⁸, it was also observed that:-

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them.

4. (2018) 10 SCC 472
5. (2014) 8 SCC 273
6. (2010) 7 SCC 667
7. (2012) 10 SCC 741
8. (2018) 14 SCC 452”

7. Considering the aforesaid facts and submissions made as well as the law laid down in the case of *Kahkashan Kausar @ Sonam* (supra), this Court is of the view that probability of the Petitioners having been implicated in this case being actuated with malice is not ruled out and, as such, continuance of the prosecution in the facts and circumstances against them shall be an abuse of process of court.

8. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the entire criminal prosecution launched against the Petitioners vide G.R. Case No.33 of 2007 on the file of the learned S.D.J.M., Chhatrapur. The trial court shall do well to comply with this order on production of the certified copy of this order.

9. However, the aforesaid shall not prevent the court, if any evidence comes to the record at the time of trial to proceed against the Petitioners arraying them under Section 319 of Cr.P.C., notwithstanding such quashment in this petition under Section 482 of Cr.P.C.

10. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA