IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1012 OF 2019

Ramesh Uttamchand Ajmera & Anr ….Petitioners
V/s
The State of Maharashtra and Ors. …..Respondent

Mr. Girish Kulkarni i/b Mr. Aditya Mithe for the Petitioner.
Ms. S.S. Kaushik, APP for the Respondent No.1/State.
Ms. Taubon Irani a/w Nuzhat Shaikh for Respondent No.2.

CORAM: NITIN W. SAMBRE &
N. R. BORKAR, JJ.

DATE: NOVEMBER 06, 2023

P.C.:-

1] Petitioners are seeking quashing of FIR in Crime No. 586 of 2018 registered with Khar Police Station on 17/12/2018 for the offence punishable under Sections 498A, 406, 323, 504, 506 and 34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act, 1961. Petitioners are also chargesheeted for the aforesaid offence and as such they are seeking quashing of the charge-sheet.

2] Prosecution case against the Petitioners is as under:-

3] Respondent No.2 – Anita got married to the son of the Petitioners on 15/12/2005 at Mumbai. As such, Petitioners before this Court are father-in-law and mother-in-law of Respondent No.2. On 16/12/2018, Respondent No.2 approached Respondent No.1 – Police Station, alleging that in the engagement so also in marriage substantial gits were given to the Petitioners and their son. It is alleged that in February 2006 and March, 2006, both the Petitioners have demanded dowry of Rs 5 crores. According to her, she was blessed with son Ruhan on 02/10/2008 during which time also Petitioners reminded her of the non-payment of dowry of Rs 5 crores. She has subsequently claimed that younger son was born on 22/02/2013 by name Ayan when again Petitioners reminded her of the non-payment of dowry. She has claimed in the complaint that Petitioners who are her in-laws subjected her to cruelty and as such have made themselves liable not only for the offence punishable under Section 498A but also under 406, as her belongings i.e. jewellery in the form of Stridhan and other articles which were held by the Petitioners in trust were not returned, resulting into offence of criminal breach of trust. It is claimed in the FIR that harassment of Respondent No.2 was with a view to coerce her to meet unlawful demand for money. That being so, offence came to be registered and investigated.

4] Mr. Girish Kulkarni, learned Senior Counsel appearing for the Petitioners would urge that both the Petitioners are into their advance age. Petitioner No.1, father-in-law, is now aged about 80 years, whereas Petitioner No.2, mother-in-law, has crossed the age of 75 years. According to him, allegations in the FIR are based on stale instances, which are formed to be the basis for registration of offence, not only under the Dowry Prohibition Act but also under various provisions of the Indian Penal Code. He would further urge that allegations made in the FIR are not only vague, general and non-specific but also stale in nature which do not constitute satisfaction of ingredients of the offence under Sections 498A, 406, 323, 504, 506 and 34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act, 1961.

5] Mr. Kulkarni, learned Senior Counsel would further urge that it is an admitted position on record that Respondent No.2/Complainant since 2015 has started residing with her parents. According to him, alongwith charge-sheet, photographs are produced which speaks of Respondent No.2/Complainant having already accepted her jewellery including diamond and gold ornaments which were kept in the locker with the Axis Bank. The learned Senior Counsel in the aforesaid backdrop would urge that not only the Petitioners are falsely implicated in the offence based on non-specific, vague and general attributions but proceedings are being used to twist the arm of the Petitioners to agree for settlement. Drawing support from the judgments of the Apex Court in the matter of (i) *Preeti Gupta and Another vs. State of Jharkhand and Anr.* reported in **(2010) 7 SCC 667**, (ii) *Abhishek vs. State of Madhya Pradesh*, **2023 SCC OnLine SC 1083** and (iii) *Geeta Mehrotra and Anr vs State of Uttar Pradesh and Anr.* reported in **(2012) 10 SCC 741,** he would urge that prosecution against the Petitioners is not sustainable and is liable to be quashed. He would specifically draw support from the observations of the Apex Court in the matter of *Preeti Gupta*, cited supra, particularly paras 35 and 37 which read thus:

> "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."

> "37] Before parting with this case, we would like to observe that a serious re-look of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

Similarly, he has also drawn support from the observations from the judgment of the Apex Court in the matter of *Geeta Mehrotra*, cited supra, particularly paras 14, 20, 24 and 25 which read thus:

"14. On a perusal of the complaint and other materials on record as also analysis of the arguments advanced by the contesting parties in the light of the settled principles of law reflected in a catena of decisions, it is apparent that the High Court has not applied its mind on the question as to whether the case was fit to be quashed against the appellants and has merely disposed of the petition granting liberty to the appellants to move the trial court and raise contentions on the ground as to whether it has territorial jurisdiction to continue with the trial in the light of the averment that no part of the cause of action had arisen at Allahabad and the entire incident even as per the FIR had taken place at Faridabad."

"20] Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding."

"24] In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of Ramesh vs. State of T.N. [(2005) 3 SCC 507] that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect were although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498-A IPC and Section 3/4 of Dowry Prohibition Act against the appellants who are the sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them."

"25] However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out

> of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

In addition, he has also relied on the observations of the Apex Court in the matter of *Abhishek*, cited supra, particularly para 13 and other observations so as to claim that neither offence under Section 498A could be inferred nor ingredients of Section 406 could be said to be satisfied in view of acknowledgment of jewellery by the Respondent No.2/Complainant. Para 13 of the said judgment in the case of

Abhishek, cited supra reads thus :

> "13] Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty bound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged."

6] While countering the aforesaid submissions, Ms Taubon Irani, learned Counsel for Respondent No.2 would urge that offence punishable under Section 498A is a continuous one. According to her, FIR has to be read as a whole to infer specific allegations against the

Petitioners which constitute the offence under Sections 498A, 406, 323, 504, 506 and 34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act, 1961. She would claim that neither Stridhan is returned till date nor well being of the children is looked into. According to her, Petitioners have failed to demonstrate abuse of process of law so as to seek relief under Section 482 of the Cr.P.C. and Article 226 of the Constitution and that being so, Petition is liable to be rejected by relegating the Petitioners to the remedy of seeking discharge before the Court below.

7] Having appreciated rival submissions, what can be noticed from perusal of the material available on record against the Petitioners is, Respondent No.2/Complainant has acknowledged in her statement dated 16/12/2018 about receipt of the articles worth about Rs 8,92,500/- which includes gold, silver articles and clothes etc.

8] The son of Petitioners was married to Respondent No.2/Complainant on 15/12/2005. At the time of marriage, son of the Petitioners was employed and he has left job in February, 2006 to join business of the Petitioner-father. During aforesaid period i.e. after husband of the Respondent No.2/Complainant left the job and joined business of his father at Vadodara, Petitioners claimed to have demanded dowry of Rs 5 crores and she being threatened for the same in 2006. The second incident which was narrated is, after Respondent No.2/Complainant shifted in March, 2006 to Vadodara, husband has demanded dowry of Rs 5 cores and in October, 2011, Petitioner-mother-in-law claimed to have altercations with mother of Respondent no.2/Complainant based on which mother-in-law has made false complaint to her son whereupon her husband has quarreled with her and made Respondent No.2/Complainant to seek pardon from the Petitioner-mother-in-law. The above events are relied on for alleging offence punishable under Sections 498A, 504, 506, 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

9] As such, principal allegations against the Petitioners are of instance of February 2006 when demand of dowry of Rs 5 crores was made and in 2011 making a false complaint by mother-in-law about conduct of Respondent No.2/Complainant which has led to Respondent No.2/Complainant having tendered apology to mother in law. The first incident is of 2006 and thereafter Respondent No.2/Complainant continued to stay with son of the Petitioners. The second incident is said to be of October, 2011. Both these stale and vague instances are said to be relied upon by the Respondent No.2/Complainant for lodging complaint dated 17/12/2018, resulting into registration of Crime being Offence No.586 of 2018. The FIR in specific terms does not speak of any pinpointed and specific allegations against the Petitioners but for past two stale instances. Petitioners are roped in for the offence in question which incidents are more than 10 years and 7 years old. The allegation of demand of dowry does not hold any substance, particularly when Respondent No.2/Complainant continued to stay with her husband for almost 10 years from the first incident. She not only continued her marital life but also conceived thereafter. As such, Respondent No.2/Complainant, based on vague, general and non-specific allegations implicated the Petitioner, a senior citizen in the offence.

10] In this backdrop, if we appreciate the law laid down by the Apex Court in the matter of *Preeti Gupta* cited supra, what can be noticed is, the uncontroverted allegations in the FIR do not satisfy very ingredients of the offence under Section 498A, 504, 506 of the Indian

Penal Code and Section 4 of the Dowry Prohibition Act.

11] In the matter of *Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre* reported in **(1988) 1 SCC 692**, the Apex Court in para 7 has observed thus:-

> "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 uncontroverted allegations as made pirma facie establilsh 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 utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are 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."

In the wake of the contents in the FIR which led to registration of offence against the Petitioners and having regard to the observations made by the Apex Court in the matter of *Madhavrao Jiwajirao Scindia,* cited supra, we are of the view that uncontroverted allegations as made do not establish the offence. The criminal proceedings cannot be utilized for oblique purpose and we are of the opinion that chances of ultimate conviction based on material reflected in the charge-sheet are bleak. That being so, no useful purpose will be served in keeping the prosecution pending against the Petitioners. Apart from above, similar view is also expressed by the Apex Court in the matter of *State of Haryana vs. Bhajan Lal* reported in **1992 Supp (1) SCC 335**, particularly para 102. Cause (1) of para 102 of the aforesaid judgment is squarely attracted in the facts of the present case, which reads thus:

> "(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 faice constitute any offence or make out a case against the accused."

No doubt, Ms Taubon Irani, learned Counsel appearing for Respondent No.2/Complainant has claimed that criminal court needs to have great deal of caution in exercising powers under Section 482 of Cr.P.C. however, we are required to be equally sensitive to the vague, general, non-specific and omnibus allegations made by Respondent No.2/Complainant against the Petitioners. The act of Respondent No.2/Complainant in prosecuting the Petitioners can be termed not less than abuse of process of the Court and misuse of criminal proceedings.

12] Paras 35 and 37 of the judgment of the Apex Court in *Preeti Gupta* cited supra are worth referring to which are also reproduced hereinabove in support of above observation.

13] The complaint lacks basic ingredients constituting offence under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act which sufficiently warrants this Court to exercise powers under section 482 of the Cr.P.C. can be supported by the observations in paras 24 and 25 of the judgment of the Apex Court in the matter of *Geeta Mehrotra*, cited supra. This Court in support of observations of granting prayer for quashing of the prosecution against Petitioners can draw support from the judgment of the Apex Court in the matter of *Kahkashan Kausar alias Sonam & Ors. vs. State of Bihar & Ors* reported in **(2022) 6 SCC 599** wherein Apex Court has held that vague, general, non-specific and omnibus allegations against family members of the husband cannot be relied upon for pursuing prosecution against the blood relations.

14] As such, for the aforesaid reasons, we are of the view that prosecution against the Petitioners at the behest of Respondent No.2/Complainant cannot be said to be sustainable, particularly when she had an appropriate remedy for recovery of her Stridhan in matrimonial proceedings for which present prosecution need not be continued. FIR and other material which is a part of charge-sheet does not depict satisfaction of the ingredients of the offence of cruelty, criminal intimidation and that of causing simple hurt. As such, we are of the view that present writ Petition needs to be allowed.

15] Accordingly Writ Petition is allowed in terms of prayer clauses (b) and (C).

(N. R. BORKAR, J.) **(NITIN W. SAMBRE, J.)**