

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

207

CRM-M-2729-2022

Date of Decision : 08.05.2023

Dilbagh Singh and another

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Joginder Siwach, Advocate
for the petitioners.

Ms. Dimple Jain, DAG, Haryana.

None for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. Despite repeated notices and opportunities there is no representation on behalf of respondent No.2. This Court is left with no other option except to adjudicate the present petition with the able assistance of learned State counsel.

2. The petitioners through instant petition under Section 482 Cr.P.C. are seeking quashing of FIR No.56 dated 09.08.2021 registered at Women Police Station, Bhiwani, District Bhiwani, under Sections 323, 34, 354A, 376, 406, 498A, 506 and 511 of IPC (Sections 354A, 376 and 511 of IPC have been deleted later on) and final report dated 11.09.2021 which after completing investigation has been filed under Section 173 of Cr.P.C.

3. The brief facts of the case are that Annu-respondent No.2 lodged a complaint alleging that she is widow of Sandeep. Her marriage

with Sandeep was solemnised on 15.03.2021 as per Hindu rites and ceremonies in village Nangal, Tehsil and District Bhiwani. The in-laws family was not happy with money spent on the occasion of marriage as well as articles given by her family members. They started demanding car and gold chain. Ashok Kumar (husband of her *nand*) tried to commit wrong act with her. When she used to be alone at home, her father-in-law tried to commit wrong act with her. She told this fact to her mother-in-law. She said nothing to her father-in-law and demanded dowry. On 10.05.2021 in the night, her father-in-law finding her alone, forcibly entered in the room and told that he was having only one son who has passed away, thus, they need legal heir which you will give them. He caught hold her. She fell down on the bed and he started committing wrong act. With great difficulties, she could save herself. She came back to her parental home after completing rituals of her husband. On 23.05.2021, her father-in-law called her and asked her to come to their home on account of completion of 06 months of death of her husband. She along with her aunty (*mausi*) and driver went to her in-laws house. Ashok (husband of her *nand*) caught hold her and told her that Sandeep was only son of the family and you cannot leave their home without giving legal heir.

4. On the basis of allegations of complainant, FIR came to be registered under Sections 323, 354A, 376, 406, 506, 511 and 34 of IPC. The police during investigation found that the petitioners have not committed offence punishable under Sections 354A, 376 and 511 of IPC. The *challan* came to be presented under other Sections of IPC.

5. Learned counsel for the petitioners *inter alia* contends that FIR has been primarily registered alleging commission of offence punishable

under Sections 354A, 376 read with Section 511 of IPC. Other Sections of IPC seem to be added to implicate the petitioners. The police during investigation has found commission of no offence punishable under Sections 354A, 376 read with Section 511 of IPC.

6. Learned State counsel supporting the *challan* submitted that the petitioners are parents-in-law of the complainant and police during investigation has found commission of offence punishable under Sections 498A, 406, 323, 506, 34 IPC. Accordingly, *challan* has been presented.

7. The conceded position emerging from record is that marriage of the complainant with son of the petitioners was solemnised on 15.03.2021. The husband of the complainant due to Covid-19 passed away on 05.05.2021 i.e. within less than two months from the date of marriage. The complainant made serious allegations of attempt to rape against her father-in-law. It was alleged that father-in-law attempted to commit rape on 10.05.2021 and his son i.e. husband of the complainant had passed away on 05.05.2021. The police in the investigation has found commission of no offence punishable under Sections 354A, 376 read with Section 511 of IPC.

8. I have heard the arguments of learned counsel for the parties and perused the record.

9. A two judge Bench of Hon'ble Supreme Court in **Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599** while dealing with issue of embroiling of all and sundry family members of a husband in matrimonial cases, after noticing its previous judgments, has held:

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-A IPC was aimed at preventing cruelty

committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

12. This Court in its judgment in Rajesh Sharma v. State of U.P. (2018) 10 SCC 472, has observed : (SCC pp. 478-79, para 14)

“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 Act 46 of 1983. The expression “cruelty” in Section 498-A 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. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have 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 visualised. 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.”

13. *Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, it was also observed : (SCC p. 276, para 4)*

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC 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-AIPC 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 quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.”

14. *Further in Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667, it has also been observed : (SCC pp. 676-77, paras 32-36)*

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC 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 is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre 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 498-A 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 fibre, peace and tranquillity 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 visualised 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 the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the 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 scrutinised 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 an amicable settlement altogether. The process of suffering is extremely long and painful.”

15. In Geeta Mehrotra v. State of U.P. (2012) 10 SCC 741 it was observed : (SCC p. 749, para 21)

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] 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 : (SCC p. 698, para 12)

‘12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the 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 commission of 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 other reasons

which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their 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.”

16. Recently, in K. Subba Rao v. State of Telangana, (2018) 14 SCC 452, it was also observed that : (SCC p. 454, para 6)

“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.”

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC 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.

10. A two judge bench of Supreme Court in **State of Haryana & others Vs Bhajan Lal & others 1992 Supp (1) SCC 335** after considering plethora of judgments has illustrated circumstances where High Court in exercise of its power under Article 226 of Constitution of India and Section 482 of Cr.P.C. can quash FIR. The Supreme Court has reminded the courts that power should be exercised in exceptional cases and with full circumspection. Relevant paragraphs and findings read as:

83. The Judicial Committee in its oft-quoted decision, namely, Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 though strongly observed that the judiciary should not interfere with the police in matters which are within their province, has qualified the above statement of law by saying : (AIR p. 22)

“No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation”

85. Gajendragadkar, J. speaking for the Court while considering the inherent powers of the High Court in quashing the first information report under Section 561-A of the old Code (corresponding to Section 482 of the new Code) in R.P. Kapur v. State of Punjab [(1960) 3 SCR 388, 396 : AIR 1960 SC 866 : 1960 Cri LJ 1239] at page 393 made the following observation:

“Cases may also arise 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. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

93. The Supreme Court in State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] examined the question whether, when the investigation was in progress, the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. On the facts of that case, this Court set aside the order of the High Court quashing the order of the Magistrate in postponing the consideration of the report submitted to him till the final report of completion of further investigation, directed by the State Government was submitted to him and held that the High Court in exercise of its extraordinary jurisdiction committed a grave error in giving the direction virtually amounting to mandamus to close the case before the investigation was complete.

95. The classic exposition of the law is found in State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121] . In this case, Chandrachud, C.J. in his concurring separate judgment has stated that “if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received”. Justice A.N. Sen who wrote the main judgment in that case with which

Chandrachud, C.J. and Varadarajan, J. agreed has laid the legal proposition as follows : (SCC pp. 597-98 paras 65 and 66)

“... the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought

to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence.”

98. *Speaker for the bench, Ranganath Misra, J. as he then was in Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] has expounded the law as follows : (SCC p. 695, para 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 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 utilised 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 proceedings even though it may be at a preliminary stage.”

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 extraordinary 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 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.

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.*

11. From the perusal of impugned FIR, it transpires that complainant has primarily made allegation of attempt to commit rape against her father-in-law and brother-in-law (husband of her *nand*). The son of the petitioners died on 05.05.2021 and complainant alleged that her father-in-law attempted to commit rape on 10.05.2021. The police found allegations qua attempt to commit rape false and accordingly, *challan* was not presented alleging commission of offence punishable under Sections 376 and 511 read with Section 34 of IPC. The allegation of demand of dowry seems to be general and vague. The marriage of the complainant took place in the month of March and her husband passed away within less than two months from the date of marriage. The marriage was solemnised during Covid-19 and husband of the complainant died due to Covid-19. The complainant had left her matrimonial home even prior to death of her husband.

12. Applying the principles laid down by Hon’ble Supreme Court in *Bhajan Lal (supra)* and judgment of Karnataka High in *Kahkashan (supra)*, this court is of the considered opinion that it would in the fitness of things and interest of justice if present petition is allowed and accordingly allowed.

13. FIR No.56 dated 09.08.2021 registered at Women Police Station, Bhiwani, District Bhiwani, under Sections 323, 34, 354A, 376, 406, 498A, 506 and 511 of IPC (Sections 354A, 376 and 511 of IPC have been deleted later on) and final report dated 11.09.2021 (Annexure P-2) are hereby quashed qua the petitioners.

08.05.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>