

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33507 of 2017

Arising Out of PS. Case No.-1431 Year-2015 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Rajesh Choudhary
 2. Rakeh Choudhary.
 3. Suraj Choudhary, all are sons of Shanti Lallan Choudhary.
 4. Shanti Lallan Choudhary, son of Late Radhe Mohan Choudhary,
 5. Madhuri Devi, Wife of Shanti Lallan Choudhary,
All are residents of House No. 19, Near Cable Basti, C.P. Samitee School,
Golmuri, P.S. Golmuri, District- Jamshedpur Jharkhand.

... .. Petitioners

Versus

1. The State of Bihar
2. Rani Kumari, Wife of Rajesh Choudhary and Daughter of Birendra Choudhary, At present Mohalla Andar Killa, Nakhash Chouk, Near Bharti Bharti School, P.S. Hajipur Town, District- Vaishali.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate
For the Opposite Party/s : Mr. Harendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel appearing for the petitioners
and learned APP for the State.

2. At the outset, learned counsel appearing on behalf of the petitioner submitted that application filed on behalf of petitioner no.1, namely, Rajesh Choudhary has been withdrawn vide order dated 11.10.2023 by this Court. Now, the present application is limited with only petitioner



nos. 2 to 5.

3. This application has been filed by the petitioners for quashing of the order dated 30.10.2015 passed by learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur in Tr. No.352 of 2016 arising out of Complaint Case No.C-1-1431 of 2015, whereby the learned jurisdictional Magistrate has taken cognizance for the offences punishable under Section 498A of the Indian Penal Code (for short 'IPC') against the petitioners.

4. The prosecution case in brief as it appears from the complaint petition filed by the complainant, namely, Rani Kumari on 06.05.2015 stating therein that she was married with one Rajesh Choudhary (petitioner no.1, now stands deleted as withdrawn) by the Hindu rites and rituals where one week prior to the marriage of the complainant, her father has given gift and cash of Rs.4 lakhs for the expenses of marriage along with T.V., Freeze, Washing Machine, furniture, utensils and golden chain of Rs.2 lakhs to the petitioners. She further alleged that on the date of marriage, her father also given a golden chain to the



complainant but, petitioner no.1 (now stands deleted) called the father of the complainant and demanded one bullet motorcycle as to solemnize marriage. Thereafter, her father and relatives pacify the matter and thereafter only marriage of informant could solemnize and she went her *sasural* at Jamshedpur on 12.03.2011. She further alleged that after six months of marriage, all accused persons pressurized the complainant/O.P. No.2 for earlier demand, whereupon she informed to her parents but her parents refused to fulfil the same due to financial hardship and made an assurance to fulfil the demand shortly but, accused persons did not agree and continued torture to the complainant in various ways due to non-fulfilment of demand of aforesaid motorcycle. O.P. No.2 further alleged that after one year of marriage, her father came at her *sasural* and paid Rs.50,000/- for the motorcycle to the accused Shanti Lallan Choudhary (petitioner no.4) but since father of complainant could not arrange the balance amount, she was again tortured by the accused persons. It is further alleged that on 23.09.2012 all accused persons came at her native/parental village of Siwan



district and while on way at about 4 P.M. in evening, accused persons came to complainant's house and left the complainant at her *naihar* and also assaulted her, which was protested by her father. Accused persons also misbehaved with her father and threatened to kill her, thereafter, the petitioner no.5 Madhuri Devi sprinkled kerosene oil and accused Rajesh Choudhary (husband) ignited the matchstick and threw it on complainant, but, anyhow her parents saved the complainant but, some parts of her body were burnt in this occurrence. Thereafter, all the accused persons fled away from Bolero vehicle despite of the request made by her father for *Bidagiri*. Resultantly, the present complainant has been filed against the accused persons.

5. Learned counsel appearing for the petitioners submitted that from the perusal of FIR, no *prima facie* case is made out against petitioners and they have been implicated with present case for the reason that petitioner no. 2 and 3 are brothers-in-law, petitioner no.4 is father-in-law and petitioner no.5 is mother-in-law of the complainant/opposite party no.2. It is submitted that



petitioners are living separately, having no connection with daily and domestic affairs with opposite party no.2 and her husband. It is submitted that their implication only appears out of relations and with said ulterior and oblique motive, with harassing attitude, present case was filed. It is a classical case of malicious prosecution and misuse of provisions of Section 498-A of IPC. While concluding the argument, it is submitted that even from the perusal of complaint, the allegation *qua* petitioners is appearing very much general and omnibus and, as such, it is a fit case to quash proceedings, as same is only amounting to abuse the process of court of law.

6. In support of his submissions, learned counsel relied upon the legal report of the Hon'ble Supreme Court as reported in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1083**.

7. Notice served upon opposite party no.2 but, no one appears on her behalf to oppose the application when matter was taken on board.

8. Learned APP while opposing the application



submitted that petitioners being in-laws played active role towards alleged mental and physical cruelty to O.P. No. 2, by raising demand of dowry.

9. It would be apposite to reproduce relevant Paragraph Nos. 12 to 17 of **Abhishek Case (supra)**, which read as:-

"**12.** The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that



while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur v. State of Punjab (AIR 1960 SC 866) and State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

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 abound 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.

14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would



add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in Neelu Chopra v. Bharti [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking



vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In State of Haryana v. Bhajan Lal, [1992 Supp (1) SCC 335], this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

"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 informant 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 persons 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 view of aforesaid legal and factual submissions, as petitioners appear in-laws claimed to have no connection with daily and domestic affairs with O.P. No.2, where allegation of cruelty and dowry demand also appears *prima facie* very much general and omnibus against them and, therefore, by taking guiding note of **Abhishek case (supra)**, the impugned order taking cognizance dated 30.10.2015 passed by learned Sub-Divisional Judicial Magistrate, Vaishali at Hajipur in Tr. No.352 of 2016 arising out of Complaint Case No.C-1-1431 of 2015 with all its consequential proceedings, *qua*, all above-named petitioners are, hereby, quashed and set aside, except petitioner no.1, namely, Rajesh Choudhary.

11. This application stands allowed.

12. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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