

CRR 606 of 2022

Shri Amar Ghorui
Vs.
Smt. Aparna Ghorui & Anr.

Mr. Ravi Ranjan Kumar
... for the petitioner

Mr. Dipanjan Datta
Mr. Subhajit Chwodhury
... for the opposite party no. 1

Mr. Arindam Sen
Ms. Diksha Ghosh
... for the State

1. Affidavit-of-service filed be kept with the record. On being served the opposite party no. 1 is present.
2. The present revisional application has been preferred praying for quashing of the FIR being Rajpur P.S. Case No. 16 of 2021 dated 13.01.2021 corresponding to G.R. No. 98 of 2021 under Sections 498A/325 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act, 1961, now pending before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah.
3. Learned counsel for the State is present and has placed the case diary along with the memo of evidence.
4. On hearing the learned counsel for both the parties and on perusal of the materials on record, it appears that the parties were married in the year 2004. In the year 2011 the opposite party no. 1 filed a complaint

against the petitioner before his commanding officer in the Indian Army. The commanding officer decide to hear the parties but the opposite party no. 1 did not go with the petitioner to meet the commanding officer at Punjab.

5. The petitioner's case is that the opposite party no. 1 was always wanting the petitioner to stay separately, leaving his ailing mother. As the petitioner refused to do so, the opposite party no. 1 lodged a FIR on 09.03.2012 being Uluberia P.S. Case No. 205 of 2012 under Section 498A/406 of the Indian Penal Code.
6. Out of the said wedlock a child was born on 22.09.2014.
7. By swearing two affidavits on 24.12.2013 and 28.08.2014 the opposite party no. 1 declared that she had no allegation against the petitioner and his mother and that she had filed the case out of a misunderstanding. On the said affidavits being filed before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah, the learned Magistrate vide order dated 10.04.2015 dropped the proceedings and acquitted the petitioner of the said charge.
8. It is stated by the petitioner and admitted by the opposite party no. 1 that the opposite party no. 1 left her matrimonial home again on **13.06.2020**. The written complaint in the present case has been field on **12.01.2021** alleging an attempt to murder.

9. The learned counsel for the State has submitted that there is no material in the case diary to substantiate the allegations made by the petitioner.

10. In **Mamidi Anil Kumar Reddy vs State of Andhra Pradesh & Anr., reported in (2024) SCC OnLine SC 127, decided on February 5, 2024**, the Supreme Court held:-

“15. The phenomenon of false implication by way of general omnibus allegations in the course of matrimonial disputes is not unknown to this Court. In Kahkashan Kausar alias Sonam v. State of Bihar, this Court dealt with a similar case wherein the allegations made by the complainant-wife against her in-laws u/s. 498A and others were vague and general, lacking any specific role and particulars. The court proceeded to quash the FIR against the accused persons and noted that such a situation, if left unchecked, would result in the abuse of the process of law.

16. More recently, this Court in *Mahmood Ali v. State of U.P.*, while considering the principles applicable to the exercise of jurisdiction u/s. 482 CrPC, observed as follows:

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

17. Considering the dicta in Mahmood Ali (supra), we find that the High Court in this case has failed to exercise due care and has mechanically permitted the criminal proceedings to continue despite specifically finding that the allegations are general and omnibus in nature. The Appellants herein approached the High Court on inter alia grounds that the proceedings were re-initiated on vexatious grounds and even highlighted the commencement of divorce proceedings by Respondent No. 2. In these peculiar circumstances, the High Court had a duty to consider the allegations with great care and circumspection so as to protect against the danger of unjust prosecution.”

11. Section 498A of the Indian Penal Code, lays down:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Ingredients of offence.— The essential ingredients of the offence under Section 498A are as follows:-

- (1) A woman was married;
- (2) She was subjected to cruelty;
- (3) Such cruelty consisted in —
 - (i) Any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical.
 - (ii) Harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand.
 - (iii) The woman was subjected to such cruelty by her husband or any relation of her husband.”

12. In *Abhishek vs State of Madhya Pradesh, Criminal Appeal No. 1456 of 2015 & Criminal Appeal No. 1457 of 2015, on August 31, 2023*, the Supreme Court held:-

“11. This being the factual backdrop, we may note at the very outset that the *contention* that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, *needs mention only to be rejected*.

It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr.P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See *Joseph Salvaraj A. vs. State of Gujarat and others* {(2011) 7 SCC 59}]. This principle was reiterated in *Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another* [(2019) 11 SCC 706]. This

issue, therefore, needs no further elucidation on our part.

12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In **V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(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 **M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [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 vs. State of Punjab (AIR 1960 SC 866)** and **State of Haryana and others vs. Bhajan Lal and others [(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 and others vs. State of Bihar and others [(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 and another vs. State of Jharkhand and another* [(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 and another vs. 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 and others vs. State of U.P. and others* (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 **Bhajan Lal (supra)**, 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 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 Act concerned (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 Act concerned, 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.”

13. The allegations in the written complaint in this

case are general in nature and do not make out even a prima facie case against the petitioners in respect of the offences alleged. The FIR in this case was filed on 12.01.2021, though the parties were living separately since 13.06.2020.

14. There are no materials on record to show that the ingredients required to constitute the offences alleged are present against the petitioner and permitting such

a case to proceed towards trial will be an abuse of the process of law and as such the proceeding is liable to be quashed.

15. CRR 606 of 2022 is allowed.

16. The proceedings being Rajpur P.S. Case No. 16 of 2021 dated 13.01.2021 corresponding to G.R. No. 98 of 2021 under Sections 498A/325 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act, 1961, now pending before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah, **is hereby quashed in respect of the petitioner.**

17. All connected applications, if any, stand disposed of.

18. Interim order, if any, stands vacated.

19. Copy of this order be sent to the learned Trial Court for necessary compliance.

20. Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)