

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-M-36419-2023 (O&M)
Date of decision: 03.04.2024

JYOTI KHOKHER

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

None for the respondent No. 2.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition is preferred under Section 482 Cr.P.C. seeking quashing of the FIR No. 745 dated 15.09.2021 registered under Sections 323, 354, 377, 406, 498-A and 506 of the Indian Penal Code at Police Station Karnal City, Karnal and all subsequent proceedings arising therefrom.
2. Briefly, the facts are that the marriage between respondent no.2-complainant was solemnised with Vishnu Kumar, brother of the petitioner, on 19.11.2019. The in-law's family of respondent no. 2 were not satisfied by the dowry brought by her and taunted her about the same. The couple visited Goa after marriage, where her husband forced her to consume liquor and sexually assaulted her by making unnatural relations. On their return, the husband demanded a luxury car, the father-in-law a gold *kara*, the mother-in-law a gold kitty set and petitioner's gold jewellery. The petitioner kept the car make Volkswagon Ameo, given by the father of respondent no.2 in dowry, for her private use. On 15.01.2024, the father-in-law entered the room of respondent

no.2 with a lecherous intent but she was able to escape, however, he threatened to throw her out of the matrimonial home if she disclosed this incident to anybody. Respondent no. 2 went to her paternal home on 29.04.2020 and was not let back into her matrimonial home when she came back with her parents on 16.04.2021.

3. Learned counsel for the petitioner *inter alia* contends that respondent No. 2 has been duly served, but there is no representation on her behalf. Further, the FIR (supra) lacks any specific allegations against the petitioner. A perusal of the application filed by respondent no. 2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 would indicate that as the allegation on the petitioner for instigation for demanding Rs. 5,00,000/- finds no mention but it is alleged that the petitioner demanded gold *kara*. The petitioner was roped in the FIR(supra) merely to harass her and her family. Respondent no.2 has filed multiple complaints against the petitioner and her family, further indicating her malicious intent. Aggrieved by the same, the brother of the petitioner has filed for a divorce and the FIR(supra) was filed by respondent no. 2 as retaliation to it. Moreover, not even an iota of evidence against the petitioner can be found in the report under Section 173 Cr.P.C.

4. Having heard the learned counsel for the petitioner and after perusing the record of the case, it transpires that the petitioner was married to one Pushpinder Duhan on 30.11.2020 and is currently happily residing in her matrimonial home in District Jind. Further, respondent no.2 has recorded a statement dated 29.09.2021 (Annexure P-6) under Section 164 Cr.P.C. wherein no allegation qua demand of dowry has been levied on the petitioner. Rather, her involvement has been limited by making bald allegations of instigation. It

is evident that all the allegations are generic in nature and no specific allegations have been levelled against the petitioner.

5. A two Judge bench of the Hon'ble Supreme Court in ***Preeti Gupta v. State of Jharkhand (2010) 7 SCC 667*** quashed the complainant against the sister-in-law of the complainant noting that the sole purpose of filing the complaint was to humiliate her and allowing criminal prosecution to continue would amount to an abuse of process of law. Speaking through Justice Dalveer Bhandari, the following was observed:

“34. Before parting with this case, we would like to observe that a serious relook 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.

35. 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.”

6. A two Judge bench of the Hon'ble Supreme Court in ***Girdhar Shankar Tawde v. State of Maharashtra (2002) 5 SCC 177***, speaking through Justice Umesh C. Banerjee, opined as follows:

“18... In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under section 498-A and not de hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under section 498-A. The legislative intent is clear enough to indicate in particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). The letters by themselves though may depict a reprehensible conduct, would not, however, bring

home the charge of section 498-A against the accused. Acquittal of a charge under section 306, as noticed hereinbefore, though not by itself a ground for acquittal under section 498-A, but some cogent evidence is required to bring home the charge of section 498-A as well, without which the charge cannot be said to be maintained...”

7. A three Judge bench of the Hon’ble Supreme Court in ***Abhishek v. State of Madhya Pradesh 2023(4) R.C.R.(Criminal) 239*** quashed the FIR under Section 498-A of the IPC against the mother-in-law and brother-in-law of the complainant and observed that the allegations are mostly general and omnibus in nature without any specific details as to how and when her brother-in-law and mother-in-law who lived in different cities altogether subjected her to harassment for dowry. Such allegations are found to be incongruous and difficult to comprehend. Speaking through Justice Sanjay Kumar, the scope of Section 482 Cr.P.C. qua quashing of FIR stemming from offence under Section 498-A was also deliberated upon and the following observations were made:

“12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C., 1973 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. v. 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., 1973 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 and others v. Bhajan Lal and others [(1992) Supp (1) SCC 335], the Court would have jurisdiction to

quash the FIR/complaint.

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15. Earlier, in Neelu Chopra and another 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 and others v. 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., 1973 Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C., 1973 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."

8. Time and again, the Courts have highlighted the tendency of roping in all and sundry members of the husband’s family in cases filed under Section 498-A of the IPC. Recently, a two Judge bench the Hon’ble Supreme Court in ***Mahalakshmi and others v. State of Karnataka Criminal Appeal No. 494/2023*** decided on 30.11.2023 quashed the criminal proceedings under Section 498-A of the IPC against the husband’s sisters and cousins and observed that if the allegations are not serious and substantiated, and there is no clear evidence of accused’s involvement in the complainant’s marital life, they cannot be implicated under Section 498-A of the IPC.

9. Accordingly, this petition is allowed and FIR No. 745 dated 15.09.2021 registered under Sections 323, 354, 377, 406, 498-A and 506 of the Indian Penal Code at Police Station Karnal City, Karnal is hereby quashed qua the petitioner.

April 03, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No