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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of decision: 12.03.2024***

+ CRL.M.C. 4616/2022 & CRL.M.A. 18749/2022  
RAJESH AGGARWAL & ANR.

..... Petitioners

Through: Mr. Manoj Taneja & Mr. Vishal  
Khadia, Advs.

versus

STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Shoaib Haider, APP.  
SI Ravi Beniwal, PS  
Govindpuri.  
SI Saurabh Parasan, PS Malvia  
Nagar.  
Mr. K.P. Toms & Mr. Piyush  
Mehra, Advs. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), praying for the quashing of FIR No. 0451/2017 registered at Police Station: Govindpuri, New Delhi, under Sections 498A/406/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), against, *inter alia*, the petitioners herein.



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**Background Facts:**

2. The above FIR has been registered on the complaint of the respondent no.2, who is married to the nephew of petitioner no.1, that is, his sister's son. In the FIR itself, it is recorded that respondent no.2 got married to the nephew of petitioner no.1, namely, Yogesh Gupta, on 23.04.1994. It is alleged that right from the date of the marriage, the relatives of Yogesh Gupta, including his mother and the petitioners herein, as also his other maternal uncle and his wife, had been harassing the respondent no.2 for dowry and had even given physical beatings to her.

3. Apart from the general allegations, the specific allegation against the petitioners is that on 18.07.2007, at about 9:00 PM, Mr. Yogesh Gupta along with petitioners and the mother-in-law of the complainant asked the complainant to pay Rs.10,00,000/- to them as dowry, and when the complainant refused to pay, the petitioner no.1 caught hold of the hands of the complainant from back and Mr.Yogesh Gupta gave merciless beating to the complainant. It is further alleged that petitioner no.2 along with the mother-in-law of the complainant also gave 10-15 slaps on the face of the complainant, due to which the complainant fell unconscious. Upon regaining consciousness, she was again mercilessly beaten by Mr. Yogesh Gupta.

4. Interestingly, the FIR records that a complaint in this regard was made by the complainant to Police Station: Kalkaji on 20.07.2007. The complainant alleges that no action was taken on the said complaint. The complainant also states that a



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copy of this complaint is annexed. However, the learned counsel for the petitioners submits that in the entire Trial Court record, a copy of this alleged complaint is not found and has not been filed. This is not disputed by the learned APP and/or the learned counsel for the respondent no. 2.

5. The above FIR has been registered on a complaint dated 13.07.2017 filed by respondent no.2, that is, after 23 years of the marriage; the incident dated 18.07.2007 was also about 10 years before the complaint was filed.

**Submissions of the learned counsel for the petitioners:**

6. The learned counsel for the petitioners submits that before the Crime Against Women Cell (CAW), where the original complaint was filed by respondent no.2, the petitioners were never called for any investigation/preliminary inquiry. Even when the FIR was registered on 09.11.2017, the petitioners were called only once by the Investigating Officer ('IO'), and in their statement, they denied having any role in the alleged offence.

7. He submits that the petitioners have always been residing separately from Mr. Yogesh Gupta and the complainant, and they have been dragged into this matter only because they are family members of Yogesh Gupta.

8. He further submits that in June 2017, the mother-in-law of the complainant had filed a civil suit seeking restraint on the complainant with respect to the property on which the mother-in-law claims a title. On 14.06.2017, the concerned Court had



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passed an order of *status quo*. The complaint was filed on 13.07.2017 as a counterblast to the said proceedings.

9. The learned counsel for the petitioners further submits that the entire case against the petitioners is only on the basis of the above complaint made by the complainant. Apart from the complainant, statements under Section 161 of the Cr.P.C of only the son of the complainant and two neighbors, have been recorded by the police before the filing of the charge-sheet. They have not stated anything against the petitioners herein.

10. He places reliance on the judgments of the Supreme Court in ***Kahkashan Kausar @ Sonam & Ors. v. State of Bihar & Ors.***, (2022) 6 SCC 599; ***Abhishek v. State of MP***, 2023 SCC OnLine SC 1083; and ***Vishnu Kumar Shukla & Anr v. The State of Uttar Pradesh & Anr***, 2023 SCC OnLine SC 1582, to submit that such an abuse of the process of law cannot be allowed.

11. He further submits that cognizance of the charge-sheet filed by the police was taken by the learned Metropolitan Magistrate only against accused no.1, that is, Mr. Yogesh Gupta, and summons were issued to him alone vide order dated 22.12.2020. Later, by an order dated 06.07.2022, summons were issued also against other accused, including the petitioners herein. He submits that this is a procedure unknown to law.

12. He further submits that charges *inter alia* against the petitioners have been framed on 24.01.2023 in absence of the petitioners inasmuch as the petitioners, due to an inadvertent



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error, had noted the next date of hearing as 24.02.2023, which is also reflected on the official website of the Courts, and had not appeared on 24.01.2023.

**Submissions of the learned APP and the learned counsel for the respondent no. 2:**

13. On the other hand, the learned counsel for respondent no.2 submits that there are specific allegations made against the petitioners herein, including the incident of 18.07.2007.

14. He submits that the complainant, in order to somehow maintain a relationship, did not file the complaint earlier against the petitioners and the other accused persons, however, this does not mean that her complaint is false or *mala fide*. He submits that, in fact, the complaint filed is supported by the statement of the son of the complainant and also the neighbors.

15. The learned APP also opposes the present petition by contending that this would not be a case where the FIR deserves to be quashed at this stage, especially when the learned Trial Court has found sufficient material to frame charge *inter alia* against the petitioners under Sections 498A/34 of the IPC.

**Analysis & Findings:**

16. I have considered the submissions made by the learned counsels for the parties.

17. In *Kahkashan Kausar @ Sonam & Ors.*, (Supra), the Supreme Court highlighted the concern over the misuse of Section 498A of the IPC and in the increasing tendency of the



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complainant to implicate the relatives of the husband in matrimonial disputes, by observing as under:

*“10. Having perused the relevant facts and contentions made by the appellants and respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed?”*

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*17.The abovementioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498-A IPC 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.”*

18. The Supreme Court also placed reliance on the precedents on this issue in ***Rajesh Sharma & Ors. v. State of U.P. & Anr.***, (2018) 10 SCC 472; ***Arnesh Kumar v. State of Bihar & Anr.***, (2014) 8 SCC 273; ***Preeti Gupta & Anr. v. State of Jharkhand & Anr.***, (2010) 7 SCC 667; ***Geeta Mehrotra & Anr v. State of Uttar Pradesh & Anr.***, (2012) 10 SCC 741, and ***K. Subba Rao v. State of Telangana***, (2018) 14 SCC 452 and held that in the absence of any specific and distinct allegations



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being made against the family members of the husband and where there are only general and omnibus allegations, the FIR registered against such family members is liable to be quashed. It was further held that, in fact, in such cases if the family members are forced to go through the tribulations of trial, it would inflict severe scars upon them and such exercise must be discouraged.

19. In *Abhishek* (Supra), the Supreme Court reiterated that 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. The Court considered the precedents in *Neelu Chopra and Another v. Bharti*, (2009) 10 SCC 184; in *Mahmood Ali and Others v. State of Uttar Pradesh*, 2023 SCC OnLine SC 950; as also of the landmark judgment of the Supreme Court in *State of Haryana and Others v. Bhajan Lal and Others*, (1992) Supp (1) SCC 335, and held that where the allegations made are so far-fetched and improbable that no prudent person could conclude that there are sufficient grounds to proceed against the accused, permitting the criminal process to continue in such a situation would result in clear and patent injustice; this would be a fit case for the High Court to exercise its inherent power under Section 482 of the Cr.P.C. to quash the FIR and the consequential proceedings.

20. Keeping the above principle in view, and the facts of the present case, it is evident that the respondent no.2 married the



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nephew of the petitioner no.1, that is, Mr.Yogesh Kr. Gupta on 23.04.1994. The complaint has been filed on 13.07.2017, that is, after 23 years of marriage. Mostly general and vague allegations have been made against the family members of the husband, not only against the mother-in-law but also against the petitioners, who are the maternal uncle and aunt of the husband. Allegations have also been made against the other maternal uncle and his wife, thereby naming the entire family of the husband.

21. As clever case of drafting, specific allegations have been made dating back to around 1994-95 against Mr.Vimal Aggarwal, the other maternal uncle of the husband of the respondent no.2 and his wife Ms.Anu Aggarwal. Specific allegations against the petitioners dating back to 18.07.2007 have been made. As noted hereinabove, the complaint has been filed almost 10 years thereafter.

22. Though the respondent no.2 states that regarding the incident on 18.07.2007, she had made a complaint to the police at Police Station Kalkaji on 20.07.2007, copy thereof is stated to be attached to the complaint, the submission of the learned counsel for the petitioner that no such copy has been found in the learned Trial Court Record, has gone unrebutted. The learned counsel for the respondent no.2 has also not produced a copy of any such complaint before this Court.

23. In *Mahmood Ali and Others* (Supra), the Supreme Court emphasised that the High Court owes a duty to look into the



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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 and, 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.

24. Where the wife is set to implicate the entire family of the husband in a criminal case, it is to be expected that through her lawyer she would get a complaint properly drafted making some specific allegations against each of the family members. If only on such averment, the family members are to face agony of the trial, it would defeat the ends of the justice. In my opinion, therefore, the Court must scrutinise the complaint/FIR to determine whether the allegations are a case of clever drafting or have at least some element of truth in the same. Though the Court is not expected to conduct a mini trial, the Court also cannot be a mere spectator and refuse to exercise the power that is vested in it under Section 482 of the Cr.P.C., where it finds that the continuation of such proceedings would defeat the ends of the justice and would amount to insurmountable harassment, agony and pain to the accused and be an abuse of the criminal process.



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25. In the present case, what is also important to be emphasised is that the averment of the learned counsel for the petitioners that CAW did not even summon the petitioners for the preliminary inquiry, has gone un rebutted. The FIR and even the consequential charge-sheet are based only on the averment made by the respondent no.2 in her complaint. Barring her statement/complaint, there is no other material placed on record by the respondent no.2 against the petitioners. In fact, the learned Trial Court has till date not framed the charges against the petitioners and other co-accused persons under Section 406 of the IPC and has sought clarifications from the respondents in that regard.

26. The son of the respondent no. 2 and the neighbours, in their statements recorded under Section 161 of the Cr.P.C. also do not make any allegations against the petitioners.

27. It is also worth mentioning that by the order dated 22.12.2020, passed by the learned Metropolitan Magistrate, Mahila Court-02, South East, Saket Court in Criminal Case No.5857/2020, titled ***State v. Yogesh Kumar***, arising out of the above FIR, summons were first issued only against the husband Mr.Yogesh Kumar. It is only by the subsequent order dated 06.07.2022 passed by the said Court, that summons were directed to be issued also against the petitioners, and by the order dated 24.01.2023, in absence of the petitioners, charges under Section 498A/34 of the IPC were directed to be framed against the petitioners. For charges under Sections 406/34 of the



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IPC, clarification was sought from the IO. I am afraid that the order dated 24.01.2023, does not show the consideration of the learned Trial Court on the specific role of the petitioners herein.

28. In *Abhishek* (supra), the Supreme Court reiterated that High Court would continue to have the power to entertain and act upon a petition filed under Section 482 of the Cr.P.C. to quash the FIR even when a charge-sheet is filed by the police during the pendency of such petition. In *Mamta Shailesh Chandra v. State of Uttarakhand & Ors.*, 2024 SCC OnLine SC 136, the above view has been reiterated.

29. In view of the above, the petition is allowed and the Impugned FIR, that is, FIR No. 0451/2017 registered at Police Station: Govindpuri, New Delhi, under Sections 498A/406/34 of the IPC, and all other proceedings emanating therefrom against the petitioners are hereby quashed. Pending application is also disposed of as being rendered infructuous.

30. It is clarified that this court has considered the case only against the petitioners and any observations made in the present order shall not in any manner influence the learned Trial Court in considering the case against the remaining accused in the Impugned FIR and the case emanating therefrom.

31. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**MARCH 12, 2024/rv/RP**

*Click here to check corrigendum, if any*