



\$~67

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 289/2025**
UPENDRA KUMAR DEV & ORS.Petitioners

Through: Mr. Purushottam Sharma Tripathi and
Mr. Prakhar Singh, Advocates.

versus

STATE NCT OF DELHI & ANR.Respondents
Through: Mr. Suil Kumar Gautam, APP for
State.
SI Ashish Kumar, P.S. Okhla
Industrial Area.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.01.2025

%

1. The present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 482 of Code of Criminal Procedure, 1973²) seeks quashing of FIR No. 400/2019 dated 4th November, 2019, under Sections 498A, 323, 406, 506, 509 and 34 of the Indian Penal Code, 1860³, registered at P.S. Okhla Industrial Area
2. The impugned FIR was registered on a complaint made by Respondent No. 2 – who is the wife of Petitioner No. 1. Petitioners No. 2 & 3 are the father and mother of Petitioner No. 1, whereas, Petitioners No. 4 & 5 are the elder brother and sister-in-law of Petitioner No. 1. After conclusion

¹ “BNSS”

² “Cr.P.C.”



of investigation, a final report under Section 173 of the Cr.P.C., has been filed before the Metropolitan Magistrate, Saket Courts, wherein all the Petitioners have been arrayed as accused.

3. The Petitioners assail the FIR dated 4th November, 2019, contending that the allegations lack substance and are a gross abuse of process of law. According to the Petitioners, marital discord arose between Petitioner No. 1 and Respondent No. 2 due to personal differences. Respondent No. 2 has deserted Petitioner No. 1, for no reason. Following this, on 8th May, 2019, Petitioner No. 1 initiated proceedings under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights. However, shortly thereafter, Respondent No. 2, in what appears to be a retaliatory move, filed a complaint with the SHO, Crime Against Women Cell, New Delhi, against Petitioner No. 1 and his family members. In her complaint, she alleged that the Petitioners had subjected her to physical abuse, harassment, and dowry demands, and further claimed that they had threatened her life. The Petitioners contend that these allegations are entirely false, baseless, and made with the sole intent of harassing them and exerting undue pressure.

4. On 8th July, 2019, Respondent No. 2 filed another domestic violence case against the Petitioners. However, they point out that the said domestic violence case has since been dismissed for non-prosecution and non-appearance *vide* order dated 8th August, 2023, which order reads as follows:

*“29 CT CASES 14081/2019
PRIYANKA Vs. UPEND RA KUMAR DEV
PS-(Okhla Indl. Area)*

08.08.2023

The undersigned is also looking after the work of Ms. Aditi Rao, Ld.

³ “IPC”



MM.

Present: None.

Complainant has not been regularly appearing in court. Earlier on multiple dates, it was submitted that the matter has been settled with the respondent side and complainant is residing in the matrimonial house. Vide order dated 11.04.2023, Last opportunity was granted to the complainant to appear failing which complaint will be dismissed. On the NDOH ie., 29.05.2023 complainant was again absent. Even today nobody has appeared on behalf of complainant.

It appears that the complainant is not interested in prosecuting the present matter In view of the same, the present complaint is hereby dismissed for non prosecution and non appearance.

File be consigned to record room after due compliance.

Sd/-

(Nidhi Singh)

M.M/Mahila Court-02/SED

Saket/N.D./08.08.2023”

[Emphasis added]

5. The Petitioners contend that none of the essential ingredients of cruelty or other offences, under which the chargesheet has been filed, are discernible on a bare perusal of the FIR. They point out that Respondent No.2 herself returned to her matrimonial home after the filing of the chargesheet in the impugned FIR and subsequently gave birth to a second child with Petitioner No. 1. This conduct, coupled with her decision not to prosecute the domestic violence complaint, as evidenced by its dismissal for non-prosecution and non-appearance, suggests the allegations of cruelty and harassment are false and baseless. The voluntary resumption of cohabitation and the birth of a child, the Petitioners argue, demonstrate a lack of credibility in the allegations of cruelty and harassment raised in the FIR.
6. The Petitioners further emphasize that there is no medical examination of Respondent No. 2 on record, nor does her supplementary



statement dated 5th September, 2022, mention any specific incident of harassment. Petitioners place reliance on the judgment in the case of ***Girdhar Shankar Tawade v. State of Maharashtra***⁴, to urge that a claim of ‘cruelty’ can only be attributed when it is accompanied by some cogent evidence and in absence of such proof, Section 498A cannot be attributed to the Petitioners. Furthermore, Petitioners argue that Respondent No. 2 has not given any specifics regarding the alleged of harassment meted out to her and the allegations made in the FIR are completely vague, omnibus and general in nature. Therefore, without any specific allegation, the Petitioners submit that the impugned FIR is not sustainable in law.

7. It is further submitted that the impugned FIR is a pressure tactic employed by Respondent No. 2 to secure monetary benefits by falsely implicating the Petitioners in frivolous cases. They emphasize that Petitioner No. 4, an Army officer, resides in Delhi with his wife, Petitioner No. 5, and neither of them has ever lived in Jharkhand, where the matrimonial home of Respondent No. 2 is situated. Consequently, the allegations against them are implausible and without merit. Respondent No. 2 has dragged all the family members of Petitioner No. 1 in litigation, even though they do not live in the same house. In this regard, they place reliance on the case of ***Geeta Mehrotra v. State of U.P.***⁵ wherein the Supreme Court held that vague and generalized allegations against the husband’s family members, without specific accusations or *prima facie* evidence, are grounds for quashing proceedings as their continuation would amount to abuse of the legal process. The Petitioners urge the Court to exercise its inherent jurisdiction to

⁴ (2002) 5 SCC 177

⁵ (2012) 10 SCC 741



prevent the misuse of criminal law in this matter.

8. The Petitioners further argue that after living with Petitioner No. 1 and his family for some time, Respondent No. 2 deserted him and eloped with another man, with whom she was having extramarital affair. In this regard, on 1st November, 2023, Petitioner No. 1 had filed a missing person compliant at the P.S. Korrah, Hazaribagh (Jharkhand). Pertinently, they allege that on 11th December, 2023, Respondent No. 2 kidnapped the minor son of her and Petitioner No. 1 from the Petitioners' residence, for which the Petitioners also filed a complaint dated 13th December, 2023 at the P.S. Daru, Hazaribagh (Jharkhand).

9. During the investigation of the missing person complaint filed by Petitioner No. 1, the Investigating Officer reportedly discovered that Respondent No. 2 was residing in Ghaziabad with another man, presenting themselves as husband and wife. Thus, the Investigating Officer concluded that Respondent No. 2's actions were deceitful and demonstrated evidence suggesting an extramarital affair and live-in relationship with an individual other than her husband. The Petitioner No. 1 then filed a complaint case against Respondent No. 2 and seven others under Sections 323, 354, 363, 379, 341, 448, 352, 355, 504, 506, 34 of IPC. Subsequently, Petitioner No. 1 also filed a petition seeking divorce from Respondent No. 2 on the grounds of adultery and cruelty, which is pending consideration.

10. In light of the above, the Petitioners urge that the FIR filed against them at the instance of Respondent No. 2 is completely false and fabricated. They submit that the ingredients of Section 323, Sections 406 and 506 of IPC, are not made out, as firstly there was no recorded injury on the body of Respondent No. 2, to show that any hurt was caused to her. Secondly, the



Petitioners argue that Respondent No. 2 had exclusive possession of her jewellery, which she kept under lock and key. There is no evidence to suggest that the Petitioners misappropriated or dishonestly used any entrusted property. Without credible proof of entrustment and subsequent misappropriation, the charge under this section lacks merit. Thirdly, Petitioners assert that the allegations of threats and intimidation are unsubstantiated, as Respondent No. 2 herself deserted Petitioner No. 1 on multiple occasions and was found to be living with another man, as confirmed by the investigation conducted by the Hazaribagh Police. These findings negate any suggestion that the Petitioners engaged in acts of intimidation.

11. The Court has carefully considered the contentions of the parties. The chargesheet filed by the Investigating Officer demonstrates, *prima facie*, that the allegations made in the FIR have been substantiated upon investigation. At this stage, the Court's primary consideration is whether the FIR and the chargesheet disclose cognizable offences that warrant further judicial scrutiny, rather than delving into the merits of the case or the veracity of the allegations.

12. The Petitioners' submissions primarily hinge on counter-allegations against Respondent No. 2, including claims of her extra-marital relationship and purported desertion. While these allegations may be relevant for raising their defence during the trial, they do not negate the Respondent's claims of cruelty, harassment, and criminal intimidation. Even if the allegations against Respondent No. 2 are assumed to be true, they cannot justify actions that may constitute cognizable offences under Sections 498A, 323, 406, 506, and 509 of the IPC. The legal principle is well established that the conduct



of the complainant cannot exonerate the accused of their own culpable actions, if proven.

13. The Court reiterates that, at this stage, it is not required to evaluate the strength of the prosecution's case or the credibility of the evidence. The settled legal position, as enunciated in *State of Haryana v. Bhajan Lal*⁶, is that an FIR or chargesheet can only be quashed if the allegations made therein, even if taken at face value, do not disclose the commission of a cognizable offence, or if the proceedings amount to an abuse of the process of law. In the present case, the allegations in the FIR and the subsequent chargesheet are specific and sufficiently detailed to establish *prima facie* commission of offences under the aforementioned sections.

14. As to the contention of Petitioners No. 4 and 5 that they are residents of Delhi and have not visited the matrimonial home of Respondent No. 2, this is a factual dispute that cannot be resolved at this stage. The allegations in the chargesheet against the aforesaid two Petitioners are not vague or omnibus. Whether Petitioners No. 4 and 5 were involved in the alleged acts of harassment or cruelty is a matter to be established during trial, where both sides will have the opportunity to lead evidence. Thus, the judgment of the Supreme Court in *Geeta Mehrotra*⁷ is inapplicable.

15. The contention that Respondent No. 2 returned to her matrimonial home at a later stage and had a child with Petitioner No. 1 also does not serve as valid ground to quash the impugned FIR. The continuation of matrimonial discord, as evidenced by the pendency of a divorce petition, negates the argument that such a return absolves the alleged acts of cruelty,

⁶ 1992 Supp (1) SCC 335

⁷ Supra



harassment, and criminal intimidation. It is not uncommon for estranged parties to attempt reconciliation, but such reconciliation does not extinguish allegations of past offenses, particularly where the FIR and chargesheet indicate *prima facie* evidence of cognizable offenses. Matrimonial discord, even if ongoing, does not justify quashing proceedings where specific allegations have been substantiated through investigation.

16. The Petitioners contend that Respondent No. 2's allegations are vague and lack specificity. However, upon a careful examination of the FIR and chargesheet, it is evident that Respondent No. 2 has made specific accusations, particularly against Petitioner No. 1, of physical and mental harassment, dowry demands, and criminal intimidation. While the Petitioners may argue that the allegations are exaggerated or motivated, these are issues that can only be adjudicated at trial, where both parties will have an opportunity to lead evidence. Respondent No. 2 has specifically alleged that her dowry items were retained and misappropriated by the Petitioners. Whether these allegations are substantiated will require a detailed examination of evidence at trial.

17. The Petitioners have placed reliance on the dismissal of the domestic violence complaint for non-prosecution. While this dismissal may be relevant for assessing Respondent No. 2's conduct in that proceeding, it does not *ipso facto* discredit the allegations made in the FIR. Each case must be evaluated on its own merits, and the dismissal of one proceeding does not automatically vitiate the legitimacy of another.

18. The inherent jurisdiction of this Court under Section 482 of the Cr.P.C. (now Section 528 of BNSS), invoked for quashing of an FIR, ought to be exercised sparingly and with abundant caution. In this regard, the



Supreme Court, in ***Indian Oil Corporation v. NEPC India Limited and Others***,⁸ has discussed the scope of jurisdiction under Section 482 of the Cr. P.C. to quash criminal proceedings, and made the following observations:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few— Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of

⁸ (2006) 6 SCC 736.



the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.”

(emphasis supplied)

19. Furthermore, the Supreme Court, in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)***,⁹ after referencing several judgments, delineated the criteria for the exercise of inherent jurisdiction to quash criminal proceedings at a preliminary stage:

*“14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in **State of Haryana v. Bhajan Lal** [1992 Supp (1) SCC 335 : AIR 1992 SC 604], and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.*

‘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.’

15. In the impugned judgment, the learned Judge had rightly relied upon the opinion of Justice J.S. Khehar for a Division Bench in **Rajiv Thapar** (*supra*), which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges,

‘28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it

⁹ 2022 SCC OnLine SC 513.



would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same.'

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process.

(emphasis supplied)

20. Therefore, having regard to the precedents noted above, the grounds and contentions raised by the Petitioners for quashing the FIR are essentially in the nature of defences, or denial of allegations made in the FIR which ought to be raised during trial and not by seeking quashing of the FIR. The submissions urged by the Petitioners in the present case, do not provide a sufficient basis for this Court to quash the FIR. *Prima facie*, the allegations outlined in the FIR, taken at their face value, disclose the commission of a cognizable offence and the same do not seem so remote or improbable to merit the exercise of the discretionary jurisdiction of this Court under Section 528 of BNSS. Therefore, the Court is not inclined to entertain the present petition.

21. It is clarified that nothing mentioned herein should be construed as an expression of the Court's opinion on the merits of the case. The Petitioners



shall be at liberty to raise all the grounds urged in the present petition before the Trial Court during trial.

22. In light of the foregoing, the Court is not inclined to entertain the present petition and the same is dismissed along with pending applications.

SANJEEV NARULA, J

JANUARY 20, 2025

as