

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)
Misc. Criminal Case No.25856/2018

Mahendra Sen (Shrivasa) and others

Vs.

State of Madhya Pradesh and another

Shri Rajesh Kumar Patel, Advocate for the petitioners.
Shri A.K.Mishra, Govt. Advocate for the respondent No.1/State.
Shri Vishnu Kumar Patel, Advocate for the respondent No.2.

Whether approved for reporting : (Yes / No).

O R D E R
(29/03/2019)

This petition under Section 482 of the Cr.P.C. has been preferred by the petitioners seeking quashment of the charge-sheet and consequential criminal proceedings arising out of Crime No.118/2018 for the offence under sections 498-A/34 of the I.P.C. registered at Police Station Aishbagh, District Bhopal.

2. Facts of the case, briefly stated, are that marriage of the respondent no.2/wife was solemnized with the petitioner no.1 in the year 2010. Petitioners no.2 and 3 are parents of the petitioner no.1. On 25.3.2018 respondent No.2 wife had lodged a report at Police Station Aishbagh, District Bhopal, alleging that her husband/petitioner no.1 does not do any work and remains at home. It is further alleged that he often harass and beats her. In the last night when she went to take dinner, he abused her by filthy language, dragged her by pulling her hairs and beat her due to which she sustained injuries on her legs, waist and head. Her mother-in-law intervened. On the information, FIR was registered vide Crime No.118/2018 for the offence under sections 498-A/34 of the I.P.C. On the same day, statement of the respon-

dent no.2 was recorded in which same story was narrated. Later on, supplementary statement was recorded in which she has stated that petitioners no.2 and 3, i.e. parents of the petitioner no.1 also used to harass and beat her for demand of dowry. Brother, Sani Sen and sister Saroj Sen, of the respondent no.2 have also supported her version stating that their sister have disclosed to them several times that petitioners no.2 and 3 harass and beat her for demand of dowry. After investigation, charge-sheet was filed and the proceedings are pending before JMFC Bhopal.

4. The proceedings are challenged on the ground that petitioners no.2 and 3 has been impleaded subsequently with malice intention to take vengeance as in the FIR and the statement recorded earlier, names of petitioners no.2 and 3 do not appear with regard to harassment and demand of dowry. The charge-sheet also discloses the fact that petitioners no.2 and 3 reside separately. The allegations are also not specific and are omnibus. Therefore, the prosecution against petitioners no.2 and 3 is misuse of the process of court. In matrimonial disputes, there is tendency to implead close relatives of the husband falsely just to take revenge. Hence, the proceedings be quashed.

5. Learned counsel appearing on behalf of the respondent no.2 has stated that in the further statement given during investigation she has disclosed the act of petitioners no.2 and 3 and at this stage it cannot be said that the statement is false and the proceedings cannot be quashed.

6. Having considered the contentions advanced by learned counsel for the parties and on perusal of the record, in view of this Court, so far as petitioner no.1 is concerned, prima facie there is sufficient material and evidence to prosecute him for commission of offence punishable under section 498-A of the I.P.C. So far as petitioners no.2 and 3 are concerned, prima facie it appears that they have been impleaded in the case subsequently with malice intention just to take revenge as their names do not appear in the FIR and the statement of the complainant recorded on the same day. On the contrary, it is stated that petitioner

no.3, mother-in-law has rescued her. However, presence of petitioner no.2 has not been mentioned. Final report also discloses that petitioners no.2 and 3 reside separately from petitioner no.1. In the circumstances, allegations with regard to harassment and demand of dowry against petitioners no.2 and 3 have been made with oblique motive. Looking to the tendency of falsely implicating close relatives of husband by the complainant/wife in matrimonial cases, it becomes the duty of the Court to ascertain whether there is sufficient material available in the charge-sheet to prosecute the close relatives of the husband about which it prima facie appears that they have been arrayed subsequently just to take revenge without any cause.

7. Hon'ble the Apex Court in **Bhaskar Lal Sharma & another vs. Monica** [(2009) 10 SCC 604] in which the Apex Court considering the judgment of the Apex Court in **Sushil Kumar Sharma vs. Union of India** [(2005) 6 SCC 281] held as under :-

“10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'CrPC') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

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19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find

out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of 'wolf' is made too often as a prank, assistance and protection may not be available when the actual 'wolf' appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view."

8. Further the Apex Court in **Preeti Gupta vs. State of Jharkhand** [(2010) 7 SCC 667] held that:-

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

9. Hon'ble the Apex court in the case of **Geeta Mehrotra and another vs. State of Uttar Pradesh** [(2012)10 SCC 741] has held that :-

20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

10. Hon'ble the Apex court in the recent judgment, **Rajesh Sharma and ors. vs. State of U.P. And anr., passed in criminal appeal no. 1265/2017** dated 27.7.2017 as observed in para 14, as under :-

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression “cruelty” in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement”.

11. Considering the aforesaid enunciation of law and the facts and circumstances of the case, in view of this court, in view of this court, so far as proceedings against petitioners no.2 and 3 are concerned, the same deserves to be quashed. So far as applicant no.1 is concerned, prima facie case for the alleged offence is made out against him. Hence, invoking powers under section 482 of the Cr.P.C. with a view to secure the ends of justice and to prevent misuse of the process of the Court this petition is partly allowed and the proceedings against petitioners no.2 and 3 for the offences punishable under sections 498-A and 34 I.P.C. in criminal case pending before J.M.F.C. Bhopal, pursuant to Crime No.118/2018 is hereby quashed. However, the proceedings pending before J.M.F.C. Bhopal, pursuant to Crime No.118/2018 against applicant no.1 shall continue.

12. A copy of this order be sent to the concerning court for information and compliance.

(J.P.Gupta)
JUDGE