A.F.R.

Reserved On : 20.11.2018

Delivered On : 06.12.2018

Case :- APPLICATION U/S 482 No. - 1046 of 2005

Applicant :- Shivendra Raizada & Others
Opposite Party :- State Of U.P. & Another
Counsel for Applicant :- Amit Kumar Srivastava
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Neeraj Tiwari,J.

Heard learned counsel for the applicants, learned A.G.A. and perused the record.

Present application under section 482 has been filed to quash the proceeding of case No. 3606/9 of 2004 (Rajeshwari Saxena vs. Shivendra Raizada and others), under sections 498A, 323, 504, 506 IPC and 3/4 D.P. Act, P.S. Katghar, District Moradabad, pending in the court of Chief Judicial Magistrate, Moradabad.

As per office report dated 27.4.2005, notice to opposite party No. 2 has been returned back after service.

Since matter is pertaining to the year 2005, therefore, Court is proceeded to decide the case on merits.

Brief facts of the case are that a complaint dated 15.04.2004 has been filed before CJM, Moradabad under Section 156(3) Cr.P.C. Which was registered as Case No. 3606/9 of 2004. It is alleged in the complaint that marriage of applicant No. 1 and opposite party No. 2 was solemnised as per hindu rights and rituals in the month of January, 1999 and dowry was given to applicants and applicants were not pleased with dowry and further demanded Rs. 80,000/- of dowry which was refused by the opposite party. After refusal, applicants have harrassed opposite party No. 2-wife and thrown her out from their house. Statement of opposite party No. 2 has been recorded under Section 200 Cr.P.C. and statement of PW-1 and PW-2 has also been recorded under section 202 Cr.P.C

before the Chief Judicial Magistrate. Thereafter, learned Chief Judicial Magistrate vide order date 20.05.2004 has summoned the applicants under Sections 498A, 323, 504, 506 IPC and 3/4 D.P. Act.

Learned counsel for the applicants submitted that in fact it is absolutely frivolous complaint and learned Chief Judicial Magistrate has also passed the summoning order without application of mind. No dowry was given by the father of the opposite party No. 2 in the marriage and marriage was solemnised in a very simple manner. In fact, opposite party No. 2 had always put pressure upon her husband-applicant No. 1 to live separately from the family of applicants, but when applicant No. 1 refused to live separately, she became annoyed and left her matrimonial house in August, 2000 and since then she is living with her parents at Moradabad. He further submitted that after every efforts for reconciliation, when nothing positive has happened, applicant No. 1 and opposite party No. 2 had moved joint petition for divorce under Section 13(b) of the Hindu Marriage Act, 1955 before Judge, Family Court, Moradabad which was registered as Hindu Marriage Petition No. 579 of 2002 dated 13.12.2002. It is also submitted that applicant No. 1 has given Stri Dhan and other goods which was claimed by opposite party No. 2. It is next submitted that ultimately the divorce petition was dismissed in default vide order dated 21.2.2004 due to absence of both the parties for which applicant No. 1 has moved restoration application before Judge, Family Court, Moradabad and the same is still pending.

Learned counsel for the applicants further submitted that unfortunately applicant No. 1 had met with an accident on 21.04.2014 and his both legs got amputed. It is also submitted that on merits, the complaint has no substance for the reason that in the first paragraph of complaint dated 15.04.2004, it has been stated Rs. 80,000/- was demanded by the applicants for repairing of

clinic. He has contended that if any amount is demanded for certain purpose, it does not come withint the purview of dowry in the light of law laid down by the Apex Court. In support of his contention, he has placed reliance upon the judgment of Apex Court in the case of ***Appasaheb vs. State of Maharashtra 2007 (57) ACC 544*** decided on 05.01.2007 and another judgment of Apex Court in the case of ***Vipin Jaiswal (A-I) Vs. State of A.P. 2013 (2) JIC 377 (SC)*** decided on 13.03.2013.

It is further submitted that complaint was filed against all the family members along with applicant No. 1-husband without any specific allegation upon either of the applicants. It is next submitted that all applicants are not living jointly, but are living separately at different places. In para 18 of affidavit filed in support of application, he has stated that applicant No. 2 is employed in Forest Department and posted at Dhanaura at the time of filing of complaint and applicant No. 7 was practising lawyer of Nainital High Court, living at Bareilly and presently practising at Supreme Court of India. For lodging complaints or FIR against family members, there must be a specific allegation against every person named and in present case, a vague allegation has been made against all the family members. In support thereof, he has relied upon the judgment of ***Preeti Gupta and another Vs. State of Jharkhand and another (2010) 7 SCC 667*** decided on 13.08.2010, ***Geeta Mehrotra and another Vs. State of U.P. and another (2012) 10 SCC 741*** decided 17.10.2012 and ***Pritam Ashok Sadaphule and others vs. State of Maharashtra and another 2015 (11) SCC 769*** decided on 19.03.2015. Lastly, he prayed that in the light of facts of the case and law laid down by the Apex Court, the Court may please to allow the present application and quash the criminal proceedings.

Learned A.G.A. has opposed the prayer made by learned counsel for the applicants and submitted that in para-6 of the

complaint, there is allegation of demand of Rs. 80,000/- and harrasing the opposite party No. 2.

I have perused the records as well as judgments of Apex Court relied upon and conisdered the rival submissions made by learned counsel for the parties.

In complaint dated 15.04.2004, it has been clearly stated that Rs. 80,000/- was demanded for maintenance of clinic and further in complaint, there is no specific allegation against any of the applicants except general and vague allegations, who are the family members i.e. applicant no.1-husband, applicant Nos. 2, 3, 4, 5 and 7 are brothers of the applicant-huband and applicant No. 7 is the father of applicant-husband and even some of the brothers of husband are not residing with him.

The Apex Court in the case of **Appa Sahab (Supra)** has considered the meaning of dowry and defined the same in light of Dowry Prohibition Act. For ready reference, para 9 of the judgment is quoted below:-

> “9. Two essential ingredient of Section 304-B IPC, apart from others, are
>
> > (i) death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) women is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.
>
> Section 2 of Dowry Prohibition Act reads as under :-
>
> "2. Definition of "dowry" - In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-
>
> > (a) by one party to a marriage to the other party to the marriage; or
> >
> > (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the

> marriage in connection with the marriage of the said parties, but does not include dowry or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.
>
> In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody coversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibres of India v. Union of India, AIR (1997) SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses of for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

This judgment was also followed by the Apex Court in the case of **Vipin Jaiswal (Supra)** and relying upon the same, Court has again taken the same view. Relevant paragraph No. 6 of the judgment is quoted below:-

> "6. We have perused the evidence of PW 1 and PW 4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage,

gold, silver articles, ornaments, T.V., fridge and several other household articles worth more than Rs.2,50,000/- were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a xerox cum type institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000/- from them as he was intending to purchase a computer and set up his own business. Similarly, PW4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000/- and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW1 and PW4 is that the demand of Rs.50,000/- by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000/- that the Trial Court has recorded a finding of guilt against the appellant for the offence under Section 304B, IPC and it is only in relation to this demand of Rs.50,000/- for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the Trial Court with regard to guilt of the appellant under Section 304B, IPC. In our view, both the Trial Court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a 'dowry demand' within the meaning of Section 2 of the Dowry Prohibition Act, 1961. This Court has held in Appasaheb & Anr. Vs. State of Maharashtra (2007) 9 SCC 721:

> “In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the

> giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd., AIR (1996) SC 3509 and Chemicals and Fibers of India v. Union of India, AIR (1997) SC 558)."

Apex Court, in the case **Preeti Gupta (Supra)** has also considered the cases where all relatives have been implicated and clearly held that there should be specific allegation against the applicants. Relevant paragraph Nos. 5, 6, 7, 8, 9, 10, 28, 29, 30 and 31 of the judgment are quoted below:-

> "5. According to the appellants, there was no specific allegation against both the appellants in the complaint. Appellant no.1 had been permanently residing with her husband at Navasari, Surat (Gujarat) for the last more than seven years. She had never visited Mumbai during the year 2007 and never stayed with respondent no.2 or her husband. Similarly, appellant no.2, unmarried brother-in-law of the complainant has also been permanently residing at Goregaon, Maharashtra. It was asserted that there is no specific allegation in the entire complaint against both the appellants.
>
> 6. The statements of prosecution witnesses PW1 to PW4 were also recorded along with the statement of the complainant. None of the prosecution witnesses had stated anything against the appellants. These appellants had very clearly stated in this appeal that they had never visited Ranchi. The appellants also stated that they had never interfered with the internal affairs of the complainant and her husband. According to them, there was no question of any interference because the appellants had been living in different

cities for a number of years.

7. It was clearly alleged by the appellants that they had been falsely implicated in this case. It was further stated that the complaint against the appellants was totally without any basis or foundation. The appellants also asserted that even if all the allegations incorporated in the complaint were taken to be true, even then no offence could be made out against them. The appellants had submitted that the High Court ought to have quashed this complaint as far as both the appellants are concerned because there were no specific allegations against the appellants and they ought not have been summoned.

8. In the impugned judgment, while declining to exercise its inherent powers, the High Court observed as under:

> "In this context, I may again reiterate that the acts relating to demand or subjecting to cruelty, as per the complaint petition, have been committed at the place where the complainant was living with her husband. However, the complainant in her statement made under solemn affirmation has stated that when she came to Ranchi on the occasion of Holi, all the accused persons came and passed sarcastic remarks which in absence of actual wordings, according to the learned counsel appearing for the petitioner could never be presumed to be an act constituting offence under Section 498A of the Indian Penal Code."

9. In this appeal, both the appellants specifically asserted that they had never visited Ranchi, therefore, the allegations that they made any sarcastic remarks to the complainant had no basis or foundation as far as the appellants are concerned.

10. The complainant could not dispute that appellant no.1 was a permanent resident living with her husband at Navasari, Surat, Gujarat for the last more than seven years and the appellant no.2 was permanent resident of Goregaon, Maharashtra. They had never spent any time with respondent no.2.

.....

28. We have very carefully considered the averments

of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.

29. Admittedly, appellant no.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, appellant no.2 is a permanent resident of Goregaon, Maharasthra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent no.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.

30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:-

> "498-A. 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 purposes 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."

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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the

> place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.
>
> 36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

Again in the matter of **Vipin Jaiswal (Supra)**, the Court has taken the view that there should have been specific allegation of harrasment. Relevant paragraph No. 7 of the judgment is quoted below:-

> "7. In any case, to hold an accused guilty of both the offences under Section 304B and 498A, IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW1 and PW4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased. On the other hand, DW1 in his evidence has stated that on 4.4.1999, the day when the incident occurred, he went to the nearby temple along with his mother (A2) and his father (A3) went to the bazar to bring ration and his wife (deceased) alone was present at the house and at about 1.00 p.m., they were informed by somebody that some smoke was coming out from their house and their house was burning. Immediately he and his mother rushed to their house and by that time there was a huge gathering at the house and the police was also present. He and his family members were arrested by the police and after one month they were released on bail. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:
>
> > "While cleaning our house we found a chit on our dressing table. The said chit was written by my wife and it is in her handwriting and it also contains her

> signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same."

Again the Apex Court has considered in detail this matter in the case of **Geeta Mehrotra (Supra)** and came up with conclusion that Courts must consider that there should be specific allegation against the family members of the husband supported by the evidence. Relevant paragraph Nos. 25 and 28 of the judgement are quoted below:-

> "25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire

> family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.
>
> 28. We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed."

Apex Court in the case of **Pritam Ashok Sadaphule (Supra)** has also considered this issue and taken the same view that there should be specific allegation against the applicants. Relevant paragrap nos. 16 and 17 of the judgment are quoted below:-

> 16.What needs to be taken into consideration is, the totality of the allegations levelled by Respondent 2 against Appellants 2 to 5. Having perused the contents of the first information report dated 6.3.2010, as also, the charge-sheet dated 27.7.2010, we felt that the submission advanced at the hands of the learned counsel for the appellants, in that the allegations levelled against Appellants 2 to 5 were vague and omnibus, could not be seriously contested. It is therefore, that we require the learned counsel representing Respondent 2, to point out from the complaint dated 4.2.2010, the allegations levelled against Appellants 2 to 5. On our asking, the learned counsel representing Rspondent 2 Hima Pritam Sadaphule, invited our attention, to the contents of two paragraphs, from the complaint dated 4.2.2010, which are being extracted hereunder:
>
> > "Subsequently on 8.6.2007, myself and my husband Pritam Sahaphule came to Delhi and after some time we went to Mumbai. I stayed more than a week. During this period, Pritam, his father, mother, brother, sister i.e. the entire

> family tortured, humiliated and harassed me to a great extent. I was beaten up by them for no reasons. They asked me for money which I had to give. Subsequently, myself and Pritam came back to Delhi and thereafter left for UK on 27.06.2007. In our stay at Delhi also, Pritam's offensive behaviour towards me and my parents continued.
>
> Thereafter, Pritam Sadaphule came back on 8.7.2008 to Delhi; we stayed together in my parents' home for some time, then again same ill-treatment, harassment, emotional and mental torture, humiliation was continue by Pritam Sadaphule. Thereafter, he took me to Goa for a week. There also he had beaten me with stick, abused me, insulted me and threatened me several times. Subsequently we came back to Delhi and same ill-treatment, harassment, emotional and mental torture, humiliation to contact his family, Ashok Sadaphule, Satwashile Sadaphule, Pravin Sadaphule, Preeti Sadaphule also abused me, humiliated me, harassed me, tortured me emotionally and mentally and threatened me with dire consequneces. Thereafter, myself and Pritam left for UK on 4.9.2008."

> 17. We have carefully perused the allegations pointed out by the learned counsel, from the complaint of Respondent 2 Hima Pritam Sadaphule, dated 4.2.2010. There can be no doubt whatsoever, that the allegations levelled against Appellants 2 to 5 do not justify any inference, which would lead to the conclusion, that they could be held responsible, for an offence in the nature of Section 498-A of the Penal Code. In the above view of the matter, we are satisffied in accepting the prayer made in the instant appeal, with reference to Appellants 2 to 5, and to order quashing of the first information report dated 6.3.2010, and the proceedings that may have arisen therefrom, including the charge-sheet dated 27.7.2010."

Now in light of facts of this case and law laid down by the Apex Court, it is very much clear that allegation of demand of Rs. 80,000/- does not come within the purview of dowry as defined by the Apex Court and similarly allgations levelled against the applicants are also not specific for issuance of summoning order or

to put them to face trial as held by Apex Court.

Considering the facts and law laid down by the Apex Court, I am of the view that for establishment of case of demand of dowry, that must co-relate with the marriage or pre-marriage stage and not every demand made by the applicants after marriage will come within the purview of dowry. It may be to meet some other financial scarcity or to meet some emergent family expenses. Therefore, allegation levelled in the complaint for demand of dowry is not sustainable in the eye of law. Secondly, so far as allegation against the applicants are concenred, that is also absolutely in the teeth of law laid down by the Apex Court and it is very much clear that there is no specific allegation against any of the applicants and allegations are also levelled upon the applicants, who are even not residing along with applicant No. 1. In fact, it is necessarily required to make specific allegation against each and evey applicants whose names are mentioned in the complaint or FIR in the matrimonial cases which is absolutely missing in this case.

Therefore, in the light of facts and law laid down by the Apex Court, the allegation of dowry as well as harrasment is not sustainable.

Accordingly, the proceeding of Case No. 3609/9 of 2004 (Rajeshwari Saxena vs. Shivendra Raizada and others), under sections 498A, 323, 504, 506 IPC and 3/4 D.P. Act, P.S. Katghar, District Moradabad is hereby quashed and the application is **allowed**.

Order Date :- 06.12.2018
Sartaj