

**Court No. - 88**

**Case :-** APPLICATION U/S 482 No. - 36921 of 2018

**Applicant :-** Shabban Khan And 4 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Mukhtar Alam, Saquib Mukhtar

**Counsel for Opposite Party :-** G.A., Pankaj Satsangi

**Hon'ble Vikram D. Chauhan, J.**

1. Heard Sri Saquib Mukhtar, learned counsel for the applicants and learned AGA for the State.

1-A. No one has appeared on behalf of opposite party no.2. Previously on 20.02.2024, the case was proceeded ex-parte against opposite party no. 2.

2. This application under Section 482 Cr.P.C. has been filed by the applicants for quashing the entire proceedings of Criminal Case No. 6213 of 2018 (State vs. Shabban Khan and others) under Sections 498A, 323, 506 IPC and Section 3/4 of D.P. Act, P.S. Bilsa, District Budaun arising out of Case Crime No. 689 of 2017 as well as charge-sheet dated 20.05.2018.

3. Learned counsel for the applicant submits that initially the present application was filed by five applicants, however, relief in respect of applicant no. 1-Shabban Khan (husband) has been rejected vide order dated 11.10.2018 and during pendency of the application, applicant no. 2-Shahidan Khan has died. As such, counsel for the applicants is not pressing the application in respect of applicant nos. 1 and 2, namely Shabban Khan and Smt. Shahidan Khan, respectively.

4. Learned counsel for the applicant submits that he is pressing the application only on behalf of applicant nos. 3, 4 and 5, who are married sister-in-law, brother-in-law and unmarried sister-in-law.

5. It is submitted by learned counsel for the applicants that the first information report was lodged on 04.12.2017 by the opposite party no. 2-wife with allegations that on 07.05.2017, the opposite party no. 2 was married with applicant no. 1-Shabban Khan and dowry was given at the time of marriage. Thereafter, husband and other accused persons were harassing the opposite party no. 2 and her family members for dowry. Learned counsel for applicants submits that allegations are also with regard to assault, however, there is no injury report in respect of the same.

6. It is further submitted by learned counsel for the applicants that allegations with regard to threatening have also been levelled in the first information report. Statement of the informant recorded under Section 161 Cr.P.C. is verbatim to the allegations in the first information report. He submits that general and vague allegations have been made in the FIR against applicant nos. 3, 4 and 5, however, no specific role has been assigned. Reliance has been placed on the judgment of Supreme Court rendered in **Kahkashan Kausar @ Sonam and others vs. State of Bihar and others**<sup>1</sup>, to submit that the present criminal proceedings against applicant nos. 3, 4 and 5 are liable to be quashed.

7. Learned A.G.A. has opposed the present application, however, he does not dispute the fact that no specific role has

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1. (2022) 6 SCC 599

been assigned in the present case in respect of applicant nos. 3, 4 and 5.

8. Criminal law is set in motion by lodging of the First information report or complaint. The investigation is carried upon to find the truth in allegations. Setting in motion criminal law entails consequences including curtailing of liberty of individual. The criminal prosecution is based on the nature of allegations and the evidence found during investigation. It is important for the prosecution to provide material details of the allegations and evidence to support their allegations.

9. Vague and ambiguous allegation can violate the right of the accused to due process of law and fair trial. It is fundamental principal of law that accused is subjected to fair trial. Vague allegation has significant effect on defence by creating uncertainty. Without specific details and evidence, the defence of accused may be prejudiced or accused may not be able to effectively defend himself.

10. Vague allegations can affect the defence of accused by making it difficult to formulate a targeted defence strategy. Without clear specifics or evidence to address, accused may struggle to refute the allegations or present a compelling counter argument. Lawyers typically rely on specific information to prepare their case, such as dates, time, location, and witnesses. Vague allegations lack these crucial details, leaving the defence to speculate or generalize their response, which can weaken their defence in court. The mere suggestion of wrongdoing, without substantiation, can lead to stigma and prejudice against the accused, making it harder for them to receive a fair trial. Moreover, vague allegations may prolong

legal proceedings as the defence attempts to gather more information to understand the allegations.

11. In **State of Haryana v. Bhajan Lal**<sup>2</sup>, the supreme court has laid down the categories of cases by way of illustration wherein power under Section 482 Cr.P.C. could be exercised either to prevent abuse of process of any court or otherwise to secure the ends of justice. One of the categories pointed out in the said judgement is stated in para 102 (5) which is quoted herein below :

*"(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

12. In law, prudent person is a hypothetical person who in the facts and circumstances would conduct in a reasonable, just and fair manner. In the context of vague allegations at the stage of cognizance or summoning of accused, it is to be examined whether on the basis of the allegations in the complaint or the first information report and the evidence collected during investigation it can be said that a prudent person would come to the conclusion that there is sufficient ground for proceeding against the accused. The insufficiency of ground for proceedings against an accused may also arise when material particulars in respect of the alleged offence are absent. The sufficiency of material against an accused is a condition precedent for proceedings against an accused.

13. In **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla**<sup>3</sup>, the Supreme Court has laid emphasis that the complaint must

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2. 1992 Supp (1) SCC 335

3. (2005) 8 SCC 89

contain material to enable the court to make up mind for issuing process.

*"5. Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. **This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."***

14. The question therefore arises what is the material which is required to be before the court to issue process under criminal law. The material facts and particulars to constitute an offence are required to be shown by the prosecution before the court proceeds to issue the process. The material facts and particulars are those facts which essentially would be required to constitute an offence. These facts would also include such

facts which the law recognizes as important facts for proceeding with the trial of the case. These facts are also necessary to bring fairness in the process of trial.

15. The rule of law requires that the accused is visited with specific allegations in criminal prosecution. Specific allegation under criminal law would require that date, time and place of alleged offence is specified. The details of the person against whom the offence is committed or the thing in respect of which the offence was committed are disclosed. The allegations should also describe the manner in which the offence is committed.

16. In **Neelu Chopra v. Bharti**<sup>4</sup>, the Hon'ble Supreme Court has emphasised the need for specific and proper allegation in criminal law.

*"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end all of the matter. 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 committing of that offence."*

17. The Criminal procedure code not only provide the procedure to proceed against any person under criminal law. It also provides various checks to ensure that the criminal law is applied fairly on any accused person. The aforesaid aspect of fairness in criminal trial is essential in view of Article 21 of the Constitution. One of the essential part of criminal trial after the cognizance is taken is the framing of charge against an accused person. The object of framing of charge is to enable an accused to have a clear idea of what he is being tried for and the

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4. (2009) 10 SCC 184

essential facts which the accused is required to meet in the trial. Section 212 of the criminal procedure code mandates that the charge shall contain such particulars as to the time and place of the alleged offence and the person against whom or the thing in respect of which it was committed as a reasonably sufficient to give accused notice of the matter with which he is charged. Section 213 of the criminal procedure code further requires that the manner of committing offence must be stated in the charge.

18. The aforesaid requirement of law indicate that the aforesaid information is required to be disclosed to accused so that he is able to meet out the same at the trial. An incomplete, vague and omnibus allegation without specific details would violate section 212 and 213 of the Cr.P.C. It is after the Magistrate/court takes cognizance of the offence at a subsequent stage there is no possibility of supplying the aforesaid details to the accused if the same is not part of the final report/charge-sheet. It is therefore imperative that when the summons are issued the requirement of law is seen by the court concerned to have been fulfilled prior to taking cognizance.

19. It is true that the first information report is not an Encyclopedia and may not contain all material details however once an investigation is carried out it is the duty of the investigating officer to investigate into the material facts and particulars before submission of charge-sheet. The aforesaid material particulars would be necessary at the time of framing of charge. Once the material particulars are missing then in the event the trial is proceeded with the same would be in violation of the mandate under section 212 and 213 of the Cr.P.C. It is

the duty of the investigating officer to investigate whether the material particulars are available in respect of the offence in question.

20. The material particular form the foundation for proceeding against an accused person under criminal law. It would be wholly impermissible under law for the informant/complainant to make allegation with regard to committing of an offence by an accused person without the material particulars as to how the offence has been committed being stated. A prudent man would never reach a conclusion for proceeding against accused person when the material particulars has not been provided by the prosecution. It is to be reminded that criminal law machinery has traits of curtailing liberty of an individual as such allegations against accused person must have factual foundation. Mere mention of the language of the section by itself would not be sufficient for the prosecution to proceed against the accused person. The particulars of offence committed by each accused person and the role played by each person in committing the offence is essentially required.

21. The effect of absence of specific allegations have been considered by the Supreme Court in **Achin Gupta Vs State of Haryana**<sup>5</sup>, which is quoted herein below:

*"25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the*

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5. 2024 INSC 369



*sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute"*

22. The Supreme Court has laid down that general and omnibus allegations without any specification are prima facie indicative of matrimonial dispute between the parties and as such do not warrant prosecution. In this respect attention is drawn to the observations made by Supreme Court in **Kahkashan Kausar v. State of Bihar**<sup>6</sup>,, which is quoted herein below:

*"18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."*

23. In the present case, applicant nos. 3, 4 and 5 are proceeded with under section 498A, 323, 506 I.P.C. and  $\frac{3}{4}$  Dowry Prohibition Act. As per the prosecution case, informant-wife was married to applicant no. 1 on 07.05.2017. The first information report is lodged on 04.12.2017. The first

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information report is lodged against accused person under the above mentioned sections. It is alleged that at the time of marriage the parents of the informant has given to applicant no. 1 rupees 4 lakhs for purchase of plot, one motorcycle, fridge, cooler, television, double bed, washing machine and to the informant Jewellery. After marriage when the informant went to the house of her husband all the accused person started harassing for giving less dowry in the marriage. The accused person demanded one car in dowry and assaulted the informant. When the informant confronted the accused person in respect of demand of dowry, the accused persons assaulted the informant. The conduct of accused person was disclosed to the parents of informant by the informant herself and when the parents of informant intervened it was stated by accused person that without giving car they will not keep the informant at her matrimonial home. It is further alleged that the accused persons were harassing the informant and were making the informant do the daily work of household. It is further alleged in first information that accused persons have administered medicine to the informant as a result of the same she became sick and thereafter the informant was thrown out of house just before the festival of Eid and threatened not to come back to matrimonial home without fulfilling the demand of car otherwise the informant would be killed. Thereafter conciliation meetings have been held however the accused person are not ready to keep informant with them.

24. The statement of the victim under Section 161 Cr.P.C. has been recorded during investigation a copy of the same has been filed along with the present 482 application. A perusal of the aforesaid statement of the informant during investigation

would demonstrate that the informant has reiterated the allegations made in first information report. The informant has also stated that no medical examination was made as she had not received any external injury.

25. The investigating officer has also recorded statement of Nirale Khan who is father of the informant. The aforesaid witness has stated that as daughter was married on 07.05.2017 with the applicant no. 1 and in the marriage he had given rupees 400,000/- for purchase of plot and other gift items to the tune of rupees 10 lakhs. He has further stated that when his daughter reached her matrimonial home then the accused person were harassing the informant for less dowry given at the time of marriage and demanded for the dowry and assaulted the informant. He has further stated that the aforesaid incident was informed by his daughter. It is also alleged that the accused persons had thrown out informant from the matrimonial home just before the festival of Eid and has stated not to come back without demand of car being fulfilled. It is also alleged that accused persons have administered some medicine to the informant as a result of same informant became sick. The aforesaid witness has further stated that the receipt of the item given in dowry is lost and is not available.

26. The investigating officer has further recorded the statement of Smt Junaida who is mother of informant. The aforesaid witness has stated that informant was married to applicant no 1 on 07.05.2017. It is further stated that in the marriage rupees 4 lakh was given for purchase of plot. It is also stated that fridge, cooler, washing machine, television, double bed, jewellery and other items were given at the time of

marriage. In the marriage rupees 10 lakh was spent. It is further stated that when the informant went to the matrimonial home after marriage she was harassed by the accused person for bringing less dowry and demanded one car. Before the festival of Eid accused persons assaulted the informant and thrown her out of the house and had threatened not to come back without fulfilling the demand for car otherwise she would be killed. It is also stated that the conciliation process was also undated, however, accused persons did not agree.

27. Thereafter the investigating officer has submitted charge-sheet on 20.05.2018 and the cognizance has been taken by the court concerned on 27.07.2018. The applicants in the charge-sheet has been proceeded under section 498A, 323, 506 of the IPC and Section 3/4 of the Dowry Prohibition Act.

28. It is further to be seen that section 498A IPC provides penal consequences where the husband or relative of the husband of a woman subjects such woman to cruelty. The cruelty has been explained in explanation appended to provisions of section 498A IPC. There are two explanations provided under the aforesaid provision for interpretation of the word cruelty provided under the aforesaid section. The explanation (a) provides that the cruelty would mean any willful conduct which is of such 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). The explanation (b) provides cruelty would mean harassment of the woman where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure of her or

any person related to her to meet such demand.

29. The law contemplates a woman to cruelty by the husband or relative of the husband where the demand are unlawful for any property or valuable security and the woman is harassed in respect of the same. The demand for property or valuable security is required to be unlawful. The demand would be unlawful where the same is prohibited by law or the law punishes the aforesaid demand. The demand for dowry is prohibited under the law and is also a punishable offence. The demand of an amount or thing by the husband or the relative of the husband is required to be unlawful. Where the demand has been made by the husband or his relative after marriage, however, not in connection with the marriage of the parties the same may not amount to dowry in accordance with the definition of Dowry under Section 2 of Dowry Prohibition Act. However, where any demand for property or valuable security is made before or any time after marriage in connection with the marriage of the parties, the same would come within the mischief of section 498A IPC. The words in connection with the marriage of the parties has significance that the demand for dowry is made by parties to the marriage.

30. A perusal of the first information report, as well as, the statement of the witnesses, above mentioned, would demonstrate that there is allegation with regard to payment of rupees 4 lakhs to applicant no.1 for purchase of plot at the time of marriage. The first information report and the statement of the witness does not allege that the applicant nos. 3, 4 and 5 demanded the aforesaid amount from the informant or her family members. In the first information report or the statement

of the witness it has not been stated that the various items given at the time of marriage were demanded by the applicant no. 3, 4 and 5.

31. As per prosecution case, it is alleged that after marriage when the informant came to the matrimonial home, accused persons taunted for bringing less dowry and further demanded one car and have assaulted the informant. The law contemplates demand of dowry as punishable, however, the taunting for giving less gifts by itself is not a penal offence. The demand alleged to have been made by the accused person is wholly vague in nature. The date, time and manner in which the demand was made is not been stated in the prosecution case. General and vague allegations with regard to demand of dowry by the applicant nos. 3, 4 and 5 after marriage has been made. It has not been stated that what role has been played by each accused person in respect of the alleged offence.

32. There are allegations against the accused person for physical assault, however, neither the date has been stated when the assault took place nor the role assigned to each accused person is stated in the prosecution case. It has not been shown by the State that there was any injury report in respect of the alleged incident. In terms of section 498A IPC the cruelty would be any willful 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 of the woman. It has not shown by the prosecution whether the informant has suffered any grave injury or danger to life, limb or health. The omnibus allegations have been made against the applicant no 3, 4 and 5, however, what role has been played by the aforesaid applicants

is not stated in prosecution case.

33. It is also alleged in first information report that the applicants have threatened for life if the car is not given in dowry. The applicants are proceeded under section 506 IPC in this respect. Even in this respect allegations are general in nature and during investigation no specific role has been assigned to the applicant nos. 3, 4 and 5. The allegations against applicant nos. 3, 4 and 5 are not such that a prudent man can arrive at the conclusion that there is sufficient ground for proceeding against the applicant nos. 3, 4 and 5. Learned AGA could not show any material to substantiate that specific allegations existed against the applicant nos. 3, 4 and 5. The State has also not brought on record any injury report in respect of allegation of assault nor it is shown that during investigation specific allegations have been found by investigating officer against the applicant nos. 3, 4 and 5.

34. In view of the fact that allegations in the present case are vague in nature and lacks specification in respect of applicant nos. 3, 4 and 5, the criminal proceedings against applicant nos. 3, 4 and 5 are absurd and improbable that no prudent mind can arrive at conclusion for proceeding against applicants in view of the vague allegations.

35. In view thereof, the present criminal proceedings against applicant nos. 3, 4 and 5 are bad in law, therefore, entire proceedings of Criminal Case No. 6213 of 2018 (State vs. Shabban Khan and others) under Sections 498A, 323, 506 IPC and Section 3/4 of D.P. Act, P.S. Bilsa, District Budaun arising out of Case Crime No. 689 of 2017 as well as charge-sheet dated 20.05.2018, is hereby set aside and quashed against applicant

nos. 3, 4 and 5, namely, Smt. Mehtab, Achchan Khan and Kumari Nida, respectively.

36. The present application under Section 482 Cr.P.C. is, accordingly, *partly allowed*.

**Order Date :- 9.5.2024**  
S.Prakash

**(Vikram D. Chauhan,J.)**