

Neutral Citation No. - 2024:AHC:116565

HIGH COURT OF JUDICATURE AT ALLAHABAD

Judgement Reserved on 15.07.2024

Judgement Delivered on 23.07.2024

Court No. - 79

Case :- APPLICATION U/S 482 No. - 21088 of 2019

Applicant :- Devdutta And 4 Others

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

Counsel for Applicant :- Alok Ranjan Tripathi, Gaurav Pathak, Prashant Mishra

Counsel for Opposite Party :- G.A., Yatish Kumar Dwivedi

Hon'ble Anish Kumar Gupta, J.

1. Heard Shri Prashant Mishra, learned counsel for the applicants and Sri Prem Prakash Tiwari, learned A.G.A. for the State. None appears on behalf of opposite party no.2.
2. The instant application has been filed under Section 482 Cr.P.C. seeking quashing of the Charge-sheet dated 16.09.2018 as well as the entire proceedings in Case No. 2313 of 2019 (Stat of U.P. vs. Devdutta and Others) arising out of Case Crime No. 0192 of 2017 under Sections 498A, 323, 504, 506 I.P.C. and 3/4 of the Dowry Prohibition Act, 1961 (in short, 'D.P.Act'), P.S.- Fajalganj, District- Kanpur Nagar, the Chief Judicial Magistrate, Kanpur Nagar.
3. The brief facts of the case are that on 07.09.2017, the opposite party no.2 herein has lodged an F.I.R. against eleven persons which includes her husband, father-in-law, mother-in-law, brothers-in-law & sisters-in-laws (Jeth and Jethani), sisters-in-law (Nand), brothers-in-law (Nandoi). In sum and substance, the allegations are that the marriage of the opposite party

no.2 was solemnized with the applicant no.1 on 26.04.2012 as per the Hindu rituals and customs with all pomp and show. It is stated that in the marriage the family members of the opposite party no.2 had spent a sum of about Rs.8,00,000/-, which included the jewellery and the articles, given in the marriage. After the marriage all the accused persons arrayed in the F.I.R. started torturing her for less dowry and they also demanded a sum of Rs. 2,00,000/- for establishing a business and told her that unless she brings the aforesaid amount of Rs.2,00,000/- she will be tortured. It is further alleged in the F.I.R. that in the meantime she became pregnant. Thereupon, she was sent to her parental home by stating that come after six months after the child is born. Thereafter, the husband of the opposite party no.2 took her to her paternal home and after reaching there he quarrelled with her parents for the aforesaid sum of Rs. 2,00,000/- and during such quarrel he pushed away the opposite party no.2. due to which her pregnancy got terminated. Since then, no one came forward to take care of the opposite party no.2. When repeatedly the opposite party no.2 called her husband and in-laws then her husband came in August, 2013 and took the opposite party no.2 back and he asked the parents of the opposite party no.2 to give Rs. 50,000/, which was urgently required by him. Then, the mother of the opposite party no.2 took a loan of Rs. 50,000/- and paid to the husband of the opposite party no.2. After reaching in-laws' place the in-laws (arrayed as accused in the F.I.R.) again started torturing her for the rest of the amount of Rs. 1,50,000/-. In October, 2014 she again became pregnant and since the in-laws did not take care of her, she became very sick. Then, the in-laws again asked her to go back to her paternal place stating that since your parents have not given the amount of Rs.1,50,000/- as demanded, therefore, nobody will take care of her. Thereupon, the husband of the opposite party no.2 took her to her parental home, where she gave birth to a son, who was aged about three years at the time of lodging of the F.I.R. After the child was born the husband again took her back to the in-laws' place on 15.05.2015, as per the settlement and kept her till October, 2016. During this period again, they continue to demand Rs.1,50,000/- and used to torture her for the same and they used to call her mother saying that either give Rs.1,50,000/- or take their daughter back. On.

06.10.2015, the opposite party no.2 heard that all the in-laws were conspiring to kill her, which was protested by the opposite party no.2, thereupon, they have sent the opposite party no.2 alongwith her child through train to her parent's home. Since then, no one came to take her back and due to the persuasion of relatives the husband of the opposite party no.2 was supposed to come for settlement in the month of November, 2016, however, he did not come and due to such attitude of the husband of the opposite party no.2 her mother suffered a brain hemorrhage and she died on 19.11.2016. Since then, nobody has taken any care of the opposite party no.2 as well as her son.

4. The aforesaid F.I.R. was investigated and statement of the opposite party no.2 was recorded. In her statement under Section 161 Cr.P.C., she has almost repeated the same averments made in the F.I.R. However, in her further statements recorded on 07.09.2018, though initially she made the similar allegations, however, when the specific query was made by the Investigation Officer with regard to the fact whether all the eleven persons named in the F.I.R. are residing in the same house, then, she thought over for sometime but did not reply satisfactorily. When again another question was asked that who actually used to abuse and beat her for demand of dowry, then, she replied, her husband- Devdutta, brothers-in-law, Vijay Gupta and Dwarkadhish Gupta and Sisters-in-law, Shushila and Sarita, used to beat and torture her. When specific query was made by the Investigation Officer whether the other persons were residing in the same house and were sharing the same kitchen or they were living separately, then, she specifically told that all the persons were living separately. However, only her husband used to torture her. On query with regard to the injuries sustained by her during such torture and harassment committed by her in-laws whether there was any medical certificate with regard to any injury suffered by her, she told that she did not have any medical certificate. With regard to the fact of termination of pregnancy due to a push made by her husband, she specifically replied that she did not have any proof thereof. However, she told that something happens against the regular cycle of menstrual period then she felt that pregnancy was terminated. However, she never suffered the

termination of pregnancy. The typist have done some mistake while typing. During the investigation, statement of the applicant no.1, the husband as well as the other independent witnesses were recorded by the Investigation Officer, who states that all the daughters of Radhey Shyam are married and are living separately at different locations and the wife of Devdatta was a quarrelsome lady. It is further stated by one of the independent witnesses that the opposite party no.2 is an Advocate and used to threat Radhey Shyam Gupta and his sons to implicate them in false cases.

5. After completing the investigation the charge-sheet was filed on 16.09.2018 against the five persons out of the total eleven persons named in the F.I.R., upon which the cognizance was taken on 06.02.2019 whereupon, the instant application under Section 482 Cr.P.C. was filed by the applicants herein. Applicant no.1 is the husband, applicant nos.2 and 3 are the brothers of the applicant no.1, applicant nos. 4 and 5 are the wives of the applicant nos. 2 and 3 respectively.

6. Learned counsel for the applicants submits that if the F.I.R. as well as the statements recorded under Section 161 Cr.P.C. as well as her majid statement recorded on 07.09.2018, are read together, the same are self-contradictory. All the eleven persons have been implicated on the basis of the vague allegations, which have been found false by the investigation agencies, so far as the other the six persons are concerned and they have already been exonerated. The allegations with regard to the termination of pregnancy of the opposite party no.2 due to the injury caused by the applicant no.1 is concerned, the same has been denied by the opposite party no.2 in her statement.

7. Learned counsel for the applicants further submits that so far as the demand of an amount of Rs.2,00,000/- for the purpose of business is concerned, the same cannot be covered within the ambit of dowry and if such demand was made for a business purpose, it has not been specified in the F.I.R. or in the statement that who was to run the said business. Since, the applicants no.2 to 4 are living separately from the applicant no.1, they could not have been the beneficiaries of any amount to be paid by the

parents of the opposite party no.2. At the most, the applicant no.1, the husband would have been benefited out of any such amount, if paid by the parents of the opposite party. So far as the allegations with regard to torture and beating etc., are concerned the opposite party no.2 herself has denied that she has not sustained any such injury for which any medical examination was ever done as she did not have any medical certificate with regard to the alleged injuries caused by the applicants. It has been stated that she was sent to her parental home. From perusal of the F.I.R. it categorically appears that applicant no.1 has accompanied the opposite party no.2, and she has not left alone. So far as the the allegations with regard to the conspiracy to kill the opposite party no.2 by the applicants are concerned, the same is a concocted story as from perusal of the F.I.R. itself it is crystal clear that since her mother was sick and has suffered brain haemorrhage, therefore, she herself alongwith her child has gone to take care of her mother and thereafter she never came back. Since, there was no demand of dowry as the amount which is alleged to have been demanded was for the purpose of business, that cannot come within the ambit of dowry, hence, no offence under Section 498-A and 3/4 of the D.P. Act, are made out against the applicants herein. So far as offence under Sections 323, 504, 506 I.P.C. are concerned, the same are general and vague allegations against all the applicants including the other persons who were named in the F.I.R. and no specific averments have been made in the entire F.I.R. Therefore, the F.I.R. is nothing but a bundle of lies on the part of the opposite party no.2.

8. Therefore, learned counsel for the applicant relied upon the judgements of the Apex Court in *Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741* as well as *Achin Gupta vs. State of Haryana and Another : 2024 SCC Online SC 759*, submitted that the entire F.I.R. is nothing but a malicious prosecution based on concocted stories, therefore, the same deserves to be quashed against all the accused persons.

9. *Per contra*, learned A.G.A. for the State submits that from the plain reading of the F.I.R. as well as the statements recorded during the investigation and the charge-sheet submitted, it is crystal clear that a *prima*

facie case has been made out against the applicants and having satisfied on such a *prima facie* case against the applicants, learned Magistrate has taken cognizance in the matter. So far as the truthfulness of the allegations made in the F.I.R. is concerned that is subject matter of trial and the same cannot be decided in an application under Section 482 Cr.P.C for quashing of the proceedings.

10. Learned A.G.A. for the State has further relied upon the judgements of the Apex Court in ***R.P. Kapur v. State of Punjab, AIR 1960 SC 866, State of Haryana vs. Bhajan Lal :1992 supp(1) SCC 335*** and ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315***, to contend that once a *prima facie* case is made out against the applicants and material available before the court concerned, the proceedings cannot be quashed.

11. Having heard the submission advanced by learned counsel for the parties this Court has carefully gone through the record of the case. From the record it is reflected that the instant F.I.R. was lodged by the opposite party no.2 against the eleven persons named in the F.I.R. making general and vague allegations. The allegations of demand of Rs. 2,00,000 for the business purpose by the applicant no.1 will not come within the ambit of the demand of dowry.

12. From the aforesaid facts which has been noted hereinabove, the only question which arises for the consideration of this Court whether the instant case is a fit case where this Court should exercise its inherent power to quash the F.I.R., the charge-sheet and the entire proceedings against the applicants, initiated at the behest of the opposite party no.2.

13. In case of ***Geeta Mehrotra (supra)***, this Apex Court has observed as under:-

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who 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.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in (2003) 4 SCC 675 : AIR 2003 SC 1386 in the matter of *B.S. Joshi v. State of Haryana* it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Penal Code, 1860 was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr. P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

(Emphasis supplied)

14. In *R.P. Kapur(supra)*, the Apex Court has laid down the following guidelines while exercising the inherent powers under Section 482 Cr.P.C., to quash the proceedings wherein the following categories were mentioned by the Apex Court, which reads as under:

"(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

15. In ***Bhajan Lal(supra)***, the Apex Court has laid down the following categories where the High Courts can exercise the power to quash the criminal proceedings, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis supplied)

16. In ***Preeti Gupta vs. State of Jharkhand, reported in 2010 Criminal Law Journal 4303 (1)***, this Apex Court observed the following:—

"28. 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.

29. The courts are receiving a large number of cases emanating from section 498-A of the Penal Code, 1860 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."

30. 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.

31. 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 498-A 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.

32. 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.

33. 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. 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.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large

number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. *The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."*

(Emphasis supplied)

17. In *Achin Gupta (supra)*, the Apex Court has observed as under:

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

(Emphasis supplied)

18. Thus, from the aforesaid observations made by the Apex Court, this Court is of the considered view that the demand of money as alleged in the instant F.I.R. for carrying out a business by the applicant no.1 from her in-laws would not come within the ambit of dowry, therefore, the provisions of Section 498A I.P.C. as well as Section 3/4 of the D.P. Act would not attract in the instant case. So far as the other allegations made by the opposite party no.2, are concerned the same are general, vague and inconsistent allegations on the basis of which the applicants cannot be permitted to be harassed. The facts with regard to injury caused to the opposite party no.2 or any termination of pregnancy due to the injury caused has already been denied by the opposite party no.2 in her majid statement, recorded by the Investigation Officer during investigation.

19. In the totality of the circumstances, as discussed hereinabove, this Court is of the considered opinion that the instant case filed by the opposite party no.2 is nothing but a malicious prosecution on her part. Therefore, in the considered opinion of this Court such proceedings cannot be allowed to

continue against the applicants herein, therefore, the same deserve to be quashed.

20. For the reasons aforesaid, the instant application is ***allowed*** and the entire proceedings of Case No. 2313 of 2019 (State of U.P. vs. Devdutta and Others) arising out of Case Crime No. 0192 of 2017 under Sections 498A, 323, 504, 506 I.P.C. and 3/4 of the Dowry Prohibition Act, 1961, P.S.- Fajalganj, District- Kanpur Nagar, pending in the court of the Chief Judicial Magistrate, Kanpur Nagar, as well as the Charge-sheet dated 16.09.2018 are hereby ***quashed***.

Order Date :- 23.07.2024

Shubham Arya

(Anish Kumar Gupta, J.)