

HIGH COURT OF JAMMU & KASHMIR AND LADAKH

Bench: Justice Rajnesh Oswal

Date of Decision: 31st May 2024

Case No.:

CRM(M) No. 679/2023

APPELLANT(S):

Manzoor Hussain, Ors.

VERSUS

RESPONDENT(S):

Union Territory of Jammu and Kashmir, through Incharge Women

Police Station, Rajour

Yasmeen Akhter

Legislation:

Sections 498-A, 342, 323, 504, 505, 109 of the Indian Penal Code (IPC)

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Petition under Section 482 Cr.P.C. seeking quashing of FIR No. 022/2023 registered under Sections 498-A, 342, 323, 504, 505, and 109 IPC at the instance of respondent No. 2.

Headnotes:

Criminal Law – Quashing of FIR – Petition under Section 482 Cr.P.C. – Allegations of dowry harassment and domestic violence – FIR against entire family of husband including those living separately – Specific allegations only against husband and parents – General, vague, and bald allegations against others – No prima facie case against distant relatives – Court cites Supreme Court's caution against roping in distant relatives without specific instances – FIR quashed for distant relatives – Continuance against husband and parents upheld [Paras 1-16].

Procedure under Section 482 Cr.P.C. – Abuse of process – Emphasis on specific allegations for prosecution – Application of judgments from Supreme Court cases to ensure fair trial – General allegations insufficient to prosecute relatives without details – Court's intervention to prevent miscarriage of justice [Paras 10-14].

Decision: FIR quashed against petitioners Nos. 1, 2, 4, 5, 6, and 7 – Petition infructuous for petitioners Nos. 4 to 7 – Investigating Officer to proceed against petitioner No. 3 in accordance with law [Paras 15-16].

Referred Cases:

- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273
- K. Subba Rao v. State of Telangana, (2018) 14 SCC 452
- Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599
- Abhishek v. State of M.P., 2023 SCC OnLine SC 1083

Representing Advocates:

For petitioners: Mr. Shafiq Choudhary, Advocate

For respondents: Mr. Bhanu Jasrotia, GA

JUDGEMENT

01. The petitioners have filed the present petition under Sections 482 of the Cr. P.C. for quashing the FIR No. 0022/2023, registered with Police Station, Women Cell, Rajouri under Sections 498-A, 342, 323, 504, 505 and 109 IPC at the instance of respondent No. 2.

02. It is stated that no offence, much less, offences under Sections 498-A, 342, 323, 504, 505 and 109 IPC have been committed by

the petitioners and the entire family has been arrayed as accused in the FIR even though the petitioner Nos. 6 & 7 are residing far away. It is also stated that false and frivolous FIR has been got registered by the respondent No. 2 only to harass the petitioners, particularly when there are no specific allegations against the petitioners in the FIR.

03. The official respondent has filed the response, stating therein that on 08.08.2023, the respondent No. 2/complainant submitted an application against seven accused to the effect that her marriage was solemnized with the petitioner No. 3. As it was the love marriage between the respondent No. 2 and petitioner No. 3, other accused developed enmity with her and ill- treated her right from the first date of the marriage. The petitioner No. 3 in connivance with other accused always used to abuse her and demand dowry. On 20.07.2023, all the accused persons assaulted the respondent No. 2 mercilessly and kept her in illegal confinement in a room. On receipt of the said application, FIR No. 22/2023 for commission of offences under Sections 498-A, 342, 323, 504, 505 and 109 IPC was registered, and the investigation was entrusted to ASI Mohd Yaqoob. During investigation, Investigating Officer visited the spot, prepared the site plan and recorded the statements of the complainant and witnesses under Section 161 Cr. P.C. Based on statements of the complainant and witnesses, offences under sections 498A, 323, 504, 505 IPC have been proved against the petitioner No. 3, whereas offences under Sections 498-A, 109, 504 and 506 IPC have been proved against the petitioner Nos. 1 & 2. However, no offence has been proved against other persons named in the FIR. Besides, offence under Section 342 IPC has also not been proved against any of the accused persons and the same was dropped from the instant case.

04. Despite service, the respondent No. 2 has not chosen to appear.

05. Mr. Shafiq Choudhary, learned counsel for the petitioners has argued that false and frivolous FIR has been got registered by the respondent No. 2 by implicating all the family members and even the petitioner Nos. 6 & 7, who are residing far away from other petitioners. Besides, petitioner Nos. 4 & 5 have been unnecessarily arrayed as accused to spoil their career. Mr. Choudhary has vehemently argued that *prima facie*, no offence is made out against petitioner Nos. 1 & 2.

06. Per contra, Mr. Bhanu Jasrotia, learned GA has submitted that the Investigating Officer has proved the offences against the petitioner Nos. 1 to 3 after recording the statements of the complainant and the witnesses, as such, FIR cannot be quashed.

07. Heard learned counsel for the parties and perused the record, including the case diary.

08. The record depicts that the respondent No. 2 submitted a written application to the Senior Superintendent of Police, Rajouri, who in-turn forwarded the same to SHO, Police Station, Women Cell, Rajouri. In the application, it was stated by the respondent No. 2 that she had solemnised love marriage with petitioner No. 3, due to which rest of the accused developed hatred towards her and started ill-treating her right from the inception of the marriage. Their attitude remained cruel towards her, and she was shocked to see the character and conduct of the petitioner No. 3, who started harassing, maltreating and demanding dowry from her. The petitioner No. 3 always used abusive language and many times she was thrown out of her matrimonial home but with the intervention of the community members, the matter used to be settled. Due to harassment of the petitioner No. 3, the parents of the complainant provided more dowry articles after the marriage but despite that rest of the

accused persons did not mend their attitude. The petitioner No. 3, on the instance of the other accused persons, has deserted the respondent No. 2 after beating her and is adamant to contract second marriage. Right from the first day of the marriage, the petitioner No. 3 alongwith other accused are harassing the respondent No. 2 on one pretext or the other, more particularly that her father has not given dowry amounting to Rs. 06 lacs to the petitioner No. 3.

After few months of the marriage, her father had given an amount of Rs. 1,15,000/- in cash but still the accused continued to demand dowry. It is further stated that few months back, the petitioners had thrown out the respondent No. 2 from her matrimonial home after beating her and she took shelter in her parents' house. Thereafter, the matter was settled on the assurance of the petitioners and the respondent No. 2 returned to her matrimonial home. On 20.07.2023, the accused persons assaulted the respondent No. 2 on the ground that her parents had not fulfilled their demands and after beating her she was kept in illegal confinement in a room. After intervention of some persons, she was rescued. When she was rescued, she had received grievous injuries in her abdomen and blood was oozing from her mouth and nose. At the time of occurrence, she was six months pregnant. On these allegations, FIR impugned was registered against all the petitioners.

09. The Investigating Officer, during investigation, recorded the statement of respondent No. 2. In her statement, she has stated that on the instigation of other accused persons, the petitioner No. 3 was harassing her to bring more dowry and Rs. 6.00 lacs from her parents. The petitioner No. 3 used to threaten to kill her. When she refused to get dowry and money, the petitioner No. 3 started torturing and mentally harassing her. With the intervention of the community members, the matter was settled

but still the petitioner No. 3 continued to torture and harass her. The petitioner No. 3 used to demand dowry articles only on the instigation of his parents and relatives.

10. From the allegations made in the complaint and the statement of the complainant recorded under Section 161 Cr. P.C, it is evident that the respondent No. 2 has raised specific allegations against the petitioner No. 3. As per the status report, no offence has been proved against petitioner Nos. 4, 5, 6, & 7. The general, bald and vague allegations have been levelled by the respondent No. 2 against the petitioner Nos. 1 & 2 and petitioner Nos. 4 to 7. Simply because the petitioner Nos. 1 & 2 are the parents of the petitioner No.3, they cannot be proceeded against when on similar allegations, which are vague, general and bald in nature, the Investigating Officer has not found the petitioner No.4 to 7 involved in the commission of offence. There must be specific allegations against the relatives of the husband, to warrant their prosecution for commission of offence under Section 498-A, but on the bald and general allegations and bereft of necessary details, the relatives of the husband cannot be prosecuted.

11. In “**Arnesh Kumar v. State of Bihar**”, (2014) 8 SCC 273, the Hon’ble Supreme Court of India has observed as under:

4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section

498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

(emphasis added)

12. In “**K. Subba Rao v. State of Telangana, (2018) 14 SCC 452**”, the Hon’ble Apex Court has held as under:

Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC]. The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. **The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.**

(emphasis added)

13. In “**Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599**”, the Hon’ble Apex Court quashed the proceedings under sections 341, 323, 379, 354, 498-A IPC by observing as under:

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

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21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, **it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a**

criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.”

(emphasis added)

14. In „**Abhishek versus State of Madhya Pradesh**“, **Abhishek v. State of M.P., 2023 SCC OnLine SC 1083**, the Hon’ble Supreme Court of India has held and observed as under:

“20. We may also note that Bhawna herself claimed that Nimish came to her brother’s wedding in 2012, but she has no details to offer with regard to any harassment for dowry being meted out to her by her mother-in-law and her brothers-in-law after 2009. As noted earlier, even for that period also, her allegations are mostly general and omnibus in nature, without any specific details as to how and when her brothers-in-law and mother-in-law, who lived in different cities altogether, subjected her to harassment for dowry.

22. Given the totality of the facts and circumstances, we are of the considered opinion that Bhawna’s allegations against the appellants, such as they are, are wholly insufficient and, prima facie, do not make out a case against them. Further, they are so farfetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed against them. In effect, the case on hand falls squarely in categories (1) and (5) set out in Bhajan Lal (supra). Permitting the criminal process to go on against the appellants in such a situation would, therefore, result in clear and patent injustice. This was a fit case for the High Court to exercise its inherent power under Section 482 Cr.P.C. to quash the FIR and the consequential proceedings.

(emphasis added)

15. In view of the above, this Court is of the considered view that continuance of the proceedings against petitioner Nos. 1 & 2 shall amount to abuse of process of law. Accordingly, FIR impugned is quashed so far petitioner Nos. 1 & 2 are concerned. The petition has been rendered infructuous qua the petitioner Nos. 4 to 7. The Investigating Officer shall proceed against the petitioner No. 3 in accordance with law.

16. Disposed of.

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