
(2018) 07 MP CK 0198

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No.. 1533 OF 2017

Rama Kushwah

APPELLANT

Vs

State Of Madhya Pradesh & Anr

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 498A
Code Of Criminal Procedure, 1973 — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2018) 07 MP CK 0198

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : Raghvendra Dixit, B.K.Kushwah

Final Decision : Allowed

Judgement

Heard finally.

The present petition under Section 482 Cr.P.C. is for quashment of FIR registered vide crime No. 566/2016 at Police Station Gwalior, District Gwalior

as well as for quashment of consequential proceedings initiated pursuant to the FIR.

Precisely stated facts of the case are that petitioner got married to Rajendra Kushwah (brother of petitioner) in year 1990. As per the allegations

contained in FIR, after 56 years of marriage, Rajendra (husband), Preetam (father-in-law), Shanti (mother-in-law), Dharmendra (brother-in-law) and

present petitioner-Rama Kushwah (sister-in-law) started harassing the complainant for dowry and demanded dowry of Rs. 10 lacs. Since the

complainant and her family members did not have sufficient means to fulfill the dowry demand, complainant was subjected to harassment and physical

torture time and again. On 17/11/2016 at about 6 am, husband, father, mother and brother-in-law caused physical violence to the complainant and they were instrumental in trying to cut the hand of complainant. The incident dated 17/11/2016 was registered at 'zero' at Police Station Morena and thereafter transferred to Police Station Gwalior. On the basis of such statement, FIR was registered and investigation was undertaken by respondent

No. 1. Thereafter, charge-sheet was filed.

As per the pleadings of the petition, it appears that the petitioner is a housewife and being a married woman, lives separately in house of in-laws for

more than 15 years. She never involved in any such activity regarding dowry demand. The complainant got married in year 1990 and as per her own

statement, after 5-6 years of married life, she was subjected to harassment for dowry meaning thereby that she was subjected for such behaviour

around year 1995-96 and her conspicuous silence for 20 years itself speaks for motive of complainant; wherein, after 20 years of married life, she was

levelling charges over her husband and in-laws including the present petitioner; whereas, she is married for last 15 years and lives separately. The

statement of complainant and version of FIR, nowhere, suggest any specific allegation qua present petitioner. Only on the basis of omnibus allegations,

such case could not have been registered and therefore, trial is an abuse of process of law being vexatious litigation just to harass the petitioner.

On the other hand learned counsel for the State opposed the prayer on the basis of charge-sheet as well as case diary and submits that the allegations

of dowry demand are apparent from the FIR as well as statement made by the complainant, therefore, seeks dismissal of petition.

Learned counsel for respondent No. 2 also vehemently opposed the prayer made by the petitioner and submits that the petitioner was one of the

parties in harassment caused over the complainant, physically as well as mentally and therefore, she has rightly been impleaded as one of the accused.

Trial is going on, therefore, case needs no interference. He prayed for dismissal of petition.

Heard.

From the perusal of FIR, it appears that the complainant got married in year 1990 and for 5-6 years, peace prevailed in the married life, thereafter,

problems cropped up wherein, family members of husband of complainant

alongwith her husband started making demand for dowry and as per the FIR version itself these incidents occurred tentatively in year 1995-96. Silence of petitioner for 20 years is conspicuous and indicates that case qua petitioner made by the complainant is an afterthought because if complainant was aggrieved by any action of the family members of her husband side then she would have immediately resisted by referring the matter to her family members or to police authority by filing police complaint but for 20 years, she kept silence. In year 2016 she made a complaint and perusal of FIR and her statement, indicates that only omnibus allegations have been levelled against the present petitioner. No specific act has been attributed over present petitioner. Beside that, petitioner is also a married woman, living separately at her matrimonial home, for long.

Hon. Apex Court in the matter of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 has laid down guidelines for

quashing the criminal case which reads as under:-

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 F.I.R. 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 F.I.R. 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 proceedings 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.â??

The Supreme Court in the matter of Preeti Gupta Vs. State of Jharkhand (2010) 7 SCC 667 has held as below:-

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 Penal Code which reads as under:

â??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 purpose of this Section, 'cruelty' means-

(a) any wilful 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) 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.â??

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised 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 the husband and all his immediate relations is also not uncommon. At times, even after the

conclusion of the 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 allegation 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.â??

Similarly, in the matter of Geeta Mehrotra, Another Vs. State of Uttar Pradesh and Another (2012) 10 SCC 741, the Supreme Court has again

reiterated almost the same spirit.

One more glaring fact available in the present case is son of complainant, who is 20 years old and living with his father (husband of complainant).

When the son is 20 years old and living with his father then this factor also goes in favour of petitioner. After such delay FIR has been filed for

implication of petitioner. This case appears to be a case of false implication prima facie, therefore, petitioner cannot be subjected to rigors of

prosecution. Trial against her, amounts to abuse of process of law, therefore, petition preferred by the petitioner is hereby allowed and the FIR

registered vide crime No. 566/2016 at Police Station Gwalior District Gwalior for offence under Section 498-A, 323 of IPC and Section 3 / 4 of

Dowry Prohibition Act, so far as it relates to petitioner is hereby quashed and consequently, the criminal trial pending against the petitioner is also

hereby quashed.

Petition stands allowed and disposed of.