

(2017) 04 AHC CK 0189
In the Allahabad High Court
Case No : 11496 of 2015

S. Bhupinder Singh And 5 Others

APPELLANT

Vs

State Of U.P. And Another

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 323](#),
[Section 506](#), [Section 498\(A\)](#) -
Punishment for voluntarily causing hurt - Punishment for criminal ,intimidation -
Enticing or taking away or detaining with criminal intent a married woman
[Dowry Prohibition Act, 1961](#), [Section 3](#),
[Section 4](#) - Penalty for giving or taking dowry - Penalty for
demanding dowry

Citation : (2017) 04 AHC CK 0189

Hon'ble Judges : Pankaj Naqvi

Bench : Single Bench

Advocate : Ram Sagar Yadav

Judgement

1. Heard Sri Ram Sagar Yadav, learned counsel for the applicants and the learned A.G.A.
2. This application under Section 482 Cr.P.C has been preferred for quashing the proceedings including the summoning order dated 17.3.2015 passed in Complaint Case no. 8053 of 2014, under Sections 498-A, 323, 506 IPC and 3/4 D.P. Act, P.S. Sadar Bazaar Saharanpur, District Saharanpur, pending in the Court of Chief Judicial Magistrate, Saharanpur.
3. The O.P. no.2 lodged a complaint against the applicants alleging that she was married to applicant no.1 on 26.4.2013, as per Sikh rites in Delhi, in which considerable dowry items, cash to the tune of Rs. 5 lac was spent on the marriage, but the opposite parties were not satisfied with the same, started harassing her physically / mentally and also by depriving her from food. It was

further alleged that with the view to torture her applicant no.1 obtained her nude photographs, prepared a video and threatened her that in the event demands are not met, same would be uploaded on the net. She alleges that in the evening of 25.6.2014, applicants no. 1 to 4 assaulted her and applicant no.1 / husband gagged her mouth with a piece of cloth. The victim narrated the entire incident to her parents. Her relatives approached the P.S, concerned with a complaint and when the police insisted the applicants to come at the police station, they again assaulted the victim and the inlaws instigated their son that she be put to death by pouring kerosene over her. Eventually, she was rescued by the police and was medically examined at their instance. It was finally alleged that the applicants have retained the entire stridhan. The complainant examined herself and her witnesses Sardar Jitendra Singh and Manjeet Kaur in support of allegations made in the complaint. The learned Magistrate after considering the materials on record, proceeded to summon the applicants in the above offences under order dated 17.3.2015, which is impugned herein.

4. It is submitted that applicants are husband, father-in-law, mother-in-law, Jethani, Bua and Phupha, allegations against them are general / omnibus, without any specificity and any tangible basis, consequently the prosecution is liable to be quashed against them in the light of the judgement of the Apex Court in *Geeta Mehrotra and others vs. State of U.P. and another*, 2012 (10) SCC 741.

5. The law is well settled that when prosecution is sought to be quashed at an initial stage, the Court has to only examine the allegations made in the FIR / complaint / charge-sheet as to whether on the basis of materials on record, a case of prima facie commission of offence is made out or not. If prima facie case is disclosed, the Court may refuse to quash the same. Where going by the materials, no offence whatsoever is made out or prosecution is based on malafides or is an abuse of the process of the Court, this Court may quash the criminal prosecution. Reference in this connection may be made to the judgements of the Apex Court in *Amit Kapoor vs. Ramesh Chander* (2012) 9 SCC 460 & *State of Haryana v. Bhajan Lal*, 1992 S.C.C. (Cr.) 426.

6. The Apex Court in *Geeta Mehrotra* (supra) sounded a word of "caution" that in a matrimonial dispute, family of the victim has a tendency to rope in members of the family of the accused on the basis of general and vague allegations, which is to be discouraged.

7. Similarly in *Taramani Parakh vs. State of Madhya Pradesh and others*, (2015) 11 SCC 260 the Apex Court again struck a note not to indiscriminately quash the proceedings against the relatives of the husband in a matrimonial dispute on the strength of *Geeta Mehrotra* (supra). Paragraph-12 of *Taramani Parakh* (supra) reads as under:- 12. In *Kailash Chandra Agrawal & Anr. vs. State of U.P. & Ors.* (Criminal Appeal No.2055 of 2014 decided on 6.9.2014), it was observed: "9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants

with the husband of the complainant is distant. In *Kans Raj vs. State of Punjab & Ors.* [(2000) 5 SCC 207], it was observed:-

"5....A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case." The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to *K. Ramakrishna and Ors. vs. State of Bihar and Anr.* [(2000) 8 SCC 547], *Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.* [(1998) 5 SCC 749], *State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.* [(1992) Suppl 1 SCC 335] and *Asmathunnisa vs. State of A.P.*

8. The Apex Court culled out 2 sets of relatives, close and distant relatives. Ordinarily, the husband, the in-laws are considered to be close relatives, who may be expected to make a demand of dowry or inflict alleged physical / mental cruelty. The others are distant relatives, who are not to be arraigned unless there is specific allegation against them supported by tangible material.

9. Considering the close proximity of relations of applicant nos. 1, 2 and 3 qua O.P. No.2 / complainant and allegations of demand of dowry and torture, it would not be apposite to quash the pending proceedings against them. However, in so far applicant nos. 3, 4 and 5 are concerned, they are Jethani of O.P. no.2 and Bua & Phupha of applicant no.1 against whom general allegations are made without any tangible material, proceeding against them is liable to be dismissed.

10. Consequently, the application is allowed in part. Proceedings of Complaint Case no. 8053 of 2014, under Sections 498-A, 323, 506 IPC and 3/4 D.P. Act, P.S. Sadar Bazaar Saharanpur, District Saharanpur, pending in the Court of Chief Judicial Magistrate, Saharanpur, are quashed in so far it relates to applicant nos. 4, 5, 6, but the prayer for quashing the proceedings is refused and the application is dismissed in respect of applicant nos. 1, 2 and 3. Interim order, if any, in respect of applicant nos. 1, 2 and 3 stands vacated.

11. It is made clear that in the event applicants nos. 1, 2 and 3 have not filed

their bail applications, the court below, while considering their bail, shall bear in mind, the law laid down by the Division Bench of this Court in Brahm Singh & others Vs. State of U.P. and others, 2016 (7) ADJ 151.

12. Office to proceed.