

(2022) 09 PAT CK 0020

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 470 Of 2022

Shiwangi Prabhat

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 323, 341, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4/li>

Citation : (2022) 09 PAT CK 0020

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Ramakant Sharma, Shama Sinha, Iqbal Asif Niazi, Y.C. Verma, Vishal Vikram Rana

Final Decision : Allowed

Judgement

1. Heard Mr. Ramakant Sharma, learned Senior Counsel for the petitioners assisted by Ms. Shama Sinha, learned Advocate, Mr. Y.C. Verma, learned Senior Counsel for the informant assisted by Mr. Vishal Vikram Rana and Mr. Iqbal Asif Niazi, learned AC to GP 5 for the State.

2. This application has been filed invoking the extraordinary writ jurisdiction of this Court to quash and cancel the First Information Report giving rise to Rajiv Nagar P.S. Case No. 397 of 2021 dated 15.09.2021 registered under Sections 341, 323, 504, 506, 498(A) of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act.

3. As per the prosecution story, an arranged marriage was performed between the brother of these two petitioners and the informant on 06.05.2018 in accordance with Hindu Rites and Customs. The brother of the petitioners was working in Jubel (Saudi Arabia) and the marriage negotiation had taken place between the father of both the sides. It is alleged that after marriage while husband of the informant left for his job, she stayed with her in-laws. The

allegation is that immediately after her husband left for Saudi Arabia, the in-laws started harassing the informant. It is stated that the husband of the informant came to Muzaffarpur in May 2019 but when the informant told him about the harassment at the hands of the in-laws, he ignored the same and returned to Saudi Arabia leaving the informant with her in-laws.

It is further alleged that the informant got pregnant but even at this stage, there was no change in the behaviour of her in-laws. She was advised rest but was forced to do daily chores and on objecting her father-in-law would drag her to kitchen and choke the informant. It is further alleged that the mother-in-law would slap her and sisters-in-law would verbally abuse her. It is stated that the informant was blessed with a baby girl on 08.01.2020 but despite the birth of a girl child, the in-laws continued their abuse and did not show any interest even in the girl child. When the informant allegedly tried to return to her matrimonial home, her in-laws did not allow her to enter and demanded a dowry of Rs.10 lakhs. It is lastly alleged that even the husband of the informant did not talk to her and did not contact her. She was not allowed to enter into her matrimonial home whereafter she was compelled to return to her father's home. A copy of the First Information Report has been placed on record as Annexure '1' to the writ application.

4. Learned Senior Counsel for the petitioners submits that the petitioner no. 1 is married sister-in-law of the informant. She is working as an Assistant Professor since 14.07.2018. Petitioner no. 2 is unmarried sister-in-law who is studying in Delhi and is residing there. It is further informed that the petitioner no. 1 is married to a Naval Officer since 09.02.2014 who was earlier posted at Mumbai and is presently posted at Delhi. Petitioner no. 1 has one daughter who is a child with special needs and is undergoing therapy in Delhi.

5. Learned Senior Counsel further submits that it would appear from perusal of the First Information Report itself that no allegations much less any allegation constituting an offence under Section 498A or Section 3/4 of the Dowry Prohibition Act would be made out against these petitioners. It is submitted that it is a case of false implication of these two petitioners who have nothing to do with the personal relationship of the informant with her husband.

6. Learned Senior Counsel submits that these two petitioners had hardly any occasion to stay with the informant after her marriage and in fact the petitioner no. 1 started avoiding staying in her parents' house after marriage of the informant noticing her conducts.

7. It is further submitted that on a bare perusal of the First Information Report, it would appear that the marriage was fixed by the father of both the sides. These petitioners had no role to play in the said marriage. The marriage was solemnised on 06.05.2018 and there is no allegation that these petitioners had at any point of time asked the informant to bring any dowry either in cash or in kind. A vague allegation has been made in the FIR that at the time of Tilak a sum

of Rs. 10 lakhs was given to the bridegroom's side, however, from the narrations present in the FIR itself as per the allegations, the said amount was demanded saying that the husband of the informant is the only son and is earning handsome amount in the foreign country. There is no allegation that these petitioners were either present at the time of demand of dowry or had in any manner instigated her parents to demand dowry. The allegations of demand of dowry are completely vague and lacks credibility.

8. Learned Senior Counsel further submits that with an intention to implicate each and every member of the family of her husband, the informant has alleged that she started living in her sasural with her father-in-law, mother-in-law and both the sisters-in-law. By way of a completely vague allegations she alleges that after her husband left for Saudi Arabia, the behaviour of her mother-in-law, father-in-law and both the sisters-in-law had become cruel. This is nothing but an ornamental allegation without there being any specific act alleged against these two petitioners.

9. Learned Senior Counsel further submits that in the whole FIR, there is no allegation that these two petitioners had ever physically assaulted the informant. The informant has made a completely general kind of allegations which are ornamental in nature. As stated, the petitioner no. 1 was married long back in the year 2014 and she resides separately whereas petitioner no. 2 was living at Delhi and was preparing for her competitive examinations.

10. Learned Senior Counsel submits that towards the end of the First Information Report at one place a mention has been made that the elder sister-in-law had abused the informant and had given her a blow by a broom. The FIR, however, nowhere states about the period when such alleged act has been committed. It is submitted that the FIR has been lodged 3 years after the marriage only with concocted story.

11. Relying upon the judgment of the Hon'ble Supreme Court in the case of Sushil Kumar Sharma vs. Union of India and Ors. reported in (2005) 6 SCC 281, learned Senior Counsel submits that in the said case, the Hon'ble Apex Court has taken judicial notice of the fact that many instances have come to light here the complaints are not bonafide and have been filed with an oblique motive. The Hon'ble Apex Court has noticed that the near relatives, kith and kin of the husband have been falsely implicated just to harass them. In this regard, reliance has been placed on the judgments of the Hon'ble Supreme Court in the case of Rajesh Sharma and Ors. vs. State of U.P. & Anr. reported in (2018) 10 SCC 472; Arnesh Kumar vs. State of Bihar and Anr. reported in (2014) 8 SCC 273; Preeti Gupta & Anr. vs. State of Jharkhand and Anr. reported in (2010) 7 SCC 667; Geeta Mehrotra & Anr. vs. State of U.P. & Anr. reported in (2012) 10 SCC 741 and K. Subba Rao vs. State of Telangana reported in (2018) 4 SCC 452. It is submitted that as a result of the outburst of matrimonial disputes, in recent times, the cases of false implication have been increased and the Hon'ble Apex Court has put a word of caution saying that the Court should be careful in

proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths.

12. It is submitted, thus, that the First Information Report in so far as it relates to these two petitioners be quashed to prevent the abuse of the process of court and for the ends of justice.

13. In this case, notice was issued to the informant-O.P. No. 2 who has appeared through her advocates. This Court has heard Mr. Y.C. Verma, learned Senior Counsel assisted by Mr. Vishal Vikram Rana, learned Advocate.

14. Learned Senior Counsel submits that in the present case, there are specific allegations against the sisters-in-law and at this stage, this Court need not exercise its extraordinary writ jurisdiction to quash the First Information Report as against these petitioners. It is further submitted that in the First Information Report at least there is some allegation against the petitioner no. 1.

Consideration

15. Having heard learned Senior Counsel for the petitioners and learned Senior Counsel for the O.P. No. 2 as also learned counsel representing the State and upon perusal of the materials available on the record, this Court finds that the marriage between the brother of these two petitioners and the informant was solemnised on 27.05.2018. In the First Information Report, it is categorically stated that this marriage was negotiated by the father of both the sides. No role of these two petitioners have been alleged in the FIR.

16. This Court further finds that neither prior to the marriage nor immediately after the marriage any demand of dowry or cruelty has been alleged against these two petitioners. Between May 2018 and August 2018 the informant lived with her husband in the matrimonial home. There is no allegation that during this period, these petitioners either made any demand of dowry or committed any act of cruelty. The allegation is that after the husband of the informant left her in August 2018 and went to join his job in Saudi Arabia, her mother-in-law and father-in-law started pressurising her to bring Rs.10 lakhs as dowry. There is no allegation that these two petitioners had ever demanded or instigated her parents to demand dowry. A vague allegation has been made at this stage that after departure of her husband to Saudi Arabis, behaviour of these two petitioners became cruel but save and except that vaguely using the word 'cruel' nothing more is stated. To this Court, thus, it seems that the allegations of being cruel against these two petitioners are completely vague and ornamental in nature.

17. This Court finds that the statements made in the writ application and the supplementary affidavit filed on behalf of the petitioners stating therein that petitioner no. 1 was married in the year 2014 to a Naval Officer and she was residing with her husband at Mumbai till July 2018 has not been controverted. Even in course of argument, Mr. Y.C. Verma, learned Senior Counsel has not

controverted this statement of the petitioner no. 1.

18. This Court further finds that according to petitioner no. 1, she got a job as Assistant Professor at B.B.M. College, B.R.A Bihar University, Muzaffarpur in July 2018 and in connection with her job, she came to Muzaffarpur but very soon she has shifted in a rented accommodation in August 2018 at the ground floor of Dr. Vikash Sharma, Ward No. 19, Saraiyaganj, Muzaffarpur, Bihar. She has alleged the insensitive behaviour of the informant with the child of petitioner no. 1. It is the specific case of the petitioner no. 1 that her husband was posted to Delhi and he got family accommodation in Delhi where the petitioner no. 1 and her daughter who is a special needs child used to go during holidays. Petitioner no. 1 had taken leave from July 2019 to September 2019 for her second child and she was staying with her husband. In March 2020, the college was closed due to Covid pandemic and petitioner no. 1 worked from home while staying with her husband. During this period, the doctors declared that the girl child of the petitioner no. 1 is suffering from Autism and she was suggested to undergo therapy.

19. In these circumstances, the petitioner no. 1 took child care leave from 09.08.2021 to 06.11.2021 and stayed with her husband and children at Delhi and thereafter she returned to her rented house at Muzaffarpur for few months and again took a study leave. Presently, she is on study leave.

20. In course of argument, while learned Senior Counsel for the petitioners has pointed out these uncontroverted materials available on the record, the same has not been disputed by learned Senior counsel for the O.P. No. 2.

21. This Court, therefore, finds that there are certain uncontroverted materials available on the record and apart from the fact that the First Information Report does not disclose any specific act or omission on the part of these petitioners save and except the vague allegations made against them, these uncontroverted materials also suggest that the two petitioners being sisters-in-law of the informant have been made accused only to put pressure upon the husband and it would be nothing but a case of sheer harassment if they are allowed to be prosecuted.

22. In the case of Rajesh Sharma (Supra), the Hon'ble Supreme Court has observed in paragraph '14' as under:-

"14 Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression "cruelty" in Section 498-A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [[Explanation to Section 498-A.]] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of

married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted [[Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473]]. The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.”

23. In the case of Arnesh Kumar (Supra), in paragraph ‘4’, their Lordships have taken note of the phenomenal increase in matrimonial disputes in recent years and have noticed that how in a large number of cases, bedridden grandfathers and grandmothers of the husband, their sisters living abroad for decades are being arrested. The observations made in paragraph ‘4’ of the said judgment are being reproduced hereunder:-

“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.”

24. In the case of Preeti Gupta & Anr. (Supra), the Hon’ble Apex Court has observed in paragraphs ‘32’, ‘33’, ‘34’, ‘35’ and ‘36’ as under:-

“32. 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 is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre 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 fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

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 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 complainant are required to be scrutinised with great care and circumspection.

36. 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 an amicable settlement altogether. The process of

suffering is extremely long and painful.”

25. Further in the case of Geeta Mehrotra and Anr. (Supra), their Lordships noted that in the case where all family members are being roped into the matrimonial litigation, the High Court should have quashed the complaint arising out of a matrimonial dispute. Paragraph ‘21’ of the judgment is being reproduced hereunder:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] 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: (SCC p. 698, para 12)

“12 There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the 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 commission of 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 other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their 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 that matter was that the courts would not encourage such disputes.”

26. The Hon’ble Apex Court, in the case of K. Subba Rao (Supra) observed in paragraph ‘6’ as under:-

“6. 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 335 : 1992 SCC (Cri) 426]. 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. See Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] and Kailash Chandra Agrawal v. State of U.P. [Kailash Chandra Agrawal v. State of U.P., (2014) 16 SCC 551 : (2015) 3 SCC (Cri) 536]”

27. In the case of *Rajiv Thapar and Others vs. Madan Lal Kapoor* reported in (2013) 3 SCC 330, the Hon'ble Supreme Court laid down the four steps test for quashment in exercise of inherent power of the high Court under Section 482 CrPC. Those are as under:-

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

28. While it is true that this Court needs to exercise its extraordinary writ jurisdiction to quash the First Information Report with all circumspection and care, in the present case this Court is of the considered opinion that in the matrimonial disputes between the informant and her husband particularly these two petitioners being sisters of the husband have been made accused on completely vague and ornamental allegations.

29. This Court is, therefore, required to look into the developments in law particularly in the field of granting reliefs to the kith and kin of the husband who are facing prosecution on the basis of mere vague and omnibus kind of allegations. There are uncontroverted materials which may be relied upon safely in the light of the judgment of the Hon'ble Supreme Court in the case of *Rajiv Thapar* (supra). This case would pass the tests laid down in the said judgment.

30. In ultimate analysis this Court is of the considered opinion that not only in the First Information Report the allegations against these two petitioners are completely vague and ornamental in nature and prosecution of the petitioners would only be an abuse of the process of Court. To save them from sheer harassment, the ends of justice requires that the First Information Report being *Rajiv Nagar P.S. Case No. 397 of 2021* dated 15.09.2021 in so far as it relates to

both the petitioners is fit to be quashed.

31. Accordingly, this Court quashes the First Information Report as against these two petitioners.

32. This writ application is allowed to the extent indicated hereinabove.