

(2023) 12 J&K CK 0070

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 686 Of 2017

Subash Chander Leekha And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 28-12-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 342, 498A, 504, 506
Indian Penal Code, 1860 — Section 323, 341, 354, 379, 498A
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2023) 12 J&K CK 0070

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Aftab Malik, P.D. Singh, Vilakshan Singh

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Through the medium of this petition, the petitioners are seeking quashing of the charge-sheet bearing No. 51/2017 dated 26.05.2017 arising out of FIR No. 30/2017 dated 25.02.2017 registered with Police Station, Gandhi Nagar, Jammu at the instance of respondent No. 2 for commission of offences under Section 498-A, 342, 504, 506 RPC.

2. The petitioner Nos. 1 and 2, are the parents-in-law of the respondent No. 2, whereas the petitioner Nos. 3 and 4 are the sons of the husband of the respondent No. 2 from his first marriage. It is stated that Shashi Leekha, who happens to be the son of petitioner Nos. 1 and 2 and father of the petitioner Nos. 3 and 4 came into contact with the respondent No. 2 through a matrimonial site and they solemnized their marriage at Arya Samaj Mandir, Jammu but the petitioners did not participate in the said marriage. After solemnization of the marriage, Shashi Leekha and the respondent No. 2 started residing at 14-A Extension Karan Nagar, Jammu with the petitioners. The respondent No. 2 stayed with the petitioners at her matrimonial house for a period of five months only

and after marriage the respondent No. 2 started showing lack of concern towards her husband and other family members. She left the company of her husband without any reasonable cause. The petitioner Nos. 1 and 2 and other family members approached the respondent No. 2 and her mother for sending her back to the matrimonial home, but the respondent No. 2 as well as her mother flatly refused. The respondent No. 2, however, agreed to join her husband only on the condition that he would reside with the respondent No. 2 at her parental house at Gandhi Nagar, Jammu and would leave his old parents and children from the first marriage. The son of the petitioner No. 1 and 2 and father of petitioner Nos. 3 and 4 agreed with the conditions and he accordingly started residing with the respondent No. 2 at her parental house at Gandhi Nagar, Jammu with effect from November 2015. It is stated that on 26.12.2016 at about 7 P.M. the respondent No. 2 started beating her husband with fists and blows and hit his left eye with some blunt weapon, due to which his left eye got injured and he underwent a major surgery at Dr. Om Parkash Eye Institute at Pathankot, Punjab. After beating her husband, she locked him in a room for whole night without any food and water and the next morning, he somehow managed to inform his father i.e. the petitioner No. 1 telephonically about the whole episode and requested his father to get him released from the confinement. The petitioner No. 1 accordingly informed the Police Station, Gandhi Nagar, Jammu and SHO, Police Station, Gandhi Nagar sent two policemen with the petitioner No. 1 and thereafter the son of the petitioner No. 1 was released from the custody of respondent No. 2. Thereafter, the petitioner No. 1 and his son, namely, Shashi Leekha went to Police Station, Gandhi Nagar and lodged a complaint with the Police Station, Gandhi Nagar against the respondent No. 2 in respect of the above mentioned occurrence. To the surprise of the petitioners, the respondent No. 2 after beating her husband filed a false and frivolous complaint against her husband and the petitioners in Police Station, Gandhi Nagar, Jammu. It is also stated that FIR on the basis of the complaint lodged by the son of petitioner Nos. 1 and 2 and father of petitioner Nos. 3 and 4 was not registered as the dispute was settled between the parties and compromise was also affected. It is further stated that due to cruel attitude of the respondent No. 2 and for the treatment of his eye, the son of the petitioner Nos. 1 and 2 left his in-laws house and started residing at his own house at Karan Nagar, Jammu and again in order to settle the score, the respondent No. 2 filed a false and frivolous complaint with the Police Station, Women Cell, Gandhi Nagar, Jammu against her husband and petitioner No. 2 only and on the basis of the said complaint when the Police was about to arrest the petitioner No. 2 and her son, they obtained bail in anticipation of their arrest from the court of learned Additional District Judge, Jammu. The Police submitted a report before the learned Additional District Judge and it was found that on 03.02.2017, the respondent No. 2 had filed a complaint against her husband and her mother-in-law.

3. Thereafter, the respondent No. 2 again filed a false and frivolous complaint against whole of the family of her husband bearing FIR No. 30/2017 dated

25.02.2017 for commission of offences under Section 498-A, 342, 506 and 504 RPC with Police Station Gandhi Nagar, Jammu and after investigation challan has been filed against the petitioners and Shashi Leekha i.e. the husband of the respondent No. 2, which has been impugned by the petitioners in the present petition on the following grounds:

(i) That the allegations are vague, uncertain and no specific act has been attributed to the petitioners.

(ii) Neither FIR nor charge-sheet discloses any offence allegedly committed by any of the petitioners, who were residing at Karan Nagar, Jammu and the respondent No. 2 and her husband were residing at Gandhi Nagar, Jammu since November 2015, so no question of dowry demand and harassment of respondent No. 2 at the hands of petitioners arise at all.

(iii) That the criminal proceedings have been initiated by the respondent No. 2 just to harass the petitioners.

4. Respondent No. 2 has filed the response stating therein that after the marriage the respondent No. 2 was not allowed to enter her matrimonial home, so she had to stay with her mother at 16(1)-C/C Gandhi Nagar, Jammu for two months even after the solemnization of marriage. The petitioners and her husband demanded gold jewellery items as a condition precedent for allowing the respondent No. 2 to reside in her matrimonial house at 14-A Extension Karan Nagar, Jammu. When the respondent No.

2 fulfilled petitioners' and Shashi Leekha's above said demands, the respondent No. 2 was taken to her matrimonial house at 14-A Extension, Karan Nagar, Jammu in the month of February 2015. During her stay at matrimonial home, the respondent No. 2 was tortured by the petitioners and her husband. The petitioners and her husband used to regularly beat the respondent No. 2 and the petitioner No. 1 used to abuse the father of respondent No. 2, who had laid down his life while performing his duties as SSP, Poonch. This caused a lot of mental pain and agony to the respondent No. 2. The petitioners and Shashi Leekha would not give food to the respondent No. 2 for days together and they used to lock the respondent No. 2 in a store room without any food and water during vacations. The petitioners and her husband demanded money from the respondent No. 2 time and again and when their demands were not fulfilled, the petitioners, Shashi Leekha and sister-in-law of the respondent No. 2, namely, Rakhi Mahajan used to beat the respondent No.

2. The petitioner Nos. 2, 3 and 4 and sister-in-law on a number of occasions stole valuable ornaments and clothes of respondent No. 2. The petitioners did not allow the respondent No. 2 to lock her valuable ornaments so that they could easily steal the same. She was thrown out of her matrimonial home in August 2015, when the respondent No.2 could not fulfill the dowry demands of the petitioner. In August, 2015 the petitioner No. 3 along with one person damaged the car of respondent No.

2 bearing No. JK02BJ-5436. The respondent No. 2 spent Rs. 1,25,000/-for repairing the car. During the stay of respondent No. 2 at her matrimonial house, the petitioners and her husband used to go out of home on many occasions on vacations and while going out, they used to and ask her to go to her mother's home. The respondent No. 2 had no other option but to go to her mother's home and she would come back to her matrimonial house only after arrival of the petitioners and her husband. In October 2015, the husband of the respondent No. 2 came to the residence of her mother for staying there. The respondent No. 2 told her that she did not want to disturb her mother's life, so she asked him to take her to a rented accommodation or to take her to her matrimonial house with dignity. When the petitioners came to know that the respondent No. 2 would come back to the matrimonial house, they abused the respondent No. 2 and threatened to kill her in case she came back. Her husband stayed with her in her mother's house till December 2016 and while living with her at her parental house, he again started demanding money from her quoting his business needs. He told the respondent No. 2 that he could take her to his house at Karan Nagar only if she paid Rs. Forty Lakhs to him to complete the project of his firm under the banner of "Tawi View Resort". When the respondent No. 2 showed inability, he used to beat the respondent No. 2 on each occasion. On 26.12.2016 her husband told her that if she did not give him Rs. 40 Lacs, he would leave her forever before marriage anniversary. She requested him not to leave her. While the respondent No. 2 was standing in front of car of Shashi Leekha, he accelerated his car and dragged her all along. Many people standing there made hue and cry. They stopped his car. After injuring the respondent No. 2 with his car, he also thrashed her. After thrashing her, her husband went to sleep. Her husband finally deserted her and left her mother's residence and did not come back. During his stay with the respondent No. 2, he forced her to purchase long term LIC policies and asked her to keep him as nominee, but when she kept her mother as nominee, he abused and tortured her. He also forced the respondent No. 2 to pay the down payment for his car. It is also stated that all the ornaments of the respondent No. 2 are in custody of the petitioners and they are not returning the same to her. On these facts, the respondent No. 2 has sought the dismissal of the petition.

5. Mr. Aftab Malik, learned counsel appearing on behalf of the petitioners argued that the petitioners have been implicated in the charge-sheet just to harass them and the mere perusal of the charge-sheet as well as the FIR and evidence collected in support thereof would reveal that the petitioners have not committed any offence whatsoever and the respondent No.2 has admitted that she had been residing in her mother's house from August 2015. He further submitted that the petitioners cannot be prosecuted on the basis of vague allegations.

6. Mr. Vilakshan Singh, learned counsel for the respondent No. 2 vehemently argued that there are specific allegations against the petitioners and as such charge-sheet against them cannot be quashed.

7. Per contra, Mr. P. D. Singh, learned Dy. AG appearing on behalf of respondent No. 1 argued that the grounds raised by the petitioners cannot be considered while considering the petition for quashing the charge-sheet and the petitioners can raise all these grounds before the trial court.

8. Heard and perused the record.

9. A perusal of the record reveals that the respondent No. 2 on 25.02.2017 submitted a written complaint dated 27.12.2016 with the SHO Police Station, Gandhi Nagar, Jammu. The contents of the application submitted by the respondent No. 2 for registration of FIR are extracted as under:

"I got married to Subash Leekha S/O S. C. Leekha who has been residing presently at 16 C/C Gandhi Nagar. Since, marriage I have been continuously being tortured by my husband-Shashi Leekha, mother-in-law Shakuntala Rani, Hriday Veer Leekha (Son from husband's previous wife) and Subash Chander Leekha (Father-in-law). The atrocities started immediately after marriage. My mother-in-law would beat me, abuse me along with my husband and his son. My father-in-law would abuse my father who laid down his life while performing high sense duty as SSP, Poonch. They would not give me any food for days together. They would lock me in the store kind of room without food. The mother-in-law and husband along with my sister-in-law-Mini, would hit me for not getting enough dowry. Mother-in-law, Mini, Hriday Veer would steal all my ornaments and clothes. They would not let me lock my valuables, if I ask them my father-in-law would abuse me, my mother and my dead father and slap me without any reason. This went on between February 2015 to August 2015. They broke my car. I had to spend 1 lac 25 thousand to get it repaired. They forced me to live without food and water. They all would collectively go on vacations and lock me out of the house alone. Later, I came back to my mother's place as I had gone very sick. Then my husband called and apologized and said as my parents are bad I will come and stay at your place i.e. my mother's place. Once he came here, I told him please find a place which we can hire for living or take me home at Karan Nagar and ensure my safety. But again his sons both Hridayveer and Karanveer starting the same altogether alongwith mother-in-law and father-in-law and Mini (Sister-in-law) who is residing most of the times at my in-laws place, threatened to kill me abusing me that if I come to Karan Nagar. Later one day after again my husband started demanding money as his business requires it. He said if you want to live with me you have to give me money up to 40 lacs as my firms Tawi View Resort is incomplete and requires money. When I failed to give money he would come hit me and go. He would vanish for 1 ½ months together. I cried but he would not listen. Few days back when he would come. His mother would call along with both his sons, abuse me and tell him you can meet her only if she gives 40 lacs which is beyond my reach. Today, was our wedding anniversary. I told him yesterday night please don't go. I was standing ahead of car, he accelerated the car dragging me along, many people made hue and cry why you are doing like this, you want to kill her, he has hit me badly with

his car later thrashed me and went of to sleep after threatening me that I will leave you or kill you if you don't give me money. He has forced me to buy long term LIC policies. He has forced me to give security of his car. He has kept all the ornaments and clothes I entrusted him. When I went to his home the day they broke my car, they threw me out of the house keeping all my ornaments, expensive shawls clothes and money. He demanded 1 crore from my mother to start a business which she failed. Kindly take a stern action. It is pertinent to mention here that he is a habitual (sic). He has married previously without declaring his marriage to some Tashi Tsomo (Sunita) in Himachal, which I came to know later by the photographs. He is a criminal who exploited women on pretext of marriage. He is a fraud and cheat. They have also misused a category certificate of some Tilak Raj on benami trucks with 10C.

I pray to your good self that a stern action be taken. I have not come to this before I wanted to keep my relations good with my husband. But I realized that he only is exploiting me with my money. He always threatens me to kill me, but I wanted him to mend his ways and become a good husband but I failed. He attempted to murder me last night. The sky has fallen on me. The man whom I loved so much even tried to kill me. They first threw me out of matrimonial house and when I tell him to live a decent life with me he tries to kill me always threatened to kill me.

Kindly take a stern action so that such exploiters are brought to task. This is my pray to you."

(Note: this is the reproduction of the averments without any correction/amends)

10. All the petitioners figure as accused in the charge-sheet. The statements of the respondent No. 2 and other witnesses have also been recorded during the course of investigation. A perusal of the FIR and statement of the respondent No. 2 would reveal that the respondent No. 2 has leveled vague allegations against her in-laws and sons of her husband from his first marriage. The allegations leveled by the respondent No. 2 are that she would be locked in store kind of room without food and her mother-in-law and husband and sister-in-law would slap her for not getting enough dowry. Further allegations have been leveled that mother-in-law, sister-in-law and sons Hridayveer and Karanveer would stole her ornaments and clothes. It is also alleged that they did not let her lock her valuable items and the father in law i.e. the petitioner No. 1 abused her and her parents including her dead father and slapped her without any reason. These incidents have been stated to have happened between February, 2015 to August, 2015. It is also stated that they broke her car, as a result of which she was forced to spend Rs. 1,25,000/- on repair of her car. Grievance has also been raised by the respondent No. 2 that they would collectively go on vacations and she would reside at her mother's place. The respondent No. 2 is in fact having a matrimonial discord with her husband and there are allegations against the husband of the respondent that he demanded Rs. 40 lacs from her for completion of his project under the banner of "Tawi View Resort". The respondent

No. 2 has stated that on the previous night of their wedding anniversary, she told her husband not to go and when she was standing ahead of the car, he accelerated his car and dragged her along. People standing there made hue and cry on spot. Later he thrashed her and went to sleep after threatening her that he would leave or kill her if she did not give him money. It is further stated that he has kept all the ornaments and clothes which she entrusted with him when she went to his home, she was not allowed to go inside the home. The respondent No. 2 has also leveled allegations against her husband for having relations with one lady, namely, Tashi Tsomo in Himachal. Whole of the allegations leveled by the respondent No. 2 are in fact against her husband and it is evident that the petitioners have been unnecessarily arrayed as accused in the FIR. The respondent No. 2 has admitted that her husband lived in her mother's house from October 2015 till December 2016 i.e. when the alleged occurrence took place. The petitioner Nos. 1 and 2 are old persons of 80 and 72 years of age respectively, whereas the petitioner Nos. 3 and 4, who happen to be the sons of husband of respondent No. 2 from his first marriage, are 19 and 23 years of age respectively. It is settled law that criminal proceedings cannot be used as a tool of harassment for settling the matrimonial dispute. As per the own admission of the respondent No. 2, that her husband, who is not a party to the present petition, had been residing with her in her parental house with effect from October 2015 till December 2016 and in view of the fact that the allegations leveled against the petitioners are vague, bereft of necessary particulars, continuance of such proceedings shall be nothing but an abuse of process of law. If the petitioners harassed her during Feb 2015 till October 2015, then why she did not initiate any proceedings against them and lodged the FIR only in the month of February 2017 and referred to incident, which allegedly took place in the month of December 2016 at her parental house, in which the respondent No. 2 and her husband were only involved.

11. In its celebrated judgment of "Arnesh Kumar v. State of Bihar", (2014) 8 SCC 273, the Hon'ble Supreme Court of India has taken note of the misuse of section 498-A IPC and has observed as under:

"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 *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472, the Hon’ble Supreme Court of India has observed 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] . 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] this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.”

(emphasis added)

13. 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)

14. 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."

15. In its latest pronouncement in *Abhishek versus State of Madhya Pradesh*, 2023 INSC 779, the Hon'ble Supreme Court held that the FIR can be quashed notwithstanding the filing of charge-sheet and proceeded further to quash the FIR registered under section 498-A IPC against the relatives of the husband by observing 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)

16. In view of what has been said and discussed above, this Court is of the considered view that the proceedings in charge-sheet bearing No. 51/2017 dated 26.05.2017 arising out of FIR No. 30/2017 dated 25.02.2017 registered by the respondent No. 1 at the instance of respondent No. 2 for commission of offences under Sections 498-A, 342, 504 & 506 RPC are required to be quashed qua the petitioners only, as the husband of the respondent No.2 has not filed the present petition. Ordered accordingly.

17. Disposed of.