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**(2019) 08 CHH CK 0010**

**Chhattisgarh High Court**

**Case No:** Criminal Miscellaneous Petition (CRMP) No. 991 Of 2017

Arun Kumar Sao

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

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**Date of Decision:** Aug. 1, 2019

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 482
- Indian Penal Code, 1860 - Section 498A
- Hindu Marriage Act, 1955 - Section 13

**Hon'ble Judges:** Sharad Kumar Gupta, J

**Bench:** Single Bench

**Advocate:** Amit Sharma, M. Asha, M.K. Jaiswal

**Final Decision:** Dismissed

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**Judgement**

Sharad Kumar Gupta, J

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the FIR No. 71/2017

dated 4-5-2017 registered at Police Station Pusaur, Distt. Raigarh against him and his family members for the offence punishable under Sections 498-

A of the Indian Penal Code (In short I.P.C.), which may culminate in filing of charge sheet.

2. In brief the petitioner's case is that respondent No. 2 Smt. Satyawati Sao is his wife. She filed an application against him and his family members on

the basis of which an FIR was registered against him and his family members for the offence punishable under Section 498- A/34. The police had not

gone to the root of the case and without making preliminary inquiry registered the case. Earlier he had filed a divorce petition against her, in counter

she lodged the FIR. The complaint was filed on the false ground. The application was filed with ulterior motive to pressurize him.

3. In brief the case of the respondent No. 1/State is that from the application of respondent No. 2 cognizable offence was made out thus FIR was

lodged. The petition is devoid of merit.

4. In brief the case of the respondent No. 2 is that petitioner and his family members used to harass her on account of demand of dowry. Thus, she

had given an application to PS Pusaur.

5. Counsel for the petitioner argued that from the face of application prima facie no case is made out against him. FIR is delayed by 4 years which

indicates the malafide intention of respondent No. 2. As per the document of Family Welfare Committee, Raigarh dated 19-1-2018 no case is made

out regarding demand of dowry and cruelty.

6. Counsel for the respondents argued that contents of the application indicate that prima facie cognizable offence punishable under Section 498-A,

IPC is made out.

7. In the case is hand the impugned FIR transpires that allegedly 3 months after the marriage petitioner and his family members had asked the

respondent No. 2 that at the time of returning back from her maternal house she will bring 4 wheeler, Rs. 50,000/- cash, costly clothes, large utensils.

They ousted her so many times on account of not fulfilling the demand of dowry. He left her in her maternal house. He and his family members have

threatened her that if she will return back then she will be killed.

8. In the matter of State of Haryana and others -v- Choudhary Bhajan Lal and others reported in AIR 1992 SC 604, Hon'ble Supreme Court has

observed in para 108 as under:-

108. .... we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of

the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be

exercised. (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 FIR 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 FIR 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 proceeding 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.

9. In the matter of R.P. Kapur -v- State of Punjab reported in AIR 1960 SC 866, wherein in para 6, the Full Bench of Hon'ble Supreme Court has

held as under :-

The inherent power of the High Court under Section 561-A of the Code cannot be exercised in regard to matters specifically covered by the other

provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged.

Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of

the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the

distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation

made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its

jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the

function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a

reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

10. In *Parbatbhai Aahir v. State of Gujarat*, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High

Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of

decisions on the point, the Hon'ble Supreme Court summarised the following propositions: ""(1) Section 482 CrPC preserves the inherent powers

of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only

recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section

482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent

an abuse of the process of any court.

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11. In the matter of *Umesh Kumar v. State of A.P.* [(2013) 10 SCC 591], Their Lordships have held as under in para 20 :-

20. .... it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its

prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the

acceptability of which is essentially a matter for trial. ....

12. In the matter of *Harshendra Kumar D. v. Rebatilata Koley*, [(2011) 3 SCC 351], Their Lordships have held in para 25 that :-

25. ....It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. ....

13. In the matter of Narinder Singh v. State of Punjab [(2014) 6 SCC 466], after considering the decision in Gian Singh v. State of Punjab, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

14. Delay in lodging impugned FIR and saying that allegedly it was lodged with ulterior motive for wreaking and vengeance as a reaction of filing an application of Section 13 under the Hindu Marriage Act by the petitioner, the report of the family welfare committee are the subject matter of scrutiny of evidence and relates to the defence. Looking to these facts and aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of Harshendra Kumar D. (Supra), this Court finds that mere delay in lodging impugned FIR, and saying that it was lodged to take wreak and vengeance, said report of the Family Welfare Committee, are not sufficient to discard aforesaid allegations depict in impugned FIR.

15. If the aforesaid allegations made in the impugned FIR are taken at their face value and accepted in their entirety prima facie, they constitute the offence punishable under Section 498-A, IPC which is the cognizable offence. It cannot be said that allegations are so absurd and inherently improbable on the basis of which no prudent person can reach a just conclusion that there is a sufficient ground for proceeding against the petitioner.

In the case in hand, from the impugned FIR this Court is prima facie satisfied that sufficient grounds are in existence for initiating proceeding against

the petitioner. In the case in hand there is no express legal bar engrafted in any of the provisions of the Code or the IPC to the institution and

continuance of the proceeding. Looking to these circumstances and aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of

Choudhary Bhajan Lal (supra), R.P Kapur (supra), Umesh Kumar (supra), Parbatbhai Aahir (supra), this Court finds that impugned FIR cannot be

thrown down.

16. In the case in hand, it does not appear that there is an abuse of process or intervention is necessary to secure ends of justice. Thus, looking to the

aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of Parbatbhai Aahir (supra) and Narinder Singh (supra) this court finds

that on the ground of abuse of process and to secure ends of justice, this Court cannot intervene.

17. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not a fit case where the extra ordinary jurisdiction

of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Consequently, the instant CRMP is dismissed at motion

stage without entertaining them for final hearing.

18. In view of above, I.A. no. 1, application for grant of interim relief stands dismissed.