

(2005) 03 JH CK 0007

Jharkhand High Court

Case No: Writ Petition (Cri) No. 33 of 2004

Gazi Md. Masud Alam and
Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: March 10, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2005) 2 DMC 88 : (2005) 2 JCR 353

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: P.K. Prasad, V.K. Prasad and Amit Kumar, for the Appellant; G.P.-II, Harballava Chandra Prasad and P.C. Deswarty for the respondent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.

This application under Article 226 of the Constitution of India has been filed for quashing the FIR dated 9.1.2004 (Annexure-1).

2. Facts giving rise to the filing of this application are that the respondent No. 2 Nasreen Rehana sent a written letter to the officer-in-charge of Madhupur Police Station alleging interalia therein that she was married with Gazi Md. Masud Alam on 25.12.1993 according to the Muslim rites and custom. On the occasion of marriage, her father had given Rs. 50,000/- in cash jewellery worth 22 tolas, one palang, one sofa and other materials and with these things she went to her sasural. It is further alleged that for some days she lived very peacefully at her sasural. During this period, her husband took all her jewellery and sold them in the market and soon thereafter the greedy face of her sasural people came to her knowledge. It is further

alleged that her husband, mother-in-law, devar Arif Chand and Asif Chand, nanad and nandoi Rizwanul Hassan Kazmi pressurized her for bringing more jewellery from her naihar and they even abused her and assaulted her. Under compulsion, on 30.9.1994 she brought necklace worth eight tolas from her mother and gave it at her sasural, but thereafter also her sasural people always threatened her, pressurized her, assaulted her and compelled her to bring money from her naihar. She brought several times money from her mother and she even brought Rs. 18,000/- from her younger brother and gave it to her sasural people. She even brought Rs 45,000/- from her brother-in-law and gave the same to her sasural people. For the first time, on 16.11.1999 she mustered courage and refused to accede to the demands of her sasural people and protested to bring money from her naihar, but her refusal resulted in assault every time and as a result of which she fell ill. On getting information about her illness, on 5.3.2002 her brothers came to her sasural and took her for treatment and on the advice of the doctors she had to remain at Madhupur. When she recovered from illness, her husband did not come to take her. Thereafter her brother went to her sasural and persuaded her sasural people to take her to the sasural but they did not turn up. On 15.11.2003 she went to her sasural with her brother but she was refused entry on the ground that she should bring Rs. 2.00 lakh from her naihar. Thereafter she has filed this complaint case. On the basis of the written report, Madhupur P.S. Case No. 0008 of 2004 was registered u/s 498-A, IPC.

3. Learned counsel appearing for the petitioners has taken several grounds for quashing of the First Information Report which was registered on the basis of the written report of the respondent No. 2. The grounds taken are that the FIR has been lodged after a long delay and there is no explanation for the delay. Another ground taken by him is that the FIR has been lodged at Madhupur whereas the case should have been lodged at Giridih and the Chief Judicial Magistrate, Madhupur has got no jurisdiction to try the case. Another ground that was taken is that no allegation has been levelled against the petitioners in the FIR and further that the present FIR was lodged which is counter-blast to the case filed by the husband of the respondent No. 2 being Title Matrimonial Suit No. 199 of 2003 on 6.12.2003 in which ground of desertion has been taken as respondent No. 2 has herself left the house of her husband and in spite of several attempts made by the husband to bring her back to sasural, she did not come back and ultimately being compelled by the situations Title Matrimonial Suit No. 199 of 2003 was filed against the respondent No. 2 seeking a decree of divorce.

4. The ground such as lodging of FIR at belated stage, lodging of FIR at Madhupur where respondent No. 2 was residing at the time of lodging of the FIR being beyond the jurisdiction, the case being counter-blast to the Title Matrimonial Suit filed by the husband on 6.12.2003 for decree of divorce and ground taken in lawyer's notice sent on behalf of the respondent No. 2 to her husband which differ from facts as alleged in the FIR and all these grounds which has been taken are such which do not

make out a case for quashing of the FIR because the offence u/s 498-A, IPC is a continuing offence and so long as the marriage persists and cruelty or such things continued for time, such FIR can be lodged or complaint case may be filed. So far as the case being counter-blast to the case filed on behalf of the husband of the complainant-respondent No. 2 being Title Matrimonial Suit No. 199 of 2003 is concerned, the instant FIR is not counter-blast because Annexure-2 is a letter which is lawyer's notice sent by lawyer on behalf of the respondent No. 2 and is dated 11.11.2003 whereas the Title Suit No. 199 of 2003 has been filed on 6.12.2003 and it can safely be said that after receipt of the lawyer's notice, this Title Matrimonial Suit No. 199 of 2003 has been filed. So far as the lodging of FIR at Madhupur is concerned, that is well within the jurisdiction because the naihar of respondent No. 2 is situated at Madhupur and she was residing there and therefore, lodging of FIR at Madhupur is not beyond jurisdiction and so far as lawyer's notice on 11.11.2003 (Annexure-2) which is filed on behalf of the respondent No. 2 is concerned, it is clear that the complainant-respondent No. 2 had already sent a lawyer's notice alleging more or less the same facts as stated in the complaint petition and as such, there are no difference in the version appearing in the lawyer's notice and version appearing in the complaint petition and therefore, this ground is not such which can be considered to quash the first information report.

5. On the basis of discussions made above, I am of the view that no case for quashing of the FIR is made out. In the result, this application is dismissed.