(2017) 03 MP CK 0034

MADHYA PRADESH HIGH COURT

Case No: 3658 of 2016

Sandeep Singh Bais @ Anshu & Ors.		APPELLANT
	Vs	
State of M. P. & Anr.		RESPONDENT

Date of Decision: March 9, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
- Indian Penal Code, 1860, Section 498A, Section 323 - Husba

Hon'ble Judges: G.S. Ahluwalia

Bench: Single Bench

Advocate: R.K.S. Kushwah, Rajendra Singh Yadav, Alok Sharma

Final Decision: Allowed

Judgement

1. The present application has been filed under Section 482 of Cr.P.C. for quashing the proceedings in Criminal Case No. 2338/2015 pending in the Court of J.M.F.C., Distt. Morena for offences punishable under Sections 498-A, 323 of I.P.C. and under Sections 3, 4 of Dowry Prohibition Act.

2. The facts necessary for the disposal of the present application in short are that the complainant/respondent no. 2 lodged a F.I.R. against the applicants as well as against Saurabh (Husband), Veerpal (Father-in-law), and Smt. Vinod (Mother-in-law) alleging that She is married to Saurabh as per Hindu rites and rituals. At the time of marriage, her father had given Rs. 1,11,000 in cash, apart from Fridge, Washing Machine, Double Bed and all other household articles and gold ornaments. Her in-laws kept her properly for near about 3-4 months but thereafter the applicants

and her husband and parents-in-law started demanding Rs. 50,000/-. After some time, all started demanding Rs. 2 lacs and a motor cycle. When her parents refused to give the same, all her in-laws started harassing her for want of dowry. They used to beat her and even food was not given properly, and they used to say that till, the respondent no.2 do not bring dowry, they will continue to harass her. On 25-8-2012 She came back to her parents house. She gave birth to a female child but no body came there to see her. A panchayat was convened and thereafter She came back to her matrimonial house. On 26-7- 2015, again all of her in-laws started harassing her and beating her and a report was lodged by her. As She is still being harassed by her in-laws therefore, F.I.R. was lodged. The police after completing the investigation, filed the charge sheet against the applicants and against Saurabh (Husband), Veerpal (Father-in-law), and Smt. Vinod (Mother-in-law).

3. It is submitted by the Counsel for the applicants that the applicant no.1 is elder brother-in-law (tsB), applicant no.2 is the wife of applicant no. 1 (tsBkuh), applicant no.3 is sister-in- law (uun) and the applicant no.4 is the husband of applicant no.3 (uunksbZ). It is submitted that the applicants no. 1 and 2 are residing in Ahmedabad (Gujarat) where the applicant no.2 is doing Sewing Course and his son Kunal is studying in Class 3rd in R.H. Kapdia Primary School, Thaltej, Ahmedabad. The certificate and the fee card of the child have also been placed on record. Similarly the applicant no.3 is working as Asstt. Teacher, Primary School Magarpura (Dabar) Kshetra Nadi gaon, Jalon (Utter Pradesh). The appointment order and the certificates have also been placed on record. The applicant no.4 is working in a private company and at present he is residing in Flat No. 4, Wahid Manzil, Near Jalram Mandir, Anand Nagar, Vapi, distt. Balsad (Gujarat) where he is working in Welspun India Limited, which is a private Company. The appointment order, time statement etc. have also been placed on record. Thus, it is the contention of the applicants that they have been falsely implicated merely because they happens to be the near relatives of Saurabh, the husband of the respondent no.2. It is further submitted that no specific allegation has been made against the applicants and only vague and omnibus allegations have been made. It is further submitted that the case of the near and distant relatives of Husband stand on a different footing and therefore, unless and until there are specific allegations against them, they should not be compelled to face the trial and a tendency is increasing in the society to falsely and overimplicate the relatives of the husband so as to pressurize the husband.

4. Per Contra, it is submitted by the Counsel for the respondents, that there are sufficient allegations against the applicants for their prosecution. It is further submitted by the Counsel for the respondent no. 2 that the charges have been framed and the case is fixed for recording of evidence on 24- 3-2017.

5. Heard the learned Counsel for the parties. It is submitted by the Counsel for the applicants that although charges have been framed and the recording of evidence

has also started, but merely because the charges have been framed, this petition may not be dismissed. In support of his contention, the Counsel for the applicant relied upon judgments of Supreme Court passed in the case of Satish Mehra Vs. State (NCT of Delhi) reported in (2012) 13 SCC 614 and submitted that if the allegations made against the accused do not make out a prima facie case against him/her, then compelling them to face the trial is unwarranted.

6. The Supreme Court in the case of Satish Mehra (supra) has held as under:-

> "13. Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in R.P. Kapur v. State of Punjab wherein the parameters of exercise of the inherent power vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 CrPC, 1973) had been laid down in the following terms: (AIR p. 869, para 6)
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> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
>
> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;
>
> (iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
>
> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.
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> 14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending

criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

15. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 which may be usefully extracted below : (SCC pp. 702-03)

"7. The second limb of Mr Mookerjee''s argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:

* * *

This section is contained in Chapter XVIII called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and

circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

* * *

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court''s inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

16. It would also be worthwhile to recapitulate an earlier decision of this court in Century Spinning & Manufacturing Co. vs. State of Maharashtra (1972) 3 SCC 282 noticed in L. Muniswamy''s case (Supra) holding that: (SCC p. 704, para 10)

"10 .... the order framing a charge affects a person''s liberty substantially and therefore it is the duty of the court to consider judicially whether the materials warrant the framing of the charge.

It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial."

7. In the case of Ravikant Dubey and Others Vs. State of M.P. and another reported in 2014 Cr.L.R. (M.P.) 162 has held as under :

"8. In view of the above, the questions of law which requires consideration are as follows:

(i) Whether petition preferred by the petitioners under Section 482 of the Code for quashing the FIR can be entertained, when trial has been started and evidence of some witnesses have also been deposed before the Trial

Court ?

(ii) Whether evidence recorded by Trial Court during trial can be considered for quashing the FIR ?

(iii) Whether any ground is available for quashing the FIR in view of the facts and laws available on record ?

Regarding question of law no. (i) :-

9. Learned Senior Counsel for the petitioners submitted that inherent powers can be used at any stage to prevent abuse of process of any Court or otherwise to secure the ends of justice. It makes no different whether trial has been started or not and whether some evidence has been deposed before the Trial Court or not. In support of his contention he placed reliance in the case of Sathish Mehra (supra) and Joseph Salvaraja Vs. State of Gujrat and others, (2011) 7 SCC 59.

* * * *

12. Therefore, in the considered view of this Court this petition is maintainable also even when trial is at advance stage. The question is answered accordingly."

8. Thus, it is held that during the pendency of the petition under Section 482 of Cr.P.C., if the charges have been framed and even if some of the witnesses have been examined, the petition can be decided on merits.

9. It is submitted by the Counsel for the applicants that vague and omnibus allegations have been made against the applicants and therefore, there is no prima facie evidence against the applicants so as to compel them to face the ordeal of Trial. The applicants no.1 and 2 are the residents of Ahemdabad whereas the applicant no.3 is working on the post of Asstt. Teacher and is based in Jalon (U.P.) whereas the applicant no.4 is working in a private company and is residing in Balsad (Maharashtra).

10. If the allegations made against the applicants are considered, then it is clear that only vague and omnibus allegations have been made against the applicants. The case of the near and distant relatives of the husband stand on a different footing

than that of the husband and parents-in-law. In order to prosecute the other relatives, there has to be some specific allegations against them. General, Vague and Omnibus allegations cannot be treated as sufficient material to send the other relatives of the husband who otherwise, does not have anything to do with the family affairs of the complainant.

11. By relying on judgments passed by the Supreme Court in cases of Geeta Mehrotra Vs. State of U.P. reported in (2012) 10 SCC 741, Preeti Gupta Vs. State of Jharkhand, reported in (2010) 7 SCC 667, it is submitted by the Counsel for the applicants that there are to be some what specific and clear allegations against the relatives of the husband. There is an increasing tendency in the society to over implicate the near and dear relatives of the husband so as to pressurize the husband.

12. The Supreme Court in the case of Kansraj Vs. State of Punjab, (2000) 5 SCC 207, has held as under :

> "In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that Respondents 3 to 5 were roped in the case only on the ground of being close relations of Respondent 2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. 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 overenthusiasm 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."

13. The Supreme Court in the case Monju Roy Vs. State of West Bengal, reported in (2015) 13 SCC 693, has held as under :

> "8. While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfillment of dowry demand, we do find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out. In Kans Raj v. State of Punjab, (2000) 5 SCC 207, this Court observed

: (SCC p. 215, para 5) "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.

9. In Raja Lal Singh vs. State of Jharkhand, (2007) 15 SCC 415, it was observed : (SCC p. 419, para 14) "14. No doubt, some of the witnesses e.g. PW 5 Dashrath Singh, who is the father of the deceased Gayatri, and PW 3 Santosh Kr. Singh, brother of the deceased, have stated that the deceased Gayatri told them that dowry was demanded by not only Raja Lal Singh, but also the appellants Pradip Singh and his wife Sanjana Devi, but we are of the opinion that it is possible that the names of Pradip Singh and Sanjana Devi have been introduced only to spread the net wide as often happens in cases like under Sections 498-A and 394 IPC, as has been observed in several decisions of this Court e.g. in Kamesh Panjiyar v. State of Bihar [(2005) 2 SCC 388], etc. Hence, we allow the appeal of Pradip Singh and Sanjana Devi and set aside the impugned judgments of the High Court and the trial court insofar as it relates to them and we direct that they be released forthwith unless required in connection with some other case."

* * * * * *

11. The Court has to adopt pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against brothers and sisters and other relatives do not stand on same footing as husband and parents. In such case, apart from general allegation of demand of dowry, the court has to be satisfied that

harassment was also caused by all the named members."

14. The Supreme Court in the case of Chandralekha & Ors. v. State of Rajasthan & Anr. reported in 2013 (1) UC 155 has held as under:-

"8. We must, at the outset, state that the High Court''s view on jurisdiction meets with our approval and we confirm the view. However, after a careful perusal of the FIR and after taking into consideration the attendant circumstances, we are of the opinion that the FIR lodged by respondent 2 insofar as it relates to appellants 1, 2 and 3 deserves to be quashed. The allegations are extremely general in nature. No specific role is attributed to each of the appellants. Respondent 2 has stated that after the marriage, she resided with her husband at Ahmedabad. It is not clear whether appellants 1, 2 and 3 were residing with them at Ahmedabad. The marriage took place on 9/7/2002 and respondent 2 left her matrimonial home on 15/2/2003 i.e. within a period of seven months. Thereafter, respondent 2 took no steps to file any complaint against the appellants. Six years after she left the house, the present FIR is lodged making extremely vague and general allegations against appellants 1, 2 and 3. It is important to remember that appellant 2 is a married sister-in-law. In our opinion, such extra ordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by respondent 2 against appellants 1, 2 and 3, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, respondent 2 has tried to rope them in this case along with her husband. We are of the confirmed opinion that continuation of the criminal proceedings against appellants 1, 2 and 3 pursuant to this FIR is an abuse of process of law. In the interest of justice, therefore, the FIR deserves to be quashed insofar as it relates to appellants 1, 2 and 3."

15. If the facts of the present case are considered in the light of the judgments passed by the Supreme Court in the case of Kansraj (Supra), Monju Roy (Supra), Geeta Mehrotara (Supra), Preeti Gupta (Supra) and Chandralekha (Supra) it would be clear that only vague and general allegations have been made against the applicants. It is the specific case of the applicants that they are residing at different and distant places. This fact has not been rebutted by the respondent no.2 by filing reply to this petition. The general allegations which have been levelled by the complainant/respondent no. 2 are that after marriage for few months, she was kept properly and thereafter, her in-laws including the applicants started demanding Rs. 50,000/- and thereafter they started demanding Rs. 2 lacs and a motor cycle. It is alleged that when She gave birth to her girl child, nobody came to see her. Her mother spent Rs. 4 lacs for the treatment of her child which were saved by her

mother for the marriage of her younger sister. When she went back to her matrimonial house, again all her in-laws demanded Rs. 2 lacs and a motor cycle and said that either She should bring the amount and a motor cycle or else she should give divorce to Saurabh. She further admitted in her case diary statement that the applicants no.1 and 2 are residing in Ahmedabad and went on to allege that her husband has illicit relations with the applicant no.2. As she had caught both of them red handed, therefore, earlier She was beaten for this reason. She further alleged that the applicant no.2 is a lady of loose character and her father-in-law has also illicit relations with her. On 26-7- 2015 while She was doing her household work in her matrimonial house, then her husband again demanded Rs. 2 lacs and a motor cycle and when She refused to fulfill his demand then She was beaten by her husband by means of a lathi and all of her in-laws slapped her. If the case diary statement of the complainant/respondent no.2 is seen then it would be clear that not only she made vague allegations against the applicants, but She went to the extent assassinating the character of applicant no.2 by saying that She is of a loose character and has illicit relations with her husband and her father-in-law, whereas there is no such allegation in the F.I.R. The father and mother of the respondent no.2 have not alleged that the applicant no.2 is of a loose character having illicit relations with the husband and father-in-law of the respondent no.2. Thus, in the considered opinion of this Court, the only intention of the respondent no.2 is to some how prosecute as well as to defame them. Therefore, this is a clear case of overimplication of the near relatives of husband of the respondent no.2.

16. Thus, this Court is of the considered opinion that even if the entire allegations are considered on their face value, then there is no specific allegation against any of the applicants and they have been implicated merely because they happens to be the near relatives of the husband of the respondent no.2 and therefore, under these circumstances, it would not be proper to compel the applicants to face the agony of criminal prosecution.

17. Accordingly, the charge sheet and the criminal prosecution of the applicants in criminal case No. 2338 of 2015 pending in the Court of J.M.F.C., Morena is hereby quashed.

18. The application succeeds and is hereby allowed.