

Kahkashan Kausar @ Sonam vs The State Of Bihar on 8 February, 2022

Author: Krishna Murari

Bench: Krishna Murari, S. Abdul Nazeer

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 195 OF 2022
(arising out of S.L.P (Crl.) No. 6545 OF 2020)

KAHKASHAN KAUSAR @ SONAM & ORS.

... APPELLANT (S)

VERSUS

STATE OF BIHAR & ORS.

... RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted.

2. This appeal is directed against the judgment and order dated 13.11.2019 passed by the High Court of Patna in Criminal Writ Petition No. 1492 of 2019, filed by the Appellants under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the FIR No. 248/2019 dated 01.04.2019 implicating the Appellants for offences under Sections 341, 323, 379, 354, 498A read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC'). The High Court vide order impugned herein dismissed the same.

Reason:

Factual Matrix

3. The Complainant (Respondent No. 5 herein) Tarannum Akhtar @ Soni, was married to Md. Ikram on 18.09.17. The appellants herein are the in-laws of Respondent No. 5. On 11.12.17, the said Respondent initially instituted a criminal complaint against her husband and the appellants before the Court of Chief Judicial Magistrate, Purnea alleging demand for dowry and harassment. Thereafter, when the file was put up before the Sub Divisional Judicial Magistrate Court, Purnea, for passing order at the stage of issuance of summon, the Ld. Magistrate concluded that

upon perusal of material evidence no prima-facie case was made against the in-laws and that the allegations levelled against them were not specific in nature. The said court, however, took cognizance for the offence under section 498A, 323 IPC against the husband Md. Ikram, and issued summons. This dispute was eventually resolved and Respondent No. 5 herein came back to the matrimonial home.

4. Subsequently, on 01.04.19, Respondent No. 5 herein, gave another written complaint for registration of FIR under sections 341, 323, 379, 354, 498A read with Section 34 IPC against her husband Md. Ikram and the appellants herein. The complaint inter-alia alleged that all the accused were pressurizing the Respondent wife herein to purchase a car as dowry, and threatened to forcibly terminate her pregnancy if the demands were not met.

5. Aggrieved, the Husband and appellant herein filed a criminal writ petition before the Patna High Court, for quashing of the said FIR dated 01.04.19, which was dismissed vide impugned judgment. The High Court observed that the averments made in the FIR prima-facie disclosed commission of an offence and therefore the matter was required to be investigated by the police. The Appellants herein, being the niece (Respondent No. 1), Mother in-law (Respondent No. 2), Sister in-law (Respondent No. 3), and brother in law (Respondent No. 4) have thereby approached this court by way of the present Special Leave Petition.

Contentions made by the Appellants

6. The counsel for the Appellants herein contends, that the Police Officer was duty bound to conduct a preliminary inquiry before registering the FIR as this instant case falls within the categories of cases on which a preliminary enquiry may be made, as mandated by this court in Lalita Kumari Vs. Government of U.P. & Ors.¹ .

1. (2014) 2 SCC 1

7. It is also submitted that previously in the year 2017, the Respondent wife had instituted a criminal complaint on similar allegations, whereby the Ld. Judicial Magistrate after considering the evidence issued summons only against the husband, and found that the allegations made against the appellants herein were omnibus in nature. Further, it is submitted that the FIR in question has been made with a revengeful intent, merely to harass the Appellant in-laws herein, and should be dealt with accordingly. Reliance is placed on Social Action Forum for Manav Adhikar & Anr. Vs. Union of India, Ministry of Law And Justice & Ors.², wherein it was observed:-

“4. Regarding the constitutionality of Section 498-A IPC, in Sushil Kumar Sharma v. Union of India and others , it was held by the Supreme Court:-

"Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate a legislation.

Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations

2. (2018) 10 SCC 443 can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work.” Contention made by Respondent No. 1 – State of Bihar

8. Respondent No. 1 herein i.e., the State of Bihar, contends that the present FIR pertains to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife for dowry, and treat her properly. However, the husband and appellants, despite the assurances, have continued their demand for dowry and threatened with forcefully terminating the Respondent wife’s pregnancy. These acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.17. Moreover, an investigation was carried out pursuant to the FIR and the case has been found true against all accused persons, therefore Lalita Kumari (Supra) will not apply in the present case.

Contentions made by Respondent No 5 – Complainant Wife

9. Respondent No. 5 contends that of the total seven accused, the FIR in question was challenged by only five accused including her husband. It is argued that the impugned order is evidently accepted by the accused husband Md. Ikram @Sikandar as he has not challenged the impugned High Court judgment. Further, as far as involvement of the four accused Appellant in-laws is concerned, it is not only reflected from the averments made in the FIR, but also corroborated from the oral and documentary evidence collected by the investigating officer during investigation, culminating into filing of charge-sheet against all seven accused including the four Appellants herein. The allegations thus made in the FIR are sufficient to make out a prima facie case, and non-mentioning of pendency of Complaint case of year 2017, at the time of filing the complaint 01.04.19 is not fatal for the case of the prosecution.

10. It is further submitted that the allegations made in the FIR are serious in nature and the Respondent wife has been repeatedly tortured physically and mentally in order to fulfil the demand for dowry. Further, even if the contentions made by the Respondent No. 5 herein are disputed, by the Appellant in-laws, their veracity can be tested in trial before the Trial Court. It is further contended that this court has also taken a consistent view with regard to exercise of power under S.

482 Cr.P.C., in *Rajesh Bajaj Vs. State of NCT of Delhi & Ors.* 3, wherein it has been clearly held that even if a prima facie case is made out disclosing the ingredients of an offence, Court should not quash the complaint. Therefore, the impugned order can in no way be termed as perverse, cryptic or erroneous and therefore warrant no interference by this Hon'ble Court.

Issue Involved

11. Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed?

12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a

3. (1999) 3 SCC 259 greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in *Rajesh Sharma and Ors. Vs. State of U.P. & Anr.* 4, has observed:-

“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 the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman 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. It is a matter of serious concern that large number of cases continue to be filed under 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 visualized.

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.”

4. (2018) 10 SCC 472

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr.* 5, it was also observed:-

“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, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. 6, it has also been observed:-

“32. It is a matter of common experience that most of these complaints under section 498A 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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber 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

5. (2014) 8 SCC 273

6. (2010) 7 SCC 667 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 498A 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 fiber, peace and tranquility 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 visualized 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 husband and all his immediate relations is also not uncommon. At times, even after the conclusion of 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 complaint are required to be scrutinized 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 amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In *Geeta Mehrotra & Anr. Vs. State of UP & Anr.*⁷, it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao vs. L.H.V. Prasad & Ors.* reported in (2000) 3 SCC 693 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:

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

17. Recently, in *K. Subba Rao v. The State of Telangana*⁸, it was also observed that:-

7. (2012) 10 SCC 741

8. (2018) 14 SCC 452 “6. 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.”

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC 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.

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

20. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR. Respondent No. 1 i.e., the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.17.

21. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the Respondent wife. Allowing prosecution in the absence of clear allegations against the in-laws Appellants would simply result in an abuse of the process of law.

22. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, 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.

23. In view of the above facts and discussions, the impugned order dated 13.11.2019 passed by the High Court of Patna is set aside. The impugned F.I.R. No. 248 of 2019 against the Appellants under Sections 341, 323, 379, 354, 498A read with Section 34 IPC stands quashed.

24. As a result, appeal stands allowed.

.....J. (S. ABDUL NAZEER)J. (KRISHNA MURARI) NEW
DELHI;

08TH FEBRUARY, 2022