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PRIYANKA MISHRA & ORS.

v.

THE STATE OF MADHYA PRADESH & ANR.

(Criminal Appeal No.1545 of 2023)

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MAY 8, 2023

**[SANJAY KISHAN KAUL AND AHSANUDDIN
AMANULLAH, JJ.]**

Code of Criminal Procedure, 1973 – s.482 – Quashing of

- C *FIR – Complaint filed by Respondent no.2-wife against appellants (sister-in-law, mother-in-law and father-in-law) and her husband for offences punishable u/s.498-A and s.34, IPC and s.4, Dowry Prohibition Act – Petition filed by appellants u/s.482 for quashing, dismissed – On appeal, held: FIR in question as far as appellants are concerned, is an abuse of the process of the Court – Respondent*
- D *No.2 resided for less than three weeks in the matrimonial home from the date the marriage was solemnised – She then lived with her husband at Hyderabad for some time and, finally moved to London and then Sweden – Subsequently, upon returning to India, she filed the criminal case in question – While living with her husband in Sweden, respondent no. 2 had filed a divorce petition, hence, there was no occasion per se for her after coming from Sweden to visit the matrimonial home, much less reside there – Moreover, the husband of Respondent No.2 having emailed a complaint to the Superintendent of Police, 3 days prior to the wife lodging her complaint, with regard to threat received from Respondent No.2 to*
- E *implicate him and his family members, is clearly indicative that the charges, against the appellants were an afterthought – Impugned judgment set aside – FIR quashed qua the appellants – Penal Code, 1860 – ss.498-A, 34 – Dowry Prohibition Act – s.4.*
- F *Rajesh Sharma v State of Uttar Pradesh (2018) 10 SCC 472 : [2017] 9 SCR 529; State of Haryana v Bhajan Lal 1992 Suppl. (1) SCC 335 : [1990] 3 Suppl. SCR 259; Pawan Kumar v State of Haryana (1998) 3 SCC 309 : [1998] 1 SCR 746; Mahendra K C v State of*

Kahkashan Kausar alias Sonam v State of Bihar (2022)

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6 SCC 599 – relied on.

Rajesh Sharma v State of Uttar Pradesh (2018) 10 SCC

472 : [2017] 9 SCR 529; State of Haryana v Bhajan Lal 1992 Suppl. (1) SCC 335 : [1990] 3 Suppl. SCR 259; Pawan Kumar v State of Haryana (1998) 3 SCC 309 : [1998] 1 SCR 746; Mahendra K C v State of

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Karnataka (2022) 2 SCC 129; Central Bureau of Investigation v A Ravishankar Prasad (2009) 6 SCC 351 : [2009] 9 SCR 1025; S Mahaboob Basha v State of Karnataka (2014) 10 SCC 244 : [2014] 13 SCR 1266; Rupali Devi v State of Uttar Pradesh (2019) 5 SCC 384 : [2019] 6 SCR 577 – referred to.

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Case Law Reference

[2017] 9 SCR 529	referred to	Para 14
[1990] 3 Suppl. SCR 259	referred to	Para 16
[1998] 1 SCR 746	referred to	Para 17
[2009] 9 SCR 1025	referred to	Para 18
[2014] 13 SCR 1266	referred to	Para 19
[2019] 6 SCR 577	referred to	Para 20

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1545 of 2023. D

From the Judgment and Order dated 30.04.2019 of the High Court of Madhya Pradesh at Gwalior in MCRC No.6054 of 2019.

Ms. Vibha Datta Makhija, Sr. Adv., Karan Mamgain, Praveen Gaur, Ms. Banni Khanna, Vikrant Singh Bais, Yogesh Tiwari, Ms. Neema, Advs. for the Appellants. E

Gopal Jha, Akshay Sahay, Rohil Bansal, Lzafeer Ahmad B. F., Advs. for the Respondents.

The following Order of the Court was passed by

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AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present Appeal is directed against the Final Judgment and Order dated 30.04.2019 (hereinafter referred to as the “Impugned Judgment”) passed by the High Court of Madhya Pradesh, Bench at Gwalior (hereinafter referred to as the “High Court”) in Miscellaneous Criminal Case No. 6054 of 2019 by which the petition filed by the appellants under Section 482 of the Code of Criminal Procedure, 1973 G

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- A (hereinafter referred to as the “Code”) praying to quash First Information Report *viz.* Crime No. 139 of 2018 registered at P.S. Mahila Thana, District Gwalior, Madhya Pradesh has been dismissed.

THE FACTUAL PRISM:

- B 4. The Appellants before us, respectively, are the sister-in-law, mother-in-law and father-in-law of the Respondent No.2. As per the complaint filed by Respondent no.2 before the police, the Appellants and the husband of the Respondent No.2 were made accused for offences punishable under Section 498-A and Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”) and Section 4 of the Dowry Prohibition Act (hereinafter referred to as the “Act”). As per the allegations, the accused including the appellants and other family members demanded INR 50,00,000/- (Rupees Fifty Lakhs) cash and fifteen tolas gold ornaments. As per the complaint, the Respondent No.2 was married to the son of the Appellants No.2 & 3 on 03.02.2014 at Gwalior, Madhya Pradesh. As per the demands of the Accused-Appellants, Respondent No.2’s father gave about INR 5,00,000/- (Rupees Five Lakhs) cash, fifteen tolas gold jewellery, a diamond ring worth INR 50,000/-, clothes worth INR 60,000/- for the husband, apart from household articles and overall INR 30,00,000/- (Rupees Thirty Lakhs) was spent in the marriage functions.
- C 5. It is alleged that after marriage, the Appellants started physically and mentally harassing Respondent No.2 demanding dowry and started taunting her that her husband would have fetched INR 1,00,00,000/- (Rupees One Crore) as dowry. It is stated that in April, 2014 the Respondent No.2 got a job in Hyderabad, Telangana, where her husband was employed and she became pregnant there. It is further stated that the Appellants and husband of Respondent No.2 started abusing her that if a child was born, expenses would increase and the father of Respondent No.2 had already cheated them. It is also alleged that the accused, *inter alios*, forcibly got an abortion performed on Respondent No.2 at Hyderabad. And when the Appellant No.1 was to be engaged, the Appellants again started harassing her and in March, 2016 she was taken by her father to her parental home.
- D 6. After moving to Hyderabad in April, 2014, Respondent No.2 and her husband worked and lived at Hyderabad between April-September, 2014 and after that her husband left for London for an assignment, and she followed suit to London, but in December, 2014

only. Thereafter, the husband of Respondent No.2 got a job in Sweden A in March, 2015 and the wife/Respondent No.2 joined him in May, 2015.

7. The Respondent No.2 later filed a criminal case against her husband and the appellants. This prompted the Appellants to move before the High Court of Madhya Pradesh through Miscellaneous Criminal Case No. 6054 of 2019 for quashing the same under Section 482 of the Code. B

SUBMISSIONS BY THE APPELLANTS:

8. Learned counsel for the appellant submitted that already a divorce case has been instituted in Sweden. It was submitted that Respondent No.2 hardly lived at the matrimonial home as she was married on 03.02.2014 and in April, 2014 moved to Hyderabad and lived with her husband and also worked there. In March, 2015 Respondent No.2's husband moved to Sweden and in May, 2015, she too joined him in Sweden. C

9. It was submitted that the Appellants No.2 & 3 hardly stayed at the matrimonial home at Rewa, Madhya Pradesh, as Appellant No. 3 was working at Raigarh and living in company accommodation there with his wife (Appellant No. 2) and that the Appellant No.1 was working in Pune being employed with Wipro Infotech Limited. D

10. Learned counsel contended that there is no specific allegation against any of the appellants. Furthermore, it was canvassed that the Respondent No.2, having lived with her husband at Hyderabad and becoming pregnant, shows cordial relations between husband and wife. It was submitted that the allegation of forced abortion at Hyderabad is a complete falsehood for the reason that if such a serious incident had actually occurred, the Respondent No.2/her family members would definitely have a complaint lodged before some authority. It was also urged that moving of Respondent No.2 alongwith her husband to Sweden after receiving employment, and; living there also indicates that she had no grievance against her husband and against the appellants. It was submitted that the Appellants have, at no point of time, tried to interfere in the personal lives of the couple. E F G

11. Learned counsel submitted that Respondent No.2 and her husband had, in fact, filed an application seeking divorce in Stockholm, Sweden on 09.07.2018. Respondent No.2, upon her return to India from Sweden, started threatening her husband and the Appellants to withdraw the divorce case afore-noted, else a criminal case would be lodged against H

- A all the family members. It was submitted that the same is borne out from the fact that the husband of Respondent No.2 made a complaint to the Superintendent of Police, Gwalior on 18.09.2018, and only thereafter did the Respondent No.2 submitted her complaint, 3 days later, on 22.09.2018.

12. Learned counsel drew the attention of the Court to the discrepancy(ies) in the statements of Respondent No.2, under Section 161 of the Code before the police and under Section 164 of the Code before the learned Magistrate inasmuch as in the complaint, she has stated that her father brought her to the parental home, whereas in the statement before the learned Magistrate, she has stated that she was forcibly sent to her parental home by the accused persons.

- C 13. Learned counsel also drew the Court's attention to the order passed by the learned Sessions Judge, Gwalior dated 26.11.2018, by which anticipatory bail was granted to the appellants in which it has been noted that no documents had been appended with the case-diary with regard to any injury(ies) suffered by the complainant/Respondent No.2, and also that she was living in Sweden.

- D 14. Reliance was placed on **Rajesh Sharma v State of Uttar Pradesh, (2018) 10 SCC 472**, in which taking into consideration the misuse of Section 498-A of the IPC, the Court had issued certain directions. The submissions urged was that the same were not followed E in the present case.

- F 15. It was submitted that a perusal of the FIR and the charge sheet along with the documents appended thereto, revealed that no evidence/material was made out on its face value and that the present criminal prosecution was an abuse of the process of law.

SUBMISSIONS BY THE RESPONDENT NO.2

- G 16. Learned counsel for Respondent No.2, who has also filed a counter-affidavit, submitted that the allegations have been duly proved during investigation and cognizance has been taken by the learned Magistrate against all the accused, including the Appellants. Reliance was placed on the decision by this Court in **State of Haryana v Bhajan Lal, 1992 Suppl. (1) SCC 335**, wherein, submitted learned counsel, it has been held that if looking at the FIR, it cannot be said that *prima facie* no case is made out against the applicants, and that veracity of the allegations cannot be gone into at the stage of investigation, which is to H be established by evidence to be produced before the learned trial court.

17. The decision in ***Pawan Kumar v State of Haryana, (1998) 3 SCC 309*** was also relied upon, where at Paragraph 18 the Court noticed that on account of not satisfying the demand of goods, right from the next date of marriage, the wife was repeatedly taunted, maltreated and mentally tortured by being called ugly and thus, there cannot be greater mental torture and harassment of any bride. Similar reliance was placed on ***Mahendra K C v State of Karnataka, (2022) 2 SCC 129***, where it was stated that under Section 482 of the Code, the test to be applied by the High Court is as to whether the allegation(s) in the complaint as they stand, without adding or detracting thereto, *prima facie* establish the ingredients of the offence(s) alleged.

18. It was canvassed that the High Court neither tests the veracity of the allegations nor proceeds as a judge conducting a trial. Likewise, reference was made to the judgment in ***Central Bureau of Investigation v A Ravishankar Prasad, (2009) 6 SCC 351***, where though the trial of the case was at an advanced stage, the High Court had quashed the charges. This Court reversed the decision of the High Court therein holding the same to be an abuse of the process of court.

19. Learned counsel submitted that in ***S Mahaboob Basha v State of Karnataka, (2014) 10 SCC 244***, where at Paragraph 8 it had been held that in a case concerning cruelty meted out to the wife, to bring home the guilt of the accused, it was not essential to examine the independent witnesses, as such ill-treatment and cruelty are committed in closed doors, where hardly any witness can be expected, much less an independent witness.

20. Turning to ***Rupali Devi v State of Uttar Pradesh, (2019) 5 SCC 384*** [a 3-Judge Bench decision, where one of us, Sanjay Kishan Kaul, J. also constituted the *coram*], reliance was placed on Paragraph 16, where this Court was pleased to hold:

“16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code.”

ANALYSIS, REASONING AND CONCLUSION:

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- A 21. Having considered the matter in detail, this Court finds that the FIR in question, as far as the Appellants are concerned, is an abuse of the process of the court. From a plain but careful reading of the material brought on record, including the statements of Respondent No.2 under Sections 161 and 164 of the Code and also of other witnesses, the allegations insofar as they relate to the Appellants seem far-fetched and do not inspire confidence. The facts in totality evince that Respondent No.2 resided for less than three weeks in the matrimonial home from the date the marriage was solemnised, then lived with her husband at Hyderabad for quite some time and, finally moved to London and then Sweden. Subsequently, Respondent No.2 upon returning to India, filed the criminal case in question. We think the same is a retaliatory tactic, inasmuch as the Appellants herein are concerned.

- B 22. At this juncture, it would be relevant to note that once in Sweden, where the Respondent No.2 was living with her husband, a divorce petition had been filed, there was no occasion *per se*, for Respondent No.2 after coming from Sweden to visit the matrimonial home, much less reside there.

- C 23. Moreover, the husband of Respondent No.2 having e-mailed a complaint, 3 days prior to the wife lodging her complaint, to the Superintendent of Police, Gwalior, with regard to threat having been received from Respondent No.2 to implicate the husband and his family members, is clearly indicative that the charges, at least, as against the instant appellants are an afterthought. While the principles in the precedents cited by the Respondent No.2 hold the field, what is relevant is to see whether they come to her aid in the present factual scenario. The answer is in the negative.

- D 24. In a decision of recent vintage, this Court in *Kahkashan Kausar alias Sonam v State of Bihar*, (2022) 6 SCC 599, after considering various precedents, held that the rejection of the prayer for quashing the criminal case against the in-laws of the complainant-wife therein was unjustified. The appeal was allowed by quashing the FIR against those appellants in the said case. The Court, while granting relief, observed as under:

“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*

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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.”

(emphasis supplied)

25. We are in agreement with the view aforesaid. In the present case, the facts are akin to the position that obtained in **Kahkashan Kausar (supra)**. In light of the discussions made hereinabove, this Court is of the firm opinion that the Appellants are to be protected against vexatious and unwarranted criminal prosecution, and from unnecessarily being put through the rigours of an eventual trial.

26. The appeal stands allowed. We nip this prosecution in the bud. Accordingly, the Impugned Judgment deserves to be, and hereby is, set aside. FIR Crime No. 139 of 2018 registered at Police Station Mahila Thana, District Gwalior, stands quashed *qua* the Appellants. Any consequential proceedings thereto pertaining to the Appellants shall melt into oblivion in the eye of law.

27. Pending applications, *ergo*, do not subsist for consideration and are consigned to records. Costs made easy.

28. Respondent No.2, by way of a subsequent affidavit, sought to bring to our notice the later developments in the Swedish proceedings. Without expressing any view thereupon, we clarify that this judgment shall not preclude Respondent No.2 from pursuing other lawful remedies, if so available, against the husband in India or Sweden, as the case may be.

Divya Pandey
(Assisted by : Shevali Monga, LCRA)

Appeal allowed.