

Taramani Parakh vs State Of M.P. & Ors on 16 March, 2015

Equivalent citations: 2015 AIR SCW 1817, 2015 (11) SCC 260, AIR 2015 SC(CRI) 740, 2015 (2) AJR 729, AIR 2015 SC (SUPP) 704, (2015) 149 ALLINDCAS 3 (SC), 2015 CRILR(SC MAH GUJ) 441, (2015) 2 RECCRIR 445, (2015) 3 DLT(CRL) 280, (2015) 2 CURCRIR 123, (2015) 2 MARRILJ 155, (2015) 2 JLJR 434, (2015) 2 CRIMES 104, (2015) 3 PAT LJR 16, (2015) 2 ALLCRILR 419, (2015) 2 CRILR(RAJ) 441, 2015 CRILR(SC&MP) 441, (2015) 89 ALLCRIC 714, (2015) 2 ALLCRIR 2007, (2015) 1 DMC 764, (2015) 2 BOMCR(CRI) 453, (2015) 61 OCR 761, (2015) 3 SCALE 616, (2015) 2 MAD LJ(CRI) 83

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.456 OF 2015
(ARISING OUT OF SLP (CRL.) NO.6437 OF 2013)

TARAMANI PARAKH

...APPELLANT

VERSUS

STATE OF M.P. & ORS.

...RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. Leave granted.

2. This appeal has been preferred against judgment and order dated 20th February, 2013 passed by the High Court of Judicature of Madhya Pradesh at Gwalior in Misc. Criminal Case No.9759 of 2012.

3. The appellant was married to Respondent No.2 on 18th November, 2009. She lodged complaint dated 19th May, 2011 alleging that Respondent No.2 and his parents harassed her with demand of dowry amounting to cruelty. This led to registration of FIR being Crime No.15811 under Sections 498-A/34 of IPC at Police Station Hujrat Kotwali, Gwalior. After investigation, charge sheet was filed against Respondent No.2 and his parents which has been registered as Criminal Case No.163/12 before the Judicial Magistrate First Class, Gwalior.

4. The respondents accused moved the High Court under Section 482 of the Code of Criminal Procedure for quashing the proceedings by submitting that the behaviour of the appellant was not cordial and in spite of efforts of the accused, she failed to improve her behaviour and her father took her with him on 22nd May, 2010. The husband filed a petition under Section 9 of the Hindu Marriage Act. In mediation proceedings, the appellant stated that she did not want to live with her husband. Thereupon, the respondent filed a divorce petition on 26th April, 2011 which was pending. It was thereafter that the appellant filed the impugned complaint dated 19th May, 2011 which contained false allegations.

5. The petition was contested by the appellant.

6. The High Court relying upon judgments of this Court in Neelu Chopra and another vs. Bharti[1], Manoj Mahavir Prasad Khaitan vs. Ram Gopal Moddar and another[2] and Geeta Mehrotra and another vs. State of Uttar Pradesh and another[3] held that since there were no specific allegations, the criminal proceedings against the accused amounted to abuse of the court's process. Accordingly, the High Court quashed the criminal proceedings.

7. Aggrieved by the above, the appellant has approached this Court.

8. We have heard learned counsel for the parties and perused the record.

9. Learned counsel for the appellant submitted that it was the conduct of the accused on account of their not being satisfied with the dowry given and the inability of the appellant's family to meet such demands that the appellant was forced to leave the matrimonial home. The appellant was keen to continue in the matrimonial home and to return home even after being forced to leave but the accused refused to take her back. The husband has filed a divorce petition which is without any legal basis. The appellant lodged the complaint after filing of the divorce petition for the reason that the appellant had earlier remained hopeful that the matter may be amicably settled. It was only after she lost all hopes that she had to initiate criminal proceedings in respect of cruelty meted out to her. The High Court in proceedings under Section 482 could not quash the proceedings merely with the observation that the allegations were omnibus. The power of quashing could be exercised sparingly and only if no case was made out from the allegations taken as correct or where the complaint was absurd or legally not maintainable. In the FIR, the appellant has specifically mentioned that the accused harassed her for dowry by taunting her and beating her. It was already mentioned that she was deprived of her belongings by the accused.

10. Learned counsel for the accused respondents supported the impugned order passed by the High Court.

11. Law relating to quashing is well settled. If the allegations are absurd or do not made out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may

refer to the decisions of this Court dealing with the issue. Referring to earlier decisions, in Amit Kapoor vs. Ramesh Chander and Anr.[4], it was observed:

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is

sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; Janata Dal v.

H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 :

1998 SCC (Cri) 1400 : AIR 1998 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; [pic]Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; V.V.S. Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 :

2002 SCC (Cri) 19]; Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M. Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

12. In Kailash Chandra Agrawal & Anr. vs. State of U.P. & Ors. (Criminal Appeal No.2055 of 2014 decided on 6.9.2014), it was observed:

"9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In Kans Raj vs. State of Punjab & Ors. [(2000) 5 SCC 207], it was observed:-

"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.

10. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. vs. State of Bihar and Anr. [(2000) 8 SCC 547], Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors. [(1998) 5 SCC 749], State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors. [(1992) Suppl 1 SCC 335] and Asmathunnisa vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Anr. [(2011) 11 SCC 259]."

13. In the present case, the complaint is as follows:

"Sir, it is submitted that I was married on 18.11.09 with Sidharath Parakh s/o Manak Chand Parakh, r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial, my husband, father-in-law and mother-in-law started harassing me for bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs.2,00,000/- in cash and only then they would keep me in the house otherwise not. On account of this my husband also used to beat me and my father-in-law and my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt. Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2.4.2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh and my mother-in-law Smt. Indira Parakh for torturing me on account of demanding the dowry."

14. From reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out.

15. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing

of proceedings before the trial is not permissible.

16. The decisions referred to in the judgment of the High Court are distinguishable. In Neelu Chopra, parents of the husband were too old. The husband Rajesh had died and main allegations were only against him. This Court found no cogent material against other accused. In Manoj Mahavir, the appellant before this Court was the brother of the daughter-in-law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier 498A case. This Court found the said case to be absurd. In Geeta Mehrotra, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused.

17. Accordingly, we allow this appeal and set aside the impugned order passed by the High Court.

.....J. [T.S. THAKUR]J. [ADARSH KUMAR GOEL
] NEW DELHI MARCH 16, 2015

- [1] (2009) 10 SCC 184
- [2] (2010) 10 SCC 673
- [3] (2012) 10 SCC 741
- [4] (2012) 8 SCC 460
