

# Abhishek vs The State Of Madhya Pradesh on 31 August, 2023

**Author: Sanjay Kumar**

**Bench: Sanjay Kumar, Aniruddha Bose**

2023INSC779

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1457 of 2015

Abhishek

....

Appellant

Versus

State of Madhya Pradesh

....

Respondent

with

Criminal Appeal No. 1456 of 2015

JUDGMENT

Sanjay Kumar, J

1. Bhawna, the second respondent in Criminal Appeal No. 1456 of 2015, married Nimish Gour in the year 2007. He, however, secured a decree of divorce on 05.09.2019 dissolving their marriage. Bhawna preferred First Appeal No. 1876 of 2019 against the said divorce decree and the same is stated to be pending consideration before the Madhya Pradesh High Court. The appellants in the present appeals were Bhawna's in-laws. Kusum Lata Reason:

was her mother-in-law while Abhishek and Sourabh were her brothers-in-law.

2. Bhawna married Nimish on 02.07.2007. Their marriage was an arranged one and was performed at Indore, Madhya Pradesh. Bhawna was a teacher by profession. Nimish was working in the film industry at Mumbai and was engaged in film editing. After their marriage, the couple left for Mumbai on 08.07.2007. Bhawna is stated to have visited her in-laws in Madhya Pradesh on 3 or 4 occasions only, including the Deepavali festival in 2008. Admittedly, Bhawna parted ways with her

matrimonial home at Mumbai on 25.02.2009, be it on her own volition or otherwise, and started residing with her parents at Narsinghpur. At that time, Kusum Lata had submitted representation dated 24.02.2009 to Police Station Heera Nagar at Indore, apprehending that Bhawna may make allegations against them about harassing her for dowry.

3. Prior to the filing of the divorce petition by Nimish on 08.05.2013, Bhawna made a written complaint on 05.02.2013 to Police Station Kotwali, District Narsinghpur, levelling several allegations against her husband and her in-laws. The same was sent to the jurisdictional police station at Heera Nagar, Indore. In consequence, FIR No. 56 of 2013 dated 09.02.2013 was registered on the file of P.S. Heera Nagar, Indore, against all four of them under Section 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. All three appellants secured anticipatory bail on 06.03.2013 in relation to FIR No. 56 dated 09.02.2013 from the learned Additional Sessions Judge, Indore, vide Bail Application No. 634 of 2013.

4. The appellants then moved the Madhya Pradesh High Court under Section 482 Cr.P.C. Kusum Lata and Sourabh filed M.Cr.C. No. 6585 of 2013 while M.Cr.C. No. 2647 of 2014 was filed by Abhishek, praying for quashing of FIR No. 56 of 2013 dated 09.02.2013 insofar as they were concerned. During the pendency of these cases, the police completed their investigation and filed a charge sheet against all the four accused. The same was taken on file in Criminal Case No. 11954 of 2014 by the learned Judicial Magistrate First Class, Indore. Thereupon, Kusum Lata and Sourabh filed an application on 13.08.2014 in M.Cr.C. No. 6585 of 2013 laying a challenge to the charge sheet and the proceedings in Criminal Case No. 11954 of 2014. However, by separate orders dated 03.03.2015, the Madhya Pradesh High Court dismissed both the quash petitions. Aggrieved thereby, the appellants are before this Court by way of these appeals by special leave.

5. By common order dated 30.10.2015 passed in both the appeals, this Court stayed further proceedings qua the appellants.

6. In her written complaint dated 05.02.2013 made to P.S. Kotwali, District Narsinghpur, Bhawna spoke of her marriage being solemnized with Nimish on 02.07.2007 at Indore and stated that her parents had given Rs. 3,50,000/- in cash, one gold necklace, ear-set, anklets of silver, Bichua (toe-rings), costly sarees and clothes. She further stated that her relatives had separately given her a gold chain, Nath, Bindi etc., several jewellery items and other gifts. She alleged that her mother-in-law and brother-in-law, Abhishek, got a list prepared of all the gifts and took the same, saying: 'Bhabi, we will keep them in a Bank Locker as you do not have a house in Mumbai and you will not be able to keep them'. She stated that she went to Mumbai along with her husband on 08.07.2007. She made several allegations about how she was ill-treated by her husband at Mumbai. Those allegations are of no relevance presently, as we are not concerned with Nimish. Bhawna went on to state that her husband and mother-in-law had complaints with her and her parents on the issue of dowry and that they started harassing her mentally even on minor issues and started using wrong and intolerable words for her parents, brothers and sister. She stated that, one day, she was wearing a maxi while applying mehendi to her hair and upon seeing this, her mother-in-law said - Bhawna is wearing a maxi so she should be undressed and made to dance on the street. She alleged that her mother-in-law made a demand for a gold chain, ear-rings, ring and other gold jewellery in

dowry at the time of the marriage. She also alleged that at the time of his own marriage, her brother-in-law, Abhishek, demanded a car and additional two lakh rupees from her and her parents. They did not have so much money and could not give a car and .2,00,000/- and her in-laws said that if you cannot bring the money then live in your parental house. She further stated that her mother-in-law's house at Indore was like a paying guest accommodation, where one or the other student was always living, and there was no room for her to stay. She alleged that they treated her also like a paying guest and harassed her physically, mentally, socially and emotionally with their demands for dowry. She then spoke of how she found her husband's diary at Mumbai in which he had mentioned details of his physical relations with several other women and when she narrated the same to her mother-in-law and brother-in-law at the time of Deepavali in 2008, they said that she had spoilt the festival by telling such things and that she should never come on Deepavali day. She stated that she was thrown out of the house by her husband on 25.02.2009. She further stated that upon her many requests, Nimish came to the marriage of her brother on 17.06.2012, but again asked her about the arrangement for money. Upon being told of their inability to arrange money, he told her relatives either to fulfil the demand for money or get him freed from her. She said that her father, mother and brother developed health problems owing to these issues and requested that strict legal action be taken against Nimish, Kusum Lata, Sourabh and Abhishek, for harassing her mentally and physically for dowry and to do her justice.

7. In her statement dated 08.09.2013 made before P.S. Heera Nagar, Bhawna stated that her marriage with Nimish was performed on 02.07.2007 at Nandan Garden in Indore and her parents had given gold and silver jewellery, clothes, cash etc., exceeding their status and spent about 5 lakhs for the marriage. She said that her husband and she went to Mumbai on 07.07.2007. She made various allegations against her husband which are of no significance presently, as he is not before us. As regards her in-laws, she said that her mother-in-law, Kusum Lata, and brothers-in-law, Abhishek and Sourabh, used to harass her mentally and physically to bring .2 lakhs in cash, a car and jewellery in dowry from her parents and due to this, her parents fell ill and were being treated. She alleged that all her in-laws wanted a divorce from her forcibly and nobody wanted to talk to her after she came away from her matrimonial home. She alleged that Abhishek, who was a judge, was misusing his official position and he was the reason for obstructions in legal proceedings.

8. Om Prakash, Bhawna's father, also made a statement before the police on 08.09.2013 on the same lines. He said that her marriage was performed at Indore on 02.07.2007 and as per his status, he had given cash, gold, jewellery, clothes etc., totalling to .5 lakhs, in dowry. He said that, whenever Bhawna came to meet them, she used to tell him and all the neighbours that her husband, Nimish, mother-in-law, Kusum Lata, and brothers-in-law, Abhishek and Sourabh, used to tell her that her father had given nothing in dowry and when she went to her parental home, she should bring .2 lakhs in cash, a car and gold jewellery. He stated that they had been harassing his daughter mentally and physically for dowry. He alleged that, on Karvachauth day, Bhawna's mother-in-law had demanded 100 sarees but he had refused. Renubala, Bhawna's mother, also made a statement on 08.09.2013 on identical lines. Two of their neighbours, Sushila Bai and Mohan, also gave statements on the same day, supporting Bhawna's version. According to them, whenever Bhawna came to meet her parents, she used to tell them that her in-laws were torturing her mentally and

physically for dowry. On the other hand, Shailendra and Radhey Shyam, who lived in the neighbourhood where Nimish's father had his residence, stated to the effect that there were no demands made of Bhawna or her family for dowry and that she was never harassed on that ground. In their final report dated 20.09.2013, the police merely replicated the contents of the FIR and added nothing further on the strength of their investigation.

9. Certain other facts are also of pertinence and may be noted. Abhishek entered judicial service as a Civil Judge six or seven months after the marriage of Bhawna with Nimish. He was posted at Ujjain and, thereafter, at Neemuch in Madhya Pradesh. Kusum Lata used to reside with Abhishek. Saurabh, Bhawna's other brother-in-law, is an architect and was working at Delhi since the year 2007. Nimish made written representations to the police authorities at Narsinghpur on 09.09.2012 and 17.11.2012 complaining of intimidation by and at the behest of Bhawna. Prior thereto, an anonymous complaint was made to the Chief Justice, Madhya Pradesh High Court, against Abhishek, making scandalous allegations to the effect that he was undeserving of judicial office. A complaint was also made to the Anti-Corruption Bureau, Mumbai, purportedly in the name of one Sanyogita Mishra. Again, the allegations therein were directed against Abhishek.

10. Notably, the examination-in-chief of Bhawna on 27.10.2018 in Nimish's divorce petition in Civil Suit No. 153A of 2015 on the file of the Family Court, Narsinghpur, is made available. Therein, she asserted that her entire stridhan jewellery was with Nimish and in spite of repeated demands, he was not returning it to her as he wanted to snatch her jewellery. Further, during her cross-examination therein, she admitted that she had made a complaint to the Madhya Pradesh High Court against Abhishek. She however denied making any such complaint to the Anti-Corruption Unit at Mumbai.

11. This being the factual backdrop, we may note at the very outset that the contention that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr.P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See Joseph Salvaraj A. vs. State of Gujarat and others {(2011) 7 SCC 59}]. This principle was reiterated in Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another [(2019) 11 SCC 706]. This issue, therefore, needs no further elucidation on our part.

12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [Criminal Appeal No.330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare

cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in *R.P. Kapur vs. State of Punjab* (AIR 1960 SC 866) and *State of Haryana and others vs. Bhajan Lal and others* [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam and others vs. State of Bihar and others* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta and another vs. State of Jharkhand and another* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra and another vs. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali and others vs. State of U.P. and others* (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles

applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In Bhajan Lal (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

‘102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

18. Applying the aforesaid edicts to the case on hand, we may take note of certain glaring inconsistencies and discrepancies. Though Bhawna had earlier alleged that her mother-in-law, Kusum Lata, and her brother-in-law, Abhishek, had taken away all her jewellery after her marriage on the pretext of safekeeping, she specifically stated in her deposition before the Family Court, Narsinghpur, in Civil Suit No. 153A of 2015, that her entire stridhan jewellery was with Nimish and in spite of repeated demands, he was not returning it to her. Further, during her cross-examination therein, she admitted that she had made a complaint to the High Court against Abhishek. The complaint was styled as an anonymous one, but Bhawna voluntarily owned up to being its author. This aspect bears out her animosity against her in-laws and more particularly, Abhishek.

19. The most significant aspect to be taken note of presently is that Bhawna admittedly parted ways with her matrimonial home and her in-laws in February, 2009, be it voluntarily or otherwise, but she did not choose to make a complaint against them in relation to dowry harassment till the year 2013. Surprisingly, FIR No. 56 dated 09.02.2013 records that the occurrence of the offence was from 02.07.2007 to 05.02.2013, but no allegations were made by Bhawna against the appellants after she left her matrimonial home in February, 2009. Significantly, Bhawna got married to Nimish on 02.07.2007 at Indore and went to Mumbai with him on 08.07.2007. Her interaction with her in-laws thereafter seems to have been only during festivals and is stated to be about 3 or 4 times. Sourabh, an architect, was stationed at Delhi since the year 2007 and no specific allegation was ever made against him by Bhawna. In fact, she merely made a general allegation to the effect that he also tortured her mentally and physically for dowry. No specific instance was cited by her in that regard or as to how he subjected her to such harassment from Delhi. Similarly, Abhishek became a judicial officer 6 or 7 months after her marriage and seems to have had no occasion to be with Bhawna and Nimish at Mumbai. His exposure to her was only when she came to visit her in-laws during festivals. Surprisingly, Bhawna alleges that at the time of his own marriage, Abhishek demanded that Bhawna and her parents should provide him with a car and .2 lakhs in cash. Why he would make such a demand for dowry, even if he was inclined to commit such an illegality, from his sister-in-law at the time of his own marriage is rather incongruous and difficult to comprehend. Further, the fact that Bhawna confessed to making a vicious complaint against Abhishek to the High Court clearly shows

that her motives were not clean insofar as her brother-in-law, Abhishek, is concerned, and she clearly wanted to wreak vengeance against her in-laws. The allegation levelled by Bhawna against her mother-in-law, Kusum Lata, with regard to how she taunted her when she wore a maxi is wholly insufficient to constitute cruelty in terms of Section 498A IPC.

20. We may also note that Bhawna herself claimed that Nimish came to her brother's wedding in 2012, but she has no details to offer with regard to any harassment for dowry being meted out to her by her mother-in-law and her brothers-in-law after 2009. As noted earlier, even for that period also, her allegations are mostly general and omnibus in nature, without any specific details as to how and when her brothers-in-law and mother-in-law, who lived in different cities altogether, subjected her to harassment for dowry.

21. Most damaging to Bhawna's case is the fact that she did nothing whatsoever after leaving her matrimonial home in February, 2009, and filed a complaint in the year 2013 alleging dowry harassment, just before her husband instituted divorce proceedings.

22. Given the totality of the facts and circumstances, we are of the considered opinion that Bhawna's allegations against the appellants, such as they are, are wholly insufficient and, prima facie, do not make out a case against them. Further, they are so farfetched and improbable that no prudent person can conclude that there are sufficient grounds to proceed against them. In effect, the case on hand falls squarely in categories (1) and (5) set out in Bhajan Lal (supra). Permitting the criminal process to go on against the appellants in such a situation would, therefore, result in clear and patent injustice. This was a fit case for the High Court to exercise its inherent power under Section 482 Cr.P.C. to quash the FIR and the consequential proceedings.

23. The appeals are accordingly allowed.

FIR No. 56 of 2013 and Criminal Case No. 11954 of 2014 pending on the file of the learned Judicial Magistrate First Class, Indore, shall stand quashed insofar as the appellants, Kusum Lata, Abhishek Gour and Sourabh Gour, are concerned.

Pending applications, if any, shall stand disposed of.

.....,J (ANIRUDDHA BOSE) .....J (SANJAY KUMAR)  
.....,J (S.V.N. BHATTI) August 31, 2023 New Delhi