

Mirza Iqbal @ Golu vs The State Of Uttar Pradesh on 14 December, 2021

Author: R. Subhash Reddy

Bench: Hrishikesh Roy, R. Subhash Reddy

SLP(Crl.) No. 2786 of 2019

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1628 OF 2021
(Arising out of SLP (Crl.) No.2786 OF 2019)

Mirza Iqbal @ Golu & Anr.

...Appellant(s)

vs.

State of Uttar Pradesh & Anr

...Respondent(s)

J U D G M E N T

R. SUBHASH REDDY,J.

1. Leave granted.

2. This Criminal Appeal is filed aggrieved by the order dated 10.12.2018 passed by the High Court of Judicature at Allahabad in Application No.44475 of 2018.

3. The aforesaid application was filed before the High Court under Section 482 of Cr.P.C. for quashing the Chargesheet No.01 of 2018 dated 12.10.2018 and order of Chief Judicial Magistrate, taking cognizance 17:27:52 IST Reason:

of the case vide order dated 22.10.2018 for the offences punishable under Sections 498-A, 323, 504, 506, 304-B of IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961 (D.P. Act) in Case Crime No.0136 of 2018 registered on the file of PS-Kotwali, District Gorakhpur.

4. The 2nd respondent – complainant Shri Nisar Ullah father of the deceased, Rushda Nisar has lodged a complaint on 25.07.2018 at 09:31 p.m. at PS-Kotwali, District Gorakhpur to the effect that his younger daughter namely Rushda Nisar was married to Mirza Ismail Beg alias Amir s/o Zaki Ullah r/o Mohalla- Muftipur of Gorakhpur District on 25.12.2015. After the solemnization of marriage, the accused persons Mirza Ismail Beg alias Amir (husband), brother-in-law (devar) Mirza Iqbal alias Golu (1st Appellant herein), sister-in-law (nanad) Hifza alias Chinki and mother-in-law (saas) Sammi (2nd Appellant) continuously used to demand a four-wheeler vehicle and Rs.10,00,000/- in cash as dowry. It is alleged that as the said demands were not met, they used to beat his daughter and threatened to kill her. It is, further, alleged that ten days prior to the date of incident, all the accused persons with a common intention had severely beaten up his daughter and threatened to kill, if the demands of dowry of cash and car were not met. On being compelled, he had also given an amount of Rs.2,70,000/- cash from his business earning, in spite of the same, accused was adamant in demanding the car. On 24.07.2018 at about 8 p.m., the accused persons with a common intention beat his daughter, killed her by putting a noose around her neck and hanged her. On coming to know of the incident, he went along with his son from Surat and he was shocked to see his daughter in such a state. When the situation has become slightly normal, he has lodged a report to take necessary action and to initiate legal proceedings against the accused. Based on the aforesaid complaint, a case was registered against all the named accused including the appellants herein, who are brother-in-law and mother-in-law of the deceased for the alleged offences under Sections 498-A, 323, 504, 506, 304-B of IPC and Sections 3 & 4 of the D.P. Act.

5. When the appellants have filed quash petition before the High Court, it was disposed of by impugned order directing the appellants to surrender before the Court below and apply for grant of bail and the same was directed to be considered in accordance with law.

6. Pursuant to the complaint, crime was registered and after registration, investigation was taken up and after completing the investigation, final report was filed on 12.10.2018 and the same was taken cognizance by learned Chief Judicial Magistrate by order dated 22.10.2018.

7. We have heard Ms. Vibha Datta Makhija, learned Senior Counsel appearing on behalf of the appellants and Mr. Sahdev Singh, learned counsel for State of Uttar Pradesh and Mohd. Asad Khan, learned counsel for the respondent no.2/Complainant.

8. Learned senior counsel appearing for the appellants has contended that the 1st Appellant herein, is brother-in-law of the deceased is working as a Cashier in ICICI Bank, Khalilabad. On the date of incident i.e. on 24.07.2018, he was on duty. It is submitted that he resides at Khalilabad in view of his employment in ICICI Bank and his mother–2nd Appellant Shamima Bano alias Sammi is also living with him at Khalilabad since 2017. It is submitted that even as per the case of the prosecution, the incident has taken place at about 8 p.m. at Gorakhpur, which is 40 kms away from Khalilabad. On the date of incident, he was on duty at ICICI Bank and entered the branch at 09:49 a.m. and came out at 06:25 p.m. In spite of the same, on vague and bald allegations, appellants are sought to be prosecuted, without any specific allegations either in complaint or in the chargesheet. It is submitted that during the pendency of investigation, the appellant has filed affidavit before the Senior Superintendent of Police, District Gorakhpur, stating that he was in the Bank on the date of

incident and requested to investigate by looking into the call details of his mobile number and also CCTV footage of the bank. It is submitted that his sister-in-law i.e. the deceased was under mental depression and was undergoing treatment for the same. It is submitted that in spite of such an affidavit filed by the appellants without any investigation, in a casual and routine manner, final report was filed with vague and omnibus allegation against the appellants. It is submitted that in absence of any specific allegations against the appellants disclosing their active involvement, the learned Chief Judicial Magistrate has taken cognizance in a routine and mechanical manner. It is submitted that as there is no material or any specific allegations against the appellants/accused and if they are allowed to face the trial, it is nothing but abuse of the process of law. Learned counsel has submitted that it is evidently a fit case to quash the proceedings, by allowing the appeal.

9. On the other hand, learned counsel appearing for 1st respondent-State and 2nd respondent-Complainant, have submitted that in view of specific mention of the names in the complaint as well as in the chargesheet, it is not a case to quash the proceedings at this stage. It is submitted that the appellants have to prove their innocence in the trial. It is submitted that all the accused were demanding dowry of Rs.10,00,000/- and a car from the deceased and on 24.07.2018 with a common intention, all of them caused injuries to the deceased and ultimately killed her. It is submitted that as the postmortem report clearly reveals cause of death as asphyxia, there are no grounds to quash the proceedings. Further, it is submitted that the quash petition filed by the sister-in-law of the deceased was dismissed by this Court vide order dated 15.04.2019.

10. Having heard the learned counsels on both the sides, We have carefully perused impugned order, other material placed on record and counter affidavits filed on behalf of 1st Respondent–State as well as on behalf of 2nd Respondent–complainant.

11. The appellants are brother-in-law and mother-in-law respectively of the deceased. A perusal of the complaint filed by the 2nd respondent, pursuant to which a crime was registered, does not indicate any specific allegations by disclosing the involvement of the appellants. It is the specific case of the 1st appellant that he was working as a cashier in ICICI Bank at Khalilabad branch, which is at about 40 kms from Gorakhpur. The alleged incident was on 24.07.2018 at about 8 p.m. When the investigation was pending, the 1st appellant has filed affidavit before Senior Superintendent of Police on 08.08.2018, giving his employment details and stated that he was falsely implicated. It was his specific case that during the relevant time, he was working at ICICI Bank, Khalilabad branch, Gorakhpur and his mother was also staying with him. The Branch Manager has endorsed his presence in the branch, showing in-time at 09:49 a.m. and out-time at 06:25 p.m. Even in the statement of 2nd respondent recorded by the police and also in the final report filed under Section 173(2) of Cr.P.C., except omnibus and vague allegations, there is no specific allegation against the appellants to show their involvement for the offences alleged. This Court, time and again, has noticed making the family members of husband as accused by making casual reference to them in matrimonial disputes. Learned senior counsel for the appellants, in support of her case, placed reliance on the judgment of this Court in the case of Geeta Mehrotra and Anr. v. State of Uttar Pradesh and Anr.¹ In the aforesaid case, this Court in identical circumstances, has quashed the proceedings by observing that family members of husband were shown as accused by making casual (2012) 10 SCC 741 reference to them. In the very same judgment, it is held that a large number of

family members are shown in the FIR by casually mentioning their names and the contents do not disclose their active involvement, as such, taking cognizance of the matter against them was not justified. It is further held that taking cognizance in such type of cases results in abuse of judicial process. Paras 18 and 25 of the said judgment, which are relevant for the purpose of this case, read as under:

“18. Their Lordships of the Supreme Court in Ramesh case [(2005)3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-

in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge- sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law.

Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

12. From a perusal of the complaint filed by the 2 nd respondent and the final report filed by the police under Section 173(2) of Cr.P.C., We are of the view that the aforesaid judgment fully supports the case of the appellants. Even in the counter affidavits filed on behalf of respondent nos.1 and 2, it

is not disputed that the 1st appellant was working in ICICI Bank at Khalilabad branch, but merely stated that there was a possibility to reach Gorakhpur by 8 p.m. Though there is an allegation of causing injuries, there are no other external injuries noticed in the postmortem certificate, except the single ante-mortem injury i.e. ligature mark around the neck, and the cause of death is shown as asphyxia. Having regard to the case of the appellants and the material placed on record, we are of the considered view that except vague and bald allegations against the appellants, there are no specific allegations disclosing the involvement of the appellants to prosecute them for the offences alleged. In view of the judgment of this Court in the case of Geeta Mehrotra and Anr.1, which squarely applies to the case of the appellants, we are of the view that it is a fit case to quash the proceedings.

13. For the aforesaid reasons, this appeal is allowed and the impugned order dated 10.12.2018 passed in Application No.44475 of 2018 by the High Court, is set aside. Consequently, the chargesheet no.01 dated 12.10.2018 filed in FIR No.136 of 2018 on the file of PS-Kotwali, District Gorakhpur for the offences under Sections 498-A, 323, 504, 506, 304-B of IPC and Sections 3 & 4 of the D.P. Act and the consequential order dated 22.10.2018, passed by the Chief Judicial Magistrate, Gorakhpur, is hereby quashed.

.....J [R. Subhash Reddy]J
[Hrishikesh Roy] New Delhi.

December 14, 2021