

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 101 of 2023

1. Guriya Devi, aged about 36 years, wife of Sri Chandan Verma, resident of Barhi, P.O. & P.S.- Barhi, Dist.- Hazaribagh
2. Raj Kumar Soni, aged about 41 years, son of Sri Satyanarayan Prasad Verma, resident of PMCH Boys Hostel No. 1, Saraidhela, Koyla Nagar, Kalakusuma, BCCL Township, P.O. & P.S- Koyla Nagar, Dist.- Dhanbad
3. Chandan Verma, aged about 38 years, son of Sri Kamta Prasad Verma, resident of East Barhi, Barhi, P.O. & P.S.- Barhi, Dist.- Hazaribagh Petitioners

Versus

1. The State of Jharkhand
2. Priti Devi, daughter of Ramdev Sharan, resident of Isri Bazar, P.O. &P.S.- Nimiyaghat, Dist.- Giridih
..... Opposite Parties

For the Petitioners : Mr. Rohit Ranjan Sinha, Adv.

Mr. Vishal Kumar, Adv.

Mr. Piyush, Adv.

For the State : Mr. Shailendra Kr. Tiwari, Spl. PP

For the O.P. No. 2 : Ms. Rinku Bhagat, Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the entire criminal proceeding in connection with Nimiyaghat P.S. Case no. 87 of 2013 corresponding to G.R. No. 2045 of 2013, in which, the cognizance has been taken for the offence punishable under Section 323, 379, 498A of IPC and Section 3/4 of the D.P.Act.
3. The allegation against the petitioners is that the petitioners being the relatives of the husband of the complainant; in furtherance of the common intention of the co-accused persons, demanded dowry of Rs. 1,00,000/-, two years after the marriage of complainant with her husband. There is further allegation that as

their unlawful demand, could not be met by the opp. party no. 2, and her family members, the petitioners along with the co-accused persons, assaulted the opp. party no. 2, harassed her mentally, by telling her that they will get the marriage of her husband solemnized elsewhere for the second time and because of non-fulfilment of the demand of dowry, the petitioner no. 2 along with the co-accused persons, assaulted the opp. party no. 2 in June, 2011 and broke her leg and committed theft of *stridhan* of the opp. party no. 2. The petitioner no. 1 was the person, who committed theft of the jewelry of the opp. party no. 2 and all this harassment were perpetrated upon the opp. party no. 2 when she was pregnant and when the opp. party no. 2 informed her father and her paternal uncles, they came to the matrimonial house of the opp. party no. 2 but the petitioners in no uncertain manner, stated that unless the unlawful demand of dowry is met, they will not even get the opp. party no. 2, treated for the injuries sustained by her caused by the assault committed upon her and instructed the father of the opp. party no. 2 to take her. The petitioners and the co-accused persons, could not be persuaded, hence, seeing no other alternative, the father and paternal uncle of the opp. party no. 2, ultimately took the opp. party no. 2 to their house and the petitioner no. 3, after that, continuously used to harass the opp. party no. 2 by threatening her over the mobile phone and by repeating the unlawful dowry demand, as a condition precedent, to allow the opp. party no. 2 to reside in her matrimonial house and also mentally harassed her time and again, by telling her that the marriage of her husband will be solemnized elsewhere. There is specific allegation against the petitioners that on 25.04.2013, they came to the house of the opp. party no. 2 and stucked to their unlawful demand of dowry and they also treated the opp. party no. 2 with cruelty by assaulting her in front of her father and went away by threatening her that unless the dowry demand is met, they will not keep the complainant-victim lady

and later on, they also got solemnized the marriage of the husband of the opp. party no. 2 with someone else.

4. The complaint was referred to police under section 156 (3) of Cr.P.C. by learned CJM, and basing upon the same, Nimiyaughat P.S. Case no. 87 of 2013 was registered and police took up the investigation of the case. After completion of the investigation, the police submitted the charge sheet. Basing upon the same, cognizance for the offences punishable under Sections 323, 379, 498A of IPC and Section 3/4 of the D.P.Act. were taken against the accused persons, noted in col. No. 11 of the charge sheet but not against the petitioners but later on, the police submitted supplementary charge sheet and basing upon the same, vide order dated 01.11.2017, passed in Nimiyaughat P.S. Case no. 87 of 2013 corresponding to G.R. No. 2045 of 2013, the learned Magistrate has also taken cognizance against the petitioners as well.
5. It is submitted by learned counsel for the petitioners that the petitioners are innocent and they have not committed any offence. It is next submitted that the cognizance of the offence has to be taken only once and the fresh order taking cognizance dated 01.11.2017 was passed, in respect of the petitioners is illegal. Learned counsel for the petitioners further submits that order taking cognizance is otherwise also illegal being a cryptic one and as the learned Magistrate did not discuss the materials or grounds for taking cognizance.
6. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Dharam Pal v. State of Haryana and another** reported in **(2014) 3 SCC 306** wherein the Hon'ble Supreme Court of India has observed that the Sessions Court has the jurisdiction, on committal of the case, to take cognizance of the offences of the accused persons, not named as offender but whose complicity in the case should be evident from the materials, available in the record. It is next submitted by learned counsel for the petitioners, that even if the allegations made in the FIR are considered to be

true in their entirety, still the offence punishable under Section 498A of IPC is not made out.

7. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Kahkashan Kausar Alias Sonam and others v. State of Bihar and others** reported in **(2022) 6 SCC 599, para 18 and 21** of which reads as under :-

"18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, 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."

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 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."

it is next submitted that as the allegation against the petitioners are general in nature and no specific role has been attributed to them, hence, this is a fit case where the entire criminal proceeding in connection with Nimiyaghat P.S. Case no. 87 of 2013 corresponding to G.R. No. 2045 of 2013, be quashed and set aside.

8. Learned Special PP and learned counsel for the opp. party no. 2 on the other hand vehemently, opposes the prayer for quashing the entire criminal proceeding in connection with Nimiyaghat P.S. Case no. 87 of 2013 corresponding to G.R. No. 2045 of 2013 and submit that there is direct and specific allegation against the petitioners of distinct roles played by them, in furtherance of their common intention, perpetrating cruelty upon the opp. party no. 2-victim, by harassing her consequent upon her failure to meet the

unlawful dowry demand of Rs. 1,00,000/-. It is next submitted that there is no merit in the contention of the petitioners that the cognizance was taken in the second time, in fact, the cognizance for the offences was already taken and consequent upon submission of the supplementary charge sheet, as the court found that there is sufficient materials to proceed against the petitioners also, it was ordered that the cognizance is also taken against them and by such act of the Magistrate, no illegality has been committed by learned Magistrate, hence, there is no illegality in the order taking cognizance by learned Magistrate. It next submitted that the facts of this case are entirely different from the fact in the case of **Kahkashan Kausar Alias Sonam and others v. State of Bihar and others** (supra) as in this case, there is direct and specific allegation against each of the petitioners of demanding dowry and treating informant with cruelty and there is also direct allegation against them of committing theft of *Stridhan* of the informant-opp. party no. 2, in most inhuman manner harassing her, both mentally and physically because of failure on her part to meet the illegal demand of dowry of the petitioners, hence, it is submitted that as no illegality has been committed by learned Magistrate, this criminal miscellaneous petition being without any merit be dismissed.

9. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record and coming to the facts of the case, the perusal of the complaint reveals that there is direct and specific allegation against the petitioners, of making dowry demand of Rs. 1,00,000/-, harassing the opp. party no. 2 both mentally and physically for her failure to meet the unlawful demand of dowry by assaulting her, mentally torturing her, committing theft of her *Stridhan* property, denying to provide treatment to her after breaking her leg by assaulting her, even though the victim was pregnant and forced her to leave her matrimonial house, only for the fault of the opp. party no. 2 of failing to meet the illegal dowry demand of the petitioner and

continued their demand of dowry over phone, thereby mentally harassing the opp. party no. 2, by time and again telling her that the failure on her part to meet the unlawful dowry demand, will result in her husband's marriage being solemnized with another lady and ultimately, the same was also done.

10. Under such circumstances, this court is of the considered view that the facts of this case is different from the facts of the case of **Kahkashan Kausar Alias Sonam and others v. State of Bihar and others** (*supra*), as in this case there is direct and specific allegation against the petitioner , including their individual role played an treating the complainant with cruelty and also about the ingredients of the offence punishable under Section 323, 379, 498A of the IPC as well as the 3/4 of the D.P.Act, hence, there is no illegality committed by learned Magistrate, and the ratio of the **Kahkashan Kausar Alias Sonam and others v. State of Bihar and others** (*supra*), therefore, is not applicable to the facts of this case.
11. So far as the contention of the petitioners for cognizance which has been taken by learned Magistrate in the second time is concerned, perusal of the record reveals that the cognizance has been taken in respect of the accused persons, whose names has been mentioned in col. No. 11 of the charge sheet vide order dated 19.12.2013 and in the said order, it has categorically been mentioned that the investigation is going on against the petitioners of this criminal miscellaneous petition and later on, as police submitted supplementary charge sheet against the petitioners of this Cr.M.P, hence, learned Magistrate has recorded in the order dated 01.11.2017, that the cognizance for the said offence is also taken against the petitioners upon submission of the supplementary charge sheet, hence, this court is of the considered view that learned Magistrate, has not committed any illegality in passing the order dated 01.11.2017.
12. So far as the contention of the petitioners that the order taking cognizance is a cryptic one and non-speaking one is concerned, it is a settled principle of law, that at the stage of issuing the

summons to the accused based on police report, the Magistrate is not required to record any reason, as has been observed by the Hon'ble Supreme Court of India in the case of **State of Gujarat v. Afroz Mohammed Hasanfatta**, reported in (2019) 20 SCC 539, para 23 of which reads as under:-

" 23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) Cr.P.C. , where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file." (Emphasis supplied)

13. After going through the materials in the record, this court finds that learned Magistrate has recorded that after going through the charge sheet and the case record and the materials available in the case record, *prima facie* case for the offence punishable under Section 323, 379, 498A of the IPC and Section 3/4 of the D.P. Act, is made out against the petitioners as well, whose name has been mentioned in col. No. 11 of the charge sheet.
14. Under such circumstances, this court is of the considered view that this is not a fit case where the cognizance order is to be quashed, only because learned Magistrate has not elaborately discussed materials and the particulars of the materials, basing upon which, it found *prima facie* case, for the offences *inter alia*, in respect of which, it has taken cognizance. Hence, there is no illegality committed by learned Magistrate in this respect also.

15. Because of the discussion made above, this Court is of the considered view that there is no justifiable reason to quash the entire criminal proceeding in connection with Nimiyaghat P.S. Case no. 87 of 2013 corresponding to G.R. No. 2045 of 2013.
16. Accordingly, this Criminal Miscellaneous Petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 1st May, 2024
Smita / AFR