

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

ON THE 16th OF MAY, 2024

MISCELLANEOUS CRIMINAL CASE No. 14908 of 2024

BETWEEN:-

1. [REDACTED]

[REDACTED]

[REDACTED]

.....APPLICANTS

(BY SHRI MANOJ TIWARI - ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH
POLICE STATION MAHILA THANA, BHOPAL
(MADHYA PRADESH)

2. [REDACTED]

.....RESPONDENTS

(STATE BY SHRI MOHAN SAUSARKAR - PUBLIC PROSECUTOR)

.....

This application coming on for admission this day, the court passed the following:

ORDER

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.388/2023 registered at Police Station Mahila Thana, Bhopal for offence under Sections 498-A, 506, 34 of IPC and under Sections 3, 4 of Dowry Prohibition Act.

2. Challenging the FIR, it is submitted by counsel for the applicants that divorce has taken place between applicant No.1 and respondent No.2 by executing an agreement at Vadodara (Gujarat) on 22/06/2022, whereas FIR has been lodged on 20/12/2023 and since the relationship of husband and wife has already come to an end between applicant No.1 and respondent No.2, then no offence under Section 498-A of IPC would be made out. It is further submitted that respondent No.2 has also filed an application under Section 11 of Hindu Marriage Act for declaration of marriage of respondent No.2 with applicant No.1 as null and void. It is further submitted that the allegations are general in nature. It is further submitted that respondent No.2 had given an undertaking that she will not take any legal recourse against the applicants but in spite of that, FIR has been lodged.

3. Considered the submissions made by counsel for the applicants.

4. Respondent No.2 has lodged the FIR on the allegations that she got married to applicant No.1 on 21/04/2022 at Vadodara (Gujarat). Her parents had given sufficient dowry as per their financial capacity and had also given cash amount of Rupees Eight Lakhs apart from household articles. In all Rupees Twenty Lakhs were spent by her

parents. She was kept properly by the applicants for five days but thereafter they started passing taunts that she has brought less dowry. Even her husband was not having physical relationship with her and whenever she enquired about his conduct, then he always replied that he has married her and that is more than sufficient. She tolerated the things under an impression that with passage of time, the things would improve and thereafter she came back to Bhopal. On 26/05/2022, her husband came to Bhopal and he assaulted her and demanded a Car as well as an amount of Rupees Ten Lakhs from respondent No.2 and her parents. Her parents tried to convince her husband and thereafter on 30/05/2022, she went back to her matrimonial house along with her husband. In her matrimonial house, applicants started harassing her by using abusive language and assaulted her on the pretext that her parents had given very less dowry and her husband would have got more dowry if he had married at somewhere else. They were insisting that she should bring an amount of Rupees Ten Lakhs and a Car from her parents, only then they would keep her properly. When she informed that her parents have no financial capacity to fulfill their demand, then on 16/06/2022, her husband started quarrelling with her on trivial issues. She was assaulted by her husband and as a result, she sustained injury on her right hand and right leg. The said incident was narrated by her to her parents. Her parents tried to convince the applicants on phone and thereafter they came to her matrimonial house and tried to convince the applicants but they did not agree. Thereafter she came back to Bhopal. In the month of May - June, 2023, her husband and father-in-law came to Bhopal in connection with counseling and after counseling when she requested her husband and father-in-law to take her back to her matrimonial house,

then she was beaten by her husband and father-in-law and they alleged that unless and until she brings an amount of Rupees Ten Lakhs and a Car, they will not take her and accordingly, she lodged a report in Police Station M.P. Nagar, Bhopal. Thereafter her husband and father-in-law went back and now they are not coming to take her back. As a result, she is residing with her parents under compulsion and therefore, FIR was lodged.

5. So far as the contention of counsel for the applicants that by an agreement, parties have separated mutually is concerned, the same cannot be relied upon.

6. The parties are not Muslim by religion, therefore there cannot be any divorce by mutual consent without approaching the Court. How the Notary could notarize such an agreement, is also a matter of concern. A Notary cannot grant divorce by executing the agreement of separation.

7. Be that whatever it may be.

8. Since the agreement of separation has no sanctity in the eye of law, therefore it cannot be said that any divorce has taken place between the parties. Even otherwise, if any divorce has taken place, still the FIR under Section 498-A of IPC can be lodged in respect of cruelty meted out to the complainant prior to the divorce but that situation has not arisen in the present case because no divorce has taken place between the parties.

9. So far as the contention of counsel for applicants that respondent No.2 had agreed that she will not take any judicial action against the applicants is concerned, the same is misconceived and is contrary to Section 28 of Contract Act.

10. Section 28 of Contract Act reads as under:-

"28. Agreements in restraint of legal proceedings, void.— Every agreement,—

- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
- (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to the extent.

Exception 1.—**Saving of contract to refer to arbitration dispute that may arise.**—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.—**Saving of contract to refer questions that have already arisen.**—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3.—**Saving of a guarantee agreement of a bank or a financial**

institution.—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation.—

(i) In *Exception 3*, the expression “bank” means—

- (a) a “banking company” as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (b) “a corresponding new bank” as defined in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (c) “State Bank of India” constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);
- (d) “a subsidiary bank” as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
- (e) “a Regional Rural Bank” established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);
- (f) “a Co-operative Bank” as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(g) “a multi-State co-operative bank” as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and

(ii) In *Exception 3*, the expression “a financial institution” means any Public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956).”

11. Thus, it is clear that any contract which prohibits a party from taking legal action is a void contract.

12. Furthermore, as per Section 41 of Specific Relief Act, no injunction can be granted thereby restraining a person from taking legal recourse.

13. So far as the application filed by respondent No.2 under Section 11 of Hindu Marriage Act is concerned, it will not have any adverse effect on the FIR in question. On the contrary it supports the allegations made by complainant in her FIR.

14. The Supreme Court in the case of **Taramani Parakh Vs. State of Madhya Pradesh and Others** reported in **(2015) 11 SCC 260** has held as under:-

“12. In *Kailash Chandra Agrawal v. State of U.P.* (2014) 16 SCC 551, it was observed (SCC p. 553, paras 8-9):

“8. 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 v. State of Punjab* (2000) 5 SCC 207 : 2000 SCC (Cri) 935 :

(2000) 3 SCR 662]it was observed (SCC p. 217, para 5):

“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 overenthusiasm 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 the absence of any specific role and material to support such role.

9. 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 v. State of Bihar*, (2000) 8 SCC 547 : 2001 SCC (Cri) 27, *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400, *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992

SC 604 and *Asmathunnisa v. State of A.P.*, (2011) 11 SCC 259 : (2011) 3 SCC (Cri) 159.”

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

“Sir, it is submitted that I was married on 18-11-2009 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 home, my husband, father-in-law and mother-in-law started harassing me for not 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 dowry.

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

15. If the FIR is read in toto along with statements of the witnesses, then it is clear that there are specific allegations against the applicants of committing cruelty on account of non-fulfillment of demand of dowry. There are specific allegations that her husband and her father-in-law had beaten the respondent No.2 on the day when the case was fixed for reconciliation in the Bhopal Court. It is also clear that mother-in-law and father-in-law were also continuously passing taunts for bringing less dowry and they were misbehaving with her by using filthy language and assaulting her.

16. No other argument is advanced by counsel for the applicants.

17. Although it was not submitted by counsel for the applicants but it is also alleged in the application that respondent No.2 was already married prior to the marriage with applicant No.1 and accordingly, applicants have filed copy of marriage certificate issued by *Vaidic Vivah Avam Sanskar Samiti, Indore*. The applicants have relied upon a private document and this Court cannot take judicial notice of the same.

Therefore, it is matter of defence which is required to be proved by the applicants by leading evidence.

18. Considering the totality of facts and circumstances of the case and in view of specific allegations made in the FIR, this Court is of considered opinion that no case is made out warranting interference.

19. Application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.