

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 23rd OF JANUARY, 2024

MISC. CRIMINAL CASE No. 26247 of 2018

BETWEEN:-

1. DHIRENDRA RATHORE @ AKASH @ AKASH S/O SHRI PAWAN KUMAR RATHORE, AGED ABOUT 25 YEARS, OCCUPATION: PVT. JOB A-378, ANAND NAGAR, BAHODAPUR (MADHYA PRADESH)
2. SMT. ANITA W/O PAWAN KUMAR RATHORE, AGED ABOUT 44 YEARS, OCCUPATION: HOUSEWIFE A 378 ANAND NAGAR BAHODAPUR GWALIOR (MADHYA PRADESH)
3. PAWAN KUMAR RATHORE S/O LT SHIR BHOGIRAM, AGED ABOUT 50 YEARS, OCCUPATION: RETIRED ARMY PERSON A 378 ANAND NAGAR BAHODAPUR GWALIOR (MADHYA PRADESH)
4. VINITA RATHORE D/O PAWAN KUMAR, AGED ABOUT 20 YEARS, OCCUPATION: STUDENT A 378 ANAND NAGAR BAHODAPUR GWALIOR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI S.K. SHRIVASTAVA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER MAHILA PADAV, (MADHYA PRADESH)
2. SMT. SANGAM RATHORE W/O DHIRENDRA RATHORE B 732 ANAND NAGAR BAHODAPUR GWALIOR (MADHYA PRADESH)

(SHRI SOHIT MISHRA - GOVERNMENT ADVOCATE FOR RESPONDENT
NO.1-STATE AND SHRI ASHISH SAXENA - ADVOCATE FOR RESPONDENT
NO.2)

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

ORDER

The present petition under Section 482 of Cr.P.C. has been preferred seeking quashment of FIR registered at crime No.34/18 for the offences under Sections 498-A and 34 of IPC at police station Mahila Thana, Padav, Gwalior as well as consequential proceedings arising out of the said FIR in the form of criminal case No.1073/2018 pending before JMFC, Gwalior.

2. The facts of the case in nutshell are that the petitioner No.1 is husband of the complainant/respondent No.2. The present FIR has been lodged on 24.03.2018 alleging that, their marriage was solemnized on 11.07.2013 and from the wedlock a son, namely, Aryan was born on 11.05.2014. It is alleged by the respondent No.2/complainant in the report that her father has spent rupees twenty one lacs in her marriage but only after one month of the marriage, the petitioners started harassing her for demand of dowry, due to which in the month of January, 2014 she filed a complaint against the petitioners and after one month thereof, the parties had entered into compromise.

3. Thereafter, the petitioners again started harassing the respondent No.2/complainant and on 02.12.2017 she was driven out of the house by the petitioners, then she went to the police station on the same date i.e.

02.12.2017 and lodged FIR bearing crime No.817/2017 but at that time she didn't make any allegation against the petitioners with regard to demand of dowry or harassment and since then she has been living in her maternal home. The respondent No.2/complainant later on lodged another FIR bearing crime No.844/2017 on 13.12.2017 against respondent No.3, who is her father-in-law for the offence under Section 354 of IPC, which was quashed by this Court holding that the allegations are after thought. It was also held that the petitioner therein/complainant could not explain the delay in filing the another FIR i.e. on 13.12.2017 nor could explain that why the allegation was not levied when there was ample opportunity and time on 02.12.2017. It was also held that the said FIR dated 02.12.2017 was glaring example of false and fictitious case filed by complainant and the whole story was full of several loop holes.

4. Learned counsel for the petitioners submitted that the petitioners are innocent persons. They have not committed any offence in any manner. The respondent No.2/complainant is wife of petitioner No.1. It is further submitted that the dispute had arisen between the husband and wife, but soon after the marriage their married life was not smooth. Both parties used to report of the dispute against each other but the allegations with regard to demand of dowry and harassment were not there in the earlier reports made by the respondent No.2, wherein compromise had taken place. As per the contents of the FIR dated 02.12.2017, the complainant was driven out of the house and on the same day she lodged a complaint regarding some quarrel with the family of the petitioners, hence case was registered against the

petitioner for the offence under Section 294, 323, 506 and 34 of IPC but no allegation with regard to demand of dowry or harassment was made in the FIR.

5. It is further submitted that against the order passed by this Court the respondent No.2/complainant preferred SLP (Criminal) No.134/2019 before the Hon'ble Apex Court, however, the same was dismissed on 14.01.2019. The respondent No.2 further filed a review petition before the Hon'ble Apex Court but the same was again dismissed vide order dated 17.07.2019.

6. It is further contended by the counsel for the petitioners that looking to the conduct of the respondent No.2/complainant and allegations which were held to be fictitious, frivolous and false and thereby the FIR was quashed, therefore, the similar analogy is to be applied while quashing the FIR dated 24.03.2018. It is further submitted that the respondent No.2 could not point out the delay in lodging the FIR so also when the complainant herself approached the police station on 02.12.2017 and 12.12.2017 no allegation of demand of dowry or harassment were made, therefore, the present FIR Annexure A-1 dated 24.03.2018 is nothing but after thought and no justifiable reason was given by the respondent No.2/complainant for the delay in lodging the FIR dated 24.03.2018, therefore, the same deserves to be quashed.

7. In support of his arguments, learned counsel for the petitioner placed reliance in the matter of Nitin Kumar Shahi & Ors. Vs. Smt. Neetu Shahi passed by this Court in M.Cr.C. No.49717/2019 vide order dated 28.11.2023.

8. *Per contra*, learned Govt. Advocate for the State as well as counsel for respondent No.2/complainant opposed the prayer and submits that it can be a case of false FIR; however, to prove his respective innocence, trial is necessary. Thus, prayed for dismissal of the petition.

9. Heard counsel for the parties and perused the record.

10. The Hon'ble Supreme Court in the case of State of *Haryana Vs. Bhajan Lal as reported in 1992 Supp.(1) SCC 34* has framed guidelines for exercise of power under Section 482 of Cr.P.C. for quashment of criminal proceedings. The same are as under:-

“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 channelized and inflexible guidelines or rigid formulate 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 concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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.”

11. Further in the matter of *Mohd. Akram Siddiqui v. State of Bihar* reported in *(2019) 13 SCC 350* Hon'ble Apex Court had held as under:-

“5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.”

12. In the matter of *Mahmood Ali & Ors. Vs. State of Uttar Pradesh &*

Ors. passed in Criminal Appeal No. 2341 of 2023 arising out of S.L.P. (Criminal) No. 12459 of 2022 dated 08.12.2023, the Apex Court had held as under:-

12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged

13. Applying the aforesaid edicts to the case in hand, this Court finds certain glaring inconsistencies and discrepancies, though the respondent No.2/complainant had alleged that only after one month of the marriage, the petitioners started harassing her for demand of dowry but not a single incident of harassment by the petitioners has been mentioned therein and thereafter, when she went to the police station on the date of alleged incident i.e. 02.12.2017 and lodged FIR bearing crime No.817/2017, at that time also she didn't make any allegation against the petitioners with regard to demand of dowry or harassment. Later on, another FIR bearing crime No.844/2017 was lodged on 13.12.2017 against respondent No.3 i.e. father-in-law of the complainant for the offence under Section 354 of IPC, which was quashed

by this Court holding that the allegations are after thought, thus, it can be said that the complainant had decided to proceed against the petitioners with an ulterior motive for wrecking personal vengeance, therefore, it would not be just enough to look into the averments made in the FIR alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not and in such matters the Court owes a duty to look into may other attending circumstances emerging from the record of the case over and above the averments and with due care and circumspection should try to read between the lines and this Court while exercising jurisdiction under Section 482 of Cr.P.C. need not restrict itself only to the stage of a case but is empowered to take into account overall circumstances of the case leading to registration of the case. As in the present case multiple FIRs had been lodged over a period of time, in the background of such circumstances, the registration of FIRs assumes importance, thereby issue of wrecking vengeance of private or personal grudge cannot be ruled out.

14. Thus, in totality of facts and circumstances, this Court is of the considered opinion that the allegations leveled by the respondent No.2/complainant against the present petitioners, appears to be falls squarely in the categories (7) and set out in case of State of *Haryana v. Bhajan Lal (Supra)* and in *Mohd. Akram Siddiqui v. State of Bihar (Supra)*, and therefore, permitting the criminal process to go against the present petitioners in such a situation which would result in clear and patent injustice, thus, it is a fit case to exercise inherent powers under Section 482 of Cr.P.C. and to quash the impugned F.I.R. as well as the charge-sheet and

other subsequent proceedings initiated against the petitioners arising out of same crime and accordingly, they are hereby quashed so far as petitioners are concerned.

15. Accordingly, the present petition is allowed and disposed of in above terms.

(MILIND RAMESH PHADKE)
JUDGE

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