

MCRC-2112-2015

(SHRIKANT TAMRAKAR Vs THE STATE OF MADHYA PRADESH)

10-12-2015

HIGH COURT OF MADHYA PRADESH : AT JABALPUR
Miscellaneous Criminal Case No.2112/2015

Shrikant Tamrakar and others

Vs.

State of Madhya Pradesh and another

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Present:- Hon'ble Shri Justice C.V. Sirpurkar

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Dr Anuvad Shrivastava, counsel for the applicant.
Shri Amit Pandey, Panel Lawyer for the respondent/State.

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ORDER
(10-12-2015)

1. This miscellaneous criminal case has been instituted on an application under section 482 of the Code of Criminal Procedure filed on behalf of applicants/accused persons in Crime No.32/2015 registered by P.S. City Kotwali, Chhindwara, under section 498-A read with section 34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act, 1961.

2. The facts giving rise to this miscellaneous criminal case may briefly be stated thus: Complainant Harshna Paigwar filed a written report with the police to the effect that she was married to applicant/accused No.1 Shrikant Paigwar/Tamrakar by Hindu Rites in a Group Marriage Ceremony under the Chief Minister's Scheme at Chhindwara, on 06-06-2014. In the marriage, her mother spent about Rs.4,00,000/- and gave gold and silver ornaments and household items to the complainant. In addition thereto, she had also given Rs.2,00,000/- in cash and clothes at the time of engagement ceremony. Applicants/accused Sudama Prasad Tamrakar is father, Amarlal Tamrakar is father's brother-in-law, Uma Tamrakar is father's sister, Anoop Tamrakar is

brother-in-law, Eshwari Tamrakar is sister, Sachin Chandravanshi is brother-in-law and Jaishri Chandravanshi is sister of applicant No.1 Shrikant Tamrakar. Applicant No.9 Krishna Tamrakar is not in relation with applicant No.1 Shrikant Tamrakar. When the complainant went to matrimonial home at Chhindwara, from her maternal home at Chichli, Gadarwara, her two sisters-in-law Eshwari and Jaishri and their husbands Anoop and Sachin as also her father-in-law's sister Uma and her husband Amarlal Tamrakar as well as Krishna Tamrakar started saying that her mother had given nothing in dowry. She ought to have given at least Rs.5,00,000/-. Krishna Tamrakar said that at Chhindwara people even spent 10,00,000/- in marriages. The aforesaid relatives of her husband started taunting and mentally harassing her. Sudama, her father-in-law also mentally harassed her for dowry. Her husband Shrikant called his friends, to consume liquor in her matrimonial home. Shrikant told the complainant to do everything she does with him, with his friends as well. Her husband and father-in-law pressurized her to ask her mother on telephone to give a shop in dowry. Her husband and her father-in-law also forcibly administered intoxicating tablets and on one occasion, an injection to her. Once her husband and father-in-law tried to pour kerosene on her; whereon she ran away to her neighbours' place and called her mother on telephone. Thereafter her mother came and took her to her maternal home. Her husband and father-in-law say that they would take her to her maternal home only after her mother would make arrangement for more dowry. The FIR was lodged on 14-01-2015. After investigation,

charge-sheet was filed in the Court on 26-09-2015.

3. The applicants have prayed for quashing the first information report and the proceedings arising therefrom on the ground that applicant No.1 Shrikant married complainant Harshna in Group Marriage Ceremony under the Chief Minister's Scheme. The family of applicant Shrikant lived below poverty line. The complainant lived at her matrimonial home with applicant Shrikant only after a brief period of 10-12 days. Thereafter, her mother took her to her matrimonial home leveling false allegations against applicant Shrikant and other family members. Since, the complainant refused to live with applicant No.1 Shrikant, he served a notice dated 25-08-2014 upon her through his advocate by registered post but the complainant did not pay any heed to the aforesaid notice. Consequently applicant No.1 Shrikant Tamrakar filed an application under section 9 of the Hindu Marriage Act in the Court of Principal Judge, Family Court, Chhindwara on 18-11-2014, for restitution of conjugal rights which has been registered as Hindu Marriage Petition No.418/2014. As a counter blast to the said application, the complainant filed present first information report on 15-01-2015, wherein false allegations have been leveled not only against applicant Shrikant and father Sudama Prasad but also against Krishna Tamrakar, who is not related to applicant Shrikant as also other relatives, who lived in other towns separate from applicant Shrikant on omnibus allegations. Therefore, it has been prayed that the first information report and the criminal proceedings arising therefrom be quashed.

4. A notice was directed to be issued against the complainant (respondent No.2 Harshna); however, a perusal of the Court order dated 06-08-2015 reveals that no one had appeared on behalf of the respondent No.2 even after due service upon her. Thus, complainant was not represented before the Court at the time of arguments.

5. On due consideration of the contentions of learned counsel for the applicants and respondent No.1/State as also after perusal of the case diary, this Court is of the view that this application under section 482 of the Code of Criminal Procedure must succeed in part.

6. It is admitted that charge sheet in the matter has been filed. However, it has been held by the Apex Court in the case of **Satish Mehra Vs. State (NCT of Delhi) and another, AIR 2013 SC 506** that the power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as the case may be, *prima facie* do not disclose a triable offence, there can be no reason as to why the accused should be made to suffer the agony of legal proceeding. Thus, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of charge against the accused. Thus, the High Court can certainly exercise power under section 482 of the Code of Criminal Procedure after filing of the charge sheet or even after framing of charge.

7. It has also been held by the Supreme Court in the case of **Harshendra Kumar D. Vs. Rebatilata Koley AIR 2011 SC**

1090 that uncontroverted documents or material of unimpeachable or sterling character may be considered while exercising jurisdiction under section 482 of the Code of Criminal Procedure. The same view has been taken by the Supreme Court in the cases of **State of Orissa vs. Devendra Nath Padhi, 2005(1) SCC 568, Rukmani vs. Vijaya, AIR 2009 SC 1013 and Rajiv Thapar vs. Madan Lal Kapoor, AIR 2013 SC (supp.) 1056.**

8. Reverting back to the facts and circumstances of the case at hand, it is found that there is nothing on record to suggest that applicant Krishna Tamrakar (accused No.7) is, in any manner related to husband Shrikant Paigwar. Thus, the observation alleged to have been made by him that some people at Chhindwara spent even Rs.10,00,000/- in marriage, is inconsequential and does not make him liable to be implicated in a case under section 498-A of the Indian Penal Code.

9. So far as accused persons other than Shrikant, Sudama and Krishna are concerned, Amarlal Tamrakar is brother-in-law of Sudama Prasad. Uma Tamrakar is Amarlal's wife and Sudama Prasad's sister. Anoop Kumar is Eshwari's husband and Shrikant's brother-in-law. Likewise, Sachin is husband of Jaishri and brother-in-law of Shrikant. Eshwari and Jaishri are married sisters of Shrikant. Sister Eshwari and her husband Anoop Jasathi lived at Cheechli, Tahsil Gadarwara, District Narsinghpur. Other sister Jaishri and her husband Sachin lived at House No.43 Patwari Colony, Khargaon. Sudama's sister Uma Tamrakar and her husband Amarlal lived at Bhairoganj Seoni. Krishna Tamrakar lived separately from

Shrikant and his father Sudama, at Chhota Talab, Chhindwara. Only Shrikant and his father lived together at 23 Nice Chowk Chhindwara. Aforesaid addresses of the applicants have been recorded after investigation, in the charge sheet. Thus, it is admitted position that apart from Shrikant and Sudama no one else has ever resided with the complainant in the same house at Chhindwara.

10. In the first information report, which was recorded on the basis of a written report, specific allegations have been made against husband Shrikant and his father Sudama Prasad regarding harassment and cruelty for dowry; however, the allegations against the remaining applicants are omnibus in nature and no time and date of the incidents have been given. Moreover, in her statement recorded under section 161 of the Code of Criminal Procedure on 25-01-2015, complainant Harshna has simply stated at the end, probably by way of after-thought that other accused persons had said that more money ought to have been given in the marriage and applicants could deserved a better girl. In the end, a general statement was made that all persons had beaten her for dowry. However, no specific role in this regard has been ascribed to any of them nor time and date of the assault has been given. In any case, complainant is said to have stayed in her matrimonial home for not more than 10 or 12 days.

11. It may be noted in this regard that the Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar, 2014(8) SCC 273**, observed that:

â€œ4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a

woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.

12. It has been observed by the Supreme Court in **Preeti Gupta v. State of Jharkhand , AIR 2010 SC 3363** that:

“The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

“When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the

appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants.

13. Likewise, in the case of **Neelu Chopra & anr. v. Bharti, AIR 2009 SC(Supp) 2950**, Supreme Court held as follows:

It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.

14. A three judge bench of Supreme Court in the case of **Kans Raj vs. State of Punjab, AIR 2000 SC 2324** observed that:

For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusation are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. 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 over enthusiasm 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.*â□□

15. It may be seen from the aforesaid judgments that the Supreme Court has expressed its concern with regard to false implication of husband and his relatives in the cases under section 498-A of the Indian Penal Code by disgruntled wives. It has also been held that the tendency of falsely implicating even those relatives of husband, who lived separately and in different cities is also growing. It has been held that if there are no specific and credible allegations against, with necessary particulars against the relatives of the husband, they should not be made to suffer the ignominy of a criminal trial.

16. In the instant case, as we have already seen that there are specific allegations against husband Shrikant and his father Sudama Prasad who lived together in the matrimonial home of the complainant along with her. Thus, the power under section 482 of the Code of Criminal Procedure cannot be used to stifle their prosecution. However, so far as remaining applicants/accused persons are concerned, none of them lived together with the husband and father-in-law in the matrimonial home of the complainant. Moreover, there are no specific and credible allegations with necessary particulars,

against them. Only omnibus allegations shorn of even basic details, have been leveled; therefore, in the opinion of this Court, they should not be made to undergo the rigmarole of a criminal trial. Allowing trial to proceed against the aforesaid relatives would be travesty of justice and abuse of process of law. As such, exercise of extra-ordinary powers of the High Court reserved under section 482 of the Code of Criminal Procedure, is called for.

17. Consequently, this application under section 482 of the Code of Criminal Procedure is **allowed in part.**

18. The first information report registered by P.S. City Kotwali, Chhindwara, in Crime No.32/2015 under section 498-A read with section 34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act and the criminal proceedings arising therefrom pending in the Court of Judicial Magistrate First Class, Chhindwara, so far as they relate to applicants Eshwari, Anoop, Jaishri, Sachin, Uma, Amarlal and Krishna are quashed. The trial arising from aforesaid first information report against husband Shrikant and father-in-law Sudama Prasad, shall continue in accordance with law.

(C V SIRPURKAR)
JUDGE