

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

**BEFORE**

**HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

**ON THE 15<sup>th</sup> OF JUNE, 2023**

**MISC.CRIMINAL CASE No.41764 of 2022**

**Between:-**

- 1. SHUBHAM S/O SANJAY LEWARKAR, AGED ABOUT 27 YEARS, OCCUPATION-SERVICE (AADHAAR NO. 813779405855).**
- 2. SANJAY S/O HIRAMAN LEWARKAR, OTHERS AGED ABOUT 55 YEARS, OCCUPAION-SERVICE (AADHAAR NO.710182266579).**
- 3. SMT. PRAJAKTA W/O SANJAY LEWARKAR, AGED ABOUT 48 YEARS, OCCUPATION HOUSEHOLD (AADHAAR NO.7640554552298)**

**ALL PERMANENT RESIDENT OF PLOT NO.9A/1, NEAR MOURYA SABHAGRUH, PARVATI NAGAR, NAGPUR-440 027, AJNI, NAGPUR.**

**.....APPLICANTS**

***(BY SHRI SACHIN R.GUPTA - ADVOCATE)***

**AND**

- 1. THE STATE OF M.P. THROUGH P.S. LALBAGH, BURHANPUR, MADHYA PRADESH.**
- 2. SMT. BHAGYASHREE SHUBHAM LEWARKAR PRIOR TO MARRIGE KNOWN AS BHAGYASHREE RAVINDRA PAWAR, AGED ABOUT 25 YEARS, OCCUPATION SERVICE R/O C/O RAVINDRA PAWAR WARD NO.40, HOUSE NO.148/1, LAXMI NAGAR, GURUNANAK WARD, BURHANPUR-450 331.**

**.....RESPONDENTS**

***(BY SHRI SATYAPAL CHADAR – GOVT. ADVOCATE FOR***

**RESPONDENT NO.1 AND SHRI AMIT DUBEY –  
ADVOCATE FOR RESPONDENT NO.2)**

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RESERVED ON : 10.05.2023

PRONOUNCED ON : 15.06.2023

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*This misc.criminal case coming on for admission this day, **Hon'ble Shri Justice Dinesh Kumar Paliwal**, passed the following:*

**ORDER**

This petition under Section 482 of Cr.P.C. has been filed for quashment of F.I.R.No.420/2022 dated 25.07.2022 registered at P.S.-Lalbag, Burhanpur against the applicants for commission of offence under Section 498-A, 294, 323, 506 of IPC and Section 3 & 4 of Dowry Prohibition Act, 1961.

2. The facts giving rise to this petition are that on 25.07.2022 respondent No.2/wife who was married with applicant No.1/husband on 21.11.2021 filed an application in writing before police Lalbag alleging that her marriage was solemnized with applicant No.1 as per Hindu tradition and rites. On the next date of marriage i.e 22.11.2021, her husband's grand father left for heavenly abode, therefore, applicants started torturing her by saying that she has brought misfortune to their house. They also started torturing her for not bringing sufficient dowry and asked her to bring Rs.5 lakhs from her parents towards dowry. They also started to beat her. Applicants No.2 and 3 father-in-law and mother-in-law use to abate / instigate their son applicant No.1 against respondent No.2 and on account of abatement/incitement, applicant No.1/husband use to torture and beat respondent No.2/wife.

3. After sometime, applicant No.1/husband took her to Gujrat. There also he harassed her. After some days, they returned to Nagpur. She

narrated the entire incident to her parents on phone and called her brother Prashant to Nagpur and left her matrimonial home on 16.06.2022 and reached to her parental home at Laxminagar, Burhanpur. She had narrated the entire incident to her parents, brother and other relatives. On 23.07.2022, applicant No.1/ husband and applicant No.2/father-in-law came to Burhanpur and outside One Stop Center, her father-in-law told that unless they fulfill the demand of Rs.5 Lakh, they will not fetch respondent No.2 to the matrimonial home. When she asked her husband that her father does not have so much amount to give as dowry, applicant No.1/husband abused and slapped her and told that if she attempted to come back to matrimonial home without bringing Rs.5 lakhs, he will eliminate her. On the basis of the complaint filed in writing, F.I.R was registered and matter is still under investigation.

4. Learned counsel for the applicants submitted that marriage of applicant No.1 and respondent No.2 was solemnized on 21.11.2021 without any dowry i.e only 8 months ago before filing of the complaint. The F.I.R. No.420/22 does not disclose any specific role of the applicants about any ill-treatment, misbehaviour or demand of dowry from respondent No.2. In the F.I.R, no specific date, time and incident has been mentioned to prove the act of harassment or torture amounting to cruelty with respondent No.2/wife. After marriage, respondent No.2 did not live even for a period of 30 days with the applicant No.1. Respondent No.2 is not a woman of good nature as she is quarrelsome. She use to quarrel with applicant No.1/husband over trivial issues due to which applicant No.1 find it difficult to concentrate on his work. Ultimately, he resigned from the job. At the time of marriage, the horoscope was not matched but even then the marriage was performed. In marriage, the expenses incurred towards various functions were borne by both the parties. Applicants had neither demanded any dowry nor harassed,

torture or subjected to cruelty to respondent No.2 in connection with demand of dowry. Infact, it is the misbehaviour and short tempered nature of respondent No.2 which has caused all the problems. She is in habit of frequently leaving for maternal home. She is high headed and is in habit of disturbing peace of applicant No.1. Respondent No.2 herself does not want to live in matrimonial home with applicant No.1. It is further submitted that on 22.02.2022, applicant No.1 lost his grand mother but respondent No.2 even having knowledge of the same did not get ready to go to Nagpur to attend her last rites. Respondent No.2 is a quarrelsome lady and her behaviour is unbearable. She is short tempered and often behaves violently. It is further submitted that as F.I.R does not disclose any specific role of the applicants about causing harassment, torture or cruelty in connection with demand of dowry as required under section 498-A of IPC, no offence is made out. To buttress his argument, learned counsel for the applicant has placed reliance on the case of ***Kahkashan Kausar @ Sonam Vs. State of Bihar-(2022) 6 SCC 599*** and has prayed that F.I.R. No.420/22 dated 25.07.2022 registered in P.S. Lalbagh Burhanpur and the consequential proceedings, if any, be quashed.

5. *Per contra*, learned counsel for respondent No.1/State as well as learned counsel for respondent No.2/complainant have opposed the prayer for quashment of the F.I.R. It is submitted that matter is still under investigation as no charge sheet has been filed against the applicants so far. Investigation should be allowed to continue so that truth may be collected through investigation. It is further submitted that the matter is at the stage of investigation, therefore, it would not be justified for this court to make any interference in the investigation by quashing the F.I.R.

6. I have heard learned counsel for the parties and perused the record.

7. On perusal of the F.I.R and other material on record, it is apparent

that marriage between applicant No.1 and respondent No.2 was solemnized only 08 months before lodging the F.I.R. At the time of marriage, gold ornaments and other articles were given. It is further alleged that few days after marriage, applicants asked respondent No.2 to bring Rs.5 lakh as dowry from her father. As Rs.5 lakhs could not be arranged, she was subjected to crusty both mentally and physically. In the F.I.R specific time, date and incident has been mentioned. On 23.07.2022, applicant No.1 abused and slapped respondent No.2. In medical examination abrasion has been found on the cheek of respondent No.2. As per allegations they told her that she can return to matrimonial home only if she brings Rs.5,00,000/- dowry. On perusal of the case diary, it is apparent that investigation is still under way and charge sheet has not been filed. In the investigation conducted so far sufficient incriminating material has been collected against the applicants and F.I.R itself discloses offences under section 498-A, 323 and 506 of IPC and section 3 & 4 of Dowry Prohibition Act. As charge sheet has not been filed, it would not be proper to quash the proceedings invoking the provision of section 482 of Cr.P.C. So far as the case of ***Kahkashan Kausar (supra)*** is concerned, the Hon'ble Apex court in para-17 observed as under :-

“17. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the

relatives and in-laws of the husband when no prima facie case is made out against them.”

In that case the Hon’ble Apex Court after examining the allegations leveled against the appellants came to the conclusion that the allegations made against them being general and omnibus did not warrant prosecution.

8. In the case of of State of *Haryana Vs. Ch. Bhajanlal-(1992) Supp(1) SCC 335*, in para-7 the Hon’ble Apex Court identified following cases in which F.I.R/ complaint can be quashed :-

"(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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

9. On perusal of the material available in the case diary and also from the averments made in the F.I.R, it is clear that specific case has been disclosed against the applicants and no veiled object appears implicating the applicants falsely. On perusal of the contents of the F.I.R, it is apparent that specific overt acts are alleged against all the applicants. Even otherwise when investigation is still under way, it cannot be said that mere casual references of the names of the applicants in matrimonial dispute without allegations of active involvement have been made. It is settled preposition of law that powers under Section 482 of Cr.P.C is very wide but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court. In *Niharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others- 2021 SCC Online SC 315*, the Hon'ble Apex Court has clarified that when a prayer for quashment of the F.I.R is made by the alleged accused and the court when it exercises powers under Section 482 of Cr.P.C., only has to consider whether the allegations in the F.I.R disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable

offence and the court has to permit the investigating agency/ police to investigate the allegations in the F.I.R.

10. In the case of ***Ramesh Singh Bhadauria Vs. State of M.P. & ors. 2020 SCC OnLine MP 887***, the Division Bench of this Court has examined the matter in detail and placing reliance on the decision of Hon'ble the Apex Court in the case of ***Amit Kapoor Vs. Ramesh Chander- (2012)9 SCC 460*** has held as under:

"10. As per the provision of law which flows from the judgment in Amit Kapoor (supra), it is clear that at the stage, at which the present case is, the court should not examine the facts, evidence and material on record to determine whether there is sufficient material, which may end in a conviction. The court is only concerned with the allegations taken as a whole whether they will constitute an offence. Similarly, under section 482 Cr.P.C the court cannot take into consideration external materials given by an accused for arriving to a conclusion that no offence was disclosed or there was possibility of his acquittal. Whether mens rea behind the PC Act of forgery is present or not cannot be decided at this early stage and is best to be left to be adjudicated by the Trial Court after marshalling of evidence."

11. Hon'ble the Apex Court in the case of ***Teeja Devi Vs. State of Rajasthan (2014)15 SCC 221*** has held as under:

"We have no hesitation in holding that in the facts of the case, the High Court was not justified in interfering with the Police investigation and quashing the FIR. This is not at all a rare case. Without thorough investigation, it is not possible or proper to hold whether allegations made by the complainant are true or not. Hence the investigation should have been allowed to continue so that on filing of the report under Section 173 CrPC the affected party could pursue its remedy against the report in accordance with law. Keeping in view the fact that the criminal case was at the

stage of investigation by the Police the High Court was not justified in holding that the investigation of the impugned FIR is totally unwarranted and that the same would amount to gross abuse of the process of court."

12. The case of *Kahkashan Kausar (supra)* has no application as in that case allegations were made not only against the husband but the relatives of the husband also and allegations were omnibus and general in nature. While in the case on hand, specific allegations have been made against the husband, mother-in-law and father-in-law of respondent No.2.

13. In this case, it has been contended by learned counsel for the applicants that applicants have been falsely implicated on the basis of complaint made by them against respondent No.2 as she is of quarrelsome nature. Their defence cannot be considered in this petition when investigation is yet to be completed by the police. At this preliminary stage, it cannot be concluded that the allegations made by respondent No.2 in the F.I.R have a truth of ring or not or whether ingredients of the offences alleged are made out or not. It is pertinent to mention that F.I.R. has been lodged only within 08 months of marriage and no newly married wife would like to ruin her matrimonial home until and unless she is harassed or subjected to cruelty in connection with demand of dowry. Therefore, at this stage, it cannot be said that allegations made are false or baseless. The defence cannot be looked into by this court at the initial stage of criminal proceedings. It is also settled position of law that under section 482 of Cr.P.C., this court cannot embark upon appreciation of evidence while considering the petition filed under Section 482 of Cr.P.C for quashment of F.I.R.

14. In the aforesaid backdrop and in ultimate analysis, I am of the view that prayer for quashment of F.I.R.No.420/2022 dated 25.07.2022 registered at P.S.-Lalbag, Burhanpur against the applicants for

commission of offence under Section 498-A, 294, 323, 506 of IPC and Section 3 & 4 of Dowry Prohibition Act, 1961, is liable to be rejected. Consequently, this petition being devoid of merit, is hereby **dismissed**.

**(DINESH KUMAR PALIWAL)**  
**JUDGE**

MKL