

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF MARCH, 2024

MISC. CRIMINAL CASE No. 6308 of 2022

BETWEEN:-

1.

2.

3.

.....PETITIONERS

(BY SHRI TRILOK CHAND JAIN – ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE
STATION VIJAL (MADHYA PRADESH)**

2.

.....RESPONDENTS

*(BY MS. NISHA JAISWAL- G.A./P.L. FOR RESPONDENT NO.1/STATE
AND SHRI RISHIRAJ TRIVEDI – ADVOCATE FOR RESPONDENT NO.2)*

CRIMINAL REVISION No. 3272 of 2022

BETWEEN:-

1.

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3.

.....PETITIONERS

(BY SHRI TRILOK CHAND JAIN – ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION VIJAY NAGAR, DISTRICT
INDORE (MADHYA PRADESH)

2.

.....RESPONDENTS

*(BY MS. NISHA JAISWAL – G.A./P.L. FOR RESPONDENT NO.1/STATE
AND SHRI RISHIRAJ TRIVEDI - ADVOCATE FOR RESPONDENT NO.2)*

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These petitions coming on for admission this day, the court passed the following:

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition (M.Cr.C. No.6308 of 2022) has been filed by the petitioners under Section 482 of Cr.P.C., for quashing the FIR lodged at Crime No.999 of 2018 registered at Police Station – Vijay Nagar, Indore under Sections 498A, 323, 506, 34, 325 and 313 of IPC and also the subsequent proceedings which are pending in S.T. No.578 of 2019 in the Court of 16th Additional Sessions Judge, Indore.
- 3] Since charges have already been framed in the aforesaid case, the petitioners, by way of extra precaution, have also filed a separate Criminal Revision No.3272 of 2022 against the framing of charges dated 18.07.2022 and 04.08.2022 under Sections 498A and 313 of IPC against all the petitioners, and additional charges against petitioner No.1 under Sections 323, 325 and 506 of IPC and since the facts are identical, the aforesaid criminal revision is also being disposed of vide this order.
- 4] The case of the petitioners is that the petitioner No.1 Anshul Gupta's marriage was solemnized with the respondent No.2 Smt. Purnima on 23.04.2000, whereas the petitioner Nos.2 and 3 are the octogenarian father and mother of the petitioner No.1. Out of this marriage, the petitioner No.1 and the respondent No.2 also have a daughter, who is now aged 20 years, presently residing with the petitioners only. It is also an admitted fact that there was

matrimonial dispute between the parties after some years of the marriage and re scores of proceedings were filed by the petitioners and the respondent No.2 against each other which are as under:-

“(i) HMA No.1715/2018 Divorce petition by the petitioner No.1 (No.1) under H.M.A. (Oct.2018); **dismissed on 01.02.2023.**

(ii) MJC No.513/20 Respondent No.2 filed under Section 125 Cr.P.C.; **dismissed on 01.02.2023.**

(iii) HMA No.627/2020 Respondent No.2 filed petition under Section 9 H.M.A.; **dismissed on 01.02.2023.**

(iv) UNCR No.7301 of 2019 the respondent No.2 filed complaint under Section 12 of the Domestic Violence Act, 2005 before JMFC Indore; **dismissed on 17.02.2023.**

(v) Application under Section 13 B of HMA for decree of divorce on the basis of compromise in Family Court HMA No.187/2023; **divorce decree awarded on 02.02.2023.**”

and thus, finally the dispute was settled between the parties after the application under Section 13B of the Hindu Marriage Act, 1955 was decreed on 02.02.2023, and a decree of divorce by mutual consent was obtained after the settlement was arrived at between the parties in which it was clearly stipulated in paras 15 and 16 of the application that the respondent No.2 would get a sum of Rs.50 lakhs and she would also ensure that each and every case, which is lodged by her in any Court of India shall be withdrawn. Decree of divorce has also been filed on record.

5] After the aforesaid decree was passed, since the present case i.e. at Crime No.999 of 2018 was also pending in which the charge-sheet was filed in the month of December 2018, as no application

for compounding or quashment of the same was filed by the respondent no.2, the present petition has been filed. Thus, the grievance of the petitioners is that after the aforesaid decree was passed and the respondent No.2 received a sum of Rs.50 lakhs, she refused to withdraw the present case, which was lodged at Crime No.999 of 2018 under Sections 498A, 323, 506, 34, 325 and 313 of IPC.

6] Counsel for the petitioners has submitted that the aforesaid case was also lodged by the respondent no.2 only to harass the petitioners as even on perusal of the entire charge-sheet, it can be discerned that in the FIR itself there is no allegations of demand of dowry, and although it was alleged that the petitioners have aborted the pregnancy of respondent No.2, but no material was produced even at the time when the charge-sheet was filed, but along with the supplementary charge-sheet, a report from Bombay Hospital, Indore dated 03.01.2009 was produced in support of the allegation of the respondent No.2 that her pregnancy was aborted by the petitioners.

7] Shri T. C. Jain, learned counsel for the petitioners has also drawn the attention of this Court to the photograph, which has been captured in the CCTV of the petitioners' house in which the respondent No.2 herself can be seen trying to strangle herself with her *dupatta* and this has been filed along with charge-sheet. It is also submitted that the certificate regarding Medical Termination of Pregnancy (MTP) of the respondent No.2 dated 05.08.2020, has been filed along with the supplementary charge-sheet in which it is certified by the Bombay Hospital, Indore that the respondent No.2's

Medical Termination of Pregnancy was performed on 03.01.2009 i.e. 11 years ago. It is submitted that by no stretch of imagination, it can be said that the aforesaid MTP can be termed as illegal abortion of the respondent No.2 by the petitioners. Thus, it is submitted that petitions be allowed and the charges framed against the petitioners be quashed.

8] Counsel for the petitioners has also relied upon a decision rendered by this Court in the case of **Raghvendra Kumar Vs. The State of M.P. and Anr.** passed in **Criminal Revision No.3036 of 2023 dated 26.10.2023 to substantiate that the stale claims are liable to be rejected.** Petitioners have also relied upon a decision rendered by the Supreme Court in the case of **Abhishek Vs. State of Madhya Pradesh** passed in **Criminal Appeal No.1457 of 2015 dated 31.08.2023.**

9] On the other hand, the petition is opposed by the counsel for the respondent No.2 wife and it is submitted that no case for interference is made out as despite the fact that the respondent No.2 had agreed to withdraw all the cases, Section 313 of IPC could not have been withdrawn by her as it is a non-compoundable offence and thus, the respondent No.2 is justified in her action in prosecuting the petitioners in the present case, despite the fact that she had agreed to withdraw all the other cases.

10] Counsel for the State has opposed the prayer.

11] Heard counsel for the parties and perused the record.

12] From the record, it is found that the undisputed facts of the case are that the petitioner No.1 and respondent No.2's daughter,

who is around 18 to 20 years old, is presently residing with the petitioners. Petitioner Nos.2 and 3 are the octogenarian as both are aged 82 and 80 years (in the year 2022). It is also found that the respondent No.2 has already received a sum of Rs.50 lakhs pursuant to the decree of divorce arrived at between the parties by mutual consent on 02.02.2023, and despite the specific undertaking given in the agreement, which is also a part of the decree, the respondent no.2 has not made any efforts to get the criminal case arising out of Crime No.999 of 2018 quashed or even to support the present petition filed for the quashment of the same and on the contrary, it is being opposed.

13] At this juncture, it would be apt to refer to para 16 of the agreement between the parties, which reads as under:-

“यह कि प्रथम पक्ष व द्वितीय पक्ष ने आज दिनांक तक भारतवर्ष के किसी भी न्यायालय में एक दूसरे के विरुद्ध जो भी प्रकरण लगाए हैं अथवा उनके परिवार के किसी भी सदस्य द्वारा न्यायालय में प्रकरण प्रस्तुत किये हैं अथवा पुलिस रिपोर्ट की गयी है तो वह अपने स्तर पर इस प्रकरण के प्रभाव से शून्य होकर निष्प्रभावी हो जावेगी तथा तत्काल प्रभाव से समाप्त माने जायेंगे। उभय पक्ष उन सभी प्रकरणों की समाप्ति के लिए यथोचित कार्यवाही करने के लिए प्रतिबद्ध हैं। इसी प्रकार उभय पक्ष ने किसी भी पुलिस थाने में आज दिनांक तक जो भी आवेदन प्रस्तुत किये गये हैं, उन्हें निरस्त माना जावे एवं उभय पक्ष उनकी समाप्ति के लिए आवश्यक कार्यवाही करने हेतु प्रतिबद्ध हैं। प्रार्थी क्रं. २ के पिता श्री आर.पी. गुप्ता द्वारा निजी परिवाद JMFC इंदौर के समक्ष प्रस्तुत किया है जो प्र.क्र. 5179/19 को विद्वा कर लेंगे। ”

14] It is true that a case under Section 313 of IPC is a non-compoundable offence. However, considering the fact that the

respondent No.2 got her Medical Termination of Pregnancy way back in the year 2009, it is difficult for this Court to perceive that the aforesaid termination of pregnancy through legal procedure, from a reputed hospital can be stretched to the extent to wrap it as an offence of causing miscarriage without the respondent No.2's consent falling under Section 313 of IPC and that too after a period of around 12 years.

15] Admittedly, apart from the aforesaid certificate of MTP issued by Bombay Hospital, Indore there is nothing on record to support the allegation of offence u/s.313. It is also found that if the prosecution was of the opinion that the aforesaid procedure of medical termination of pregnancy was performed without the consent of the respondent No.2, in that case the Hospital was equally liable for that, but the Hospital is not an accused and even in the certificate issued by the Hospital, it has been mentioned that apart from the aforesaid certificate, there is no other supporting documents available regarding the aforesaid case due to lapse of time. In such circumstances, this Court is of the considered opinion that even if the documents filed along with the charge sheet are accepted to be true, the charge under Section 313 of IPC is not at all made out and appears to have been added with the mala fide intentions of harassing the petitioners.

16] So far as the other offences u/ss. 498A, 323, 506, 34, 325 of IPC are concerned, it is found that omnibus allegations have been made by the complainant and further considering the fact a decree of divorce by mutual consent has already been passed between the

parties, the respondent no.2 was bound to withdraw the same but she deliberately, with ulterior motives refused to withdraw even that part of the charge-sheet. Thus, the conduct of the respondent no.2 in continuing with the criminal case against the petitioners despite entering into a compromise with the petitioner no.1, and accepting Rs.50 Lakhs *in lieu* thereof, clearly amounts to misuse of the process of the court.

17] The Supreme Court in the case of **Mohd. Shamim and others Vs. Nahid Begum and another** reported as AIR 2005 SC 757 has held as under:-

“15. This Court in *Ruchi Agarwal v. Amit Kumar Agrawal* [(2005) 3 SCC 299 : (2004) 8 Supreme 525] in almost a similar situation has quashed a criminal proceeding against the husband, stating : (SCC pp. 301-02, paras 8-9)

“8. ... Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.

9. In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue.”

16. In view of the conduct of the first respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the appellants, in our opinion, in this case also, would be an abuse of the process of the court.....”

(Emphasis Supplied)

18] This court, in the case of **Raghvendra Kumar (supra), has** observed as under:-

“21. This court is of the considered opinion that the process of the court cannot be used to settle the personal scores of the private parties. The present case is apparently an offshoot of a matrimonial dispute, and the complainant wife cannot be allowed to keep the alleged offence in hibernation, for years together, only to be used it as a leverage over her husband and the other accused person, who are clearly at a disadvantage in contesting the case due to lapse of time. This court is also of the considered opinion that the courts are meant for serious litigants only, who are seeking redressal of their genuine problems, and not for those who use it at their leisure and pleasure, at the expense of needy and victims of serious crimes.”

(Emphasis Supplied)

19] In the case of **Abhishek (supra)**, it has been held by the Supreme Court in Para 13 as under:-

“13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.”

(Emphasis Supplied)

20] In view of the facts and circumstance of the case in hand, and the decisions rendered by the Supreme Court as also this Court, **both the petitions stand allowed** with cost of Rs.1 lakh and the FIR lodged at Crime No.999 of 2018 registered at Police Station – Vijay Nagar, Indore under Sections 498A, 323, 506, 34, 325 and 313 of IPC and the subsequent charges framed against them by the trial Court vide order dated 18.07.2022 and 04.08.2022 and the proceedings which are pending in S.T. No.578 of 2019 are hereby quashed.

21] The **cost of Rs.1 lakh** has been so imposed only to caution the unscrupulous litigants that they cannot take the Courts for a ride which are meant for serious litigation, and the valuable time of the Courts cannot be allowed to be wasted by them in any manner. Thus, the cost shall be paid by the respondent No.2, who has already received Rs.50 lakhs from the petitioners, to the petitioner No.1 within a period of **four weeks** by crediting the same in the bank account of the petitioner No.1, the details of which can be obtained from the Registry of this Court and the petitioner No.1 is directed to furnish his bank account details before the Registry of this Court so that this order can be complied with.

22] **Petitions disposed of**, accordingly.

(SUBODH ABHYANKAR)
JUDGE