

**The High Court Of Madhya Pradesh
Bench Gwalior**

SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava

MCRC 47904 of 2019

Alok Lodhi & Ors.
Vs.
State of MP & Anr.

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Shri Prasun Maheshwari, counsel for petitioners.
Shri Nitin Goyal, Panel Lawyer for respondent No.1/State.
Shri Suresh Agrawal, counsel for respondent No.2.

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Reserved on 30-03-2022
Whether approved for reporting /

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O R D E R
(Passed on 07/04/2022)

Per Rajeev Kumar Shrivastava, J:-

This petition under Section 482 of CrPC has been filed to quash FIR at Crime No.418 of 2019 registered by Police Station Kotwali, Ashok Nagar for offence u/Ss.498-A, 506, 34 of IPC and other subsequent proceedings initiated therefrom.

(2) Factual matrix of the case, in short, are that on 01/08/2019 at around 07:23 pm, the complainant (herein respondent No.2) along with her brother Santosh Lodhi, made a written complaint at Police Station Kotwali, District Ashok Nagar stating therein, that her marriage was performed on 12-12-2016 with one Alok, resident of Indore and her father had given sufficient dowry including spent of Rs.15 lac for her marriage and had given cash of Rs.15 lac at the time of "Tika". After some days of her marriage, her in-laws started demanding dowry and also, committed "marpeet" with her on 30-01-2018 and thereafter, turn out of her in-laws house. It is further alleged that the complainant made a report at PS Tilak Nagar, Indore. In February, 2019, although her father had called her husband and in-laws many times, but they avoided and she had also made a complaint before the Conciliation Centre but no fruitful purpose could be served. It is further alleged that her husband

(petitioner No.1), brother-in-law/Devar (petitioner No.2), father-in-law (petitioner No.3) and sister-in-law/Nanand (petitioner No.4), who are Residents of 309, Block -B, Subhlabh Beli Scheme No.140, Tilak Nagar, Tahsil & District Indore, are demanding Rs. 15 lac for purchase of a flat and if she did not fulfill the same, they could not keep her in house and would kill her. On that basis, aforesaid FIR has been lodged.

(3) Learned counsel appearing for the petitioners submitted that the entire allegations are completely false and FIR itself lodged with clear motive to harass and pressurize the petitioners. The complainant is a quarrelsome lady and used to quarrel with her in-laws as she has no interest to live peacefully with them and even she does not want to live with her husband. The attitude as well as conduct of complainant towards her in-laws is not good since the date of marriage. In this regard, a complaint to the SP as well as DM, Ashok Nagar has been made vide Annexure P2 & P3. On account of conduct and behaviour of complainant, her husband (herein petitioner No.1) filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage before Principal Judge, Family Court Aligarh (UP) on 13/08/2018. The petitioner No.3 who is the father-in-law of complainant, has also filed a complaint before the Court of AJCM, Aligarh on 27-07-2019 under Sections 406, 504 of IPC against the complainant and her family vide Annexure A5. On the basis of counter-blast, the complainant has falsely lodged the present FIR against the petitioners. It is further submitted that the marriage of petitioner no.4, who is sister-in-law of complainant is living separately at Bhopal whose marriage was performed prior to the date of marriage of complainant. There is no specific allegation either in regard to demand of dowry or harassment against the petitioners and only omnibus and vague allegations have been made against them in order to harass and pressurize them to attract offence under Section 498A of IPC. Therefore, the impugned FIR itself is nothing but a clear abuse of process of law and it has been made with a revengeful intent and only with an intention to wreck vengeance as against the petitioners, a false FIR has been lodged, therefore, the same deserves to be quashed. In support of contention, counsel for the petitioners has relied upon the recent judgment of Hon'ble Apex Court in the matter of **Kahkashan Kausar alias Sonam & Others vs. State of Bihar & Others**, delivered on 8th February, 2022 in Criminal Appeal

No.195 of 2022 (arising out of SLP (Crl.) No. 6545 of 2020).

(4) *Per contra*, the State Counsel as well as Counsel for complainant respondent No.2, submitted that other proceedings pending before petitioners and respondent No.2 are not impediment for her to lodge present FIR for the alleged offences committed by petitioners herein. Offence under Section 498-A of IPC is a continuous offence and cause of action arose even after her marriage and her in-laws harassed her by demanding huge sum of dowry. There is specific allegation against the petitioners for demand of huge sum of dowry and allegation of committing "marpeet" with complainant. Hence, prayed for dismissal of this petition.

(5) Heard learned counsel for the parties and perused documents available on record.

(6) The main controversy involved in the present matter is as to whether impugned FIR has been lodged by complainant with a revengeful intent or only to wreck vengeance as against the petitioners or not ?

(7) It is relevant to rely upon the judgment of **State of Haryana v. Ch. Bhajan Lal (1992 Supp (1) 335)**, wherein it has been held by the Hon'ble Apex Court that where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, then criminal proceeding can be quashed exercising the inherent jurisdiction of the High Court under Section 482 of the Code. Similarly, in the matter of **Social Action Forum for Manav Adhikar and Another vs. Union of India, Ministry of Law And Justice and Others, Writ Petition (Civil) No. 73 of 2015** decided on 14th September, 2018, the Hon'ble Apex Court has held as under:-

"3. Regarding the constitutionality of Section 498-A IPC, in **Sushil Kumar Sharma v. Union of India and others**, it was held by the Supreme Court:-

"Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate a legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But

many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work."

(8) On perusal of the impugned FIR as well as the documents available on record and in the light of the judgments passed by Hon'ble Apex Court, it appears that the allegations made against petitioners are general and omnibus, therefore, they cannot be prosecuted u/S 498A of IPC. In the present matter, earlier husband of the complainant (herein petitioner No.1) filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage before Principal Judge, Family Court, Aligarh on 13/08/2018 and thereafter, petitioner No.3 who is the father-in-law of complainant, has also filed a complaint before the Court of AJCM, Aligarh on 27-07-2019 for commission of offences under Sections 406, 504 of IPC against the complainant and her family members vide Annexure A5. Afterwards, the rival parties have filed one consent letter (annexed with this petition at Page 50), which reflects that some compromise took place between the parties but on 31/01/2018 the complainant filed an application (at page 52) before Principal Judge, Family Court, Ashok Nagar stating therein that they do not get mutual thoughts, therefore, the complainant decided to go to Bhopal and live with her father. In the case at hand, earlier a petition under Section 13 of Hindu Marriage Act was filed on 13/03/2018 by husband of complainant and on 27/09/2019, a complaint was also filed by father-in-law of complainant where-after, the conciliation proceedings could not be succeeded due to difference of thoughts whatsoever between complainant and her husband. Present FIR has been lodged on 01/08/2019 by complainant is nothing, but only to wreck vengeance so also with a revengeful intent in order to pressurize and harass the petitioners.

(9) Upon consideration of entire facts and circumstances of the case coupled with the fact that respondent No.2 has left her matrimonial home voluntarily without any rhyme and it is a fault on the part of the complainant to live separately prior to filing of the impugned FIR and in absence of specific allegation of demand of dowry or harassment, the impugned FIR deserves to be quashed. Accordingly, FIR at Crime No.418 of 2019 registered against the petitioners by Police Station Kotwali, Ashok Nagar for offence u/Ss 498-A, 506, 34 of IPC & other subsequent proceedings initiated therefrom stand **quashed.**

(10) **Petition Allowed.**

(Rajeev Kumar Shrivastava)
Judge