

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2748/2021

**BETWEEN**

- 1 . SRI AKHANI ATHAULLA,  
S/O LATE ABDUL HAQ. S  
AGED ABOUT 66 YEARS,  
R/A NO.437,  
NEW MASJID ROAD,  
DAVANGERE -- 577 001.
- 2 . SMT. FAMIDA BEGUM,  
W/C AKHANI ATHAULLA,  
AGED ABOUT 62 YEARS,  
R/A NO.437, NEW MASJID ROAD,  
DAVANGERE – 577 001.
- 3 . RAFIYA NOOR,  
W/O ISMAIL,  
AGED ABOUT 28 YEARS,  
R/AT MURTHUNJAYA NAGAR,  
1<sup>ST</sup> MAIN, 7<sup>TH</sup> CROSS,  
RANEBENNUR, HAVERI,  
KARNATAKA.

... PETITIONERS

[BY SRI.DIVYATEJ H.N., ADVOCATE FOR  
SRI.R.KOTHWAL, ADVOCATE]

**AND**

1. STATE OF KARNATAKA,  
BY DAVANGERE WOMEN POLICE STATION,  
DAVANGERE.  
REPRESENTED BY ITS  
STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
BENGALURU – 560 001.
2. SABIRA G.,  
W/O ARFATHULLA,  
AGED ABOUT 30 YEARS,  
R/AT BEHIND NEW COURT,  
DEVARAJ ARUS LAYOUT A BLOCK,  
DAVANAGERE – 577 001.

... RESPONDENTS

[BY SRI.K.S.ABHJITH. HCGP FOR R1;  
SRI.HAREESH BHANDARY T., ADVOCATE FOR R2]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.C.C.NO.35/2021 FILED BY THE RESPONDENT AGAINST THE PETITIONER U/S 3,4,5 OF DOWRY PROHIBITION ACT AND SECTION 498A, 504, 323, 114 R/W 34 OF IPC ON THE FILE OF I ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners are before this Court calling in question proceedings pending in S.C.No.35/2021 registered for offences punishable under Sections 114, 323, 307, 504, 498A read with

Section 34 of the IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961.

2. Heard the learned counsel, Sri. Divyatej H.N., appearing for the petitioners, Sri. K.S. Abhijith, learned HCGP for respondent No.1 and Sri. Hareesh Bhandary T., learned counsel appearing for respondent No.2.

3. Before embarking upon the consideration of the matter on its merit, I deem it appropriate to notice the relationship between the parties. Respondent No.2 is the complainant, wife of accused No.1, who is not before the Court. Petitioners are father-in-law, mother-in-law and sister-in-law. The marriage between accused No.1 and the complainant takes place on 14.01.2018. The relationship between two appears to have turned sore and on that score, the complainant registered a complaint on 12.12.2020 alleging torture for demand of dowry by the petitioners. The police after investigation have filed a charge sheet against the petitioners for offences punishable under Sections 114, 323, 307, 504, 498A and 34 of the IPC and

Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. On filing of the charge sheet, the petitioners have knocked the doors of this Court in the subject petition. Further proceedings against the petitioners have been interjected by an interim order granted by this Court.

4. Learned counsel appearing for the petitioners would submit that there are no allegations against the petitioners, who are father-in-law, mother-in-law and sister-in-law, who did not reside with the complainant and are without any reason dragged into these proceedings. Learned counsel would clarify that Section 307 of the IPC is alleged against the husband, as there are instances of such torture, which would become offence punishable under Section 307 of the IPC against accused No.1.

5. On the other hand, learned counsel appearing for respondent No.2, Sri. Hareesh Bhandary T., would seek to justify the action of registration of the charge sheet against the petitioners and would submit that it is a matter of trial that the petitioners have to come out clean.

6. Learned HCGP would toe the lines of the learned counsel appearing for respondent No.2.

7. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

8. The afore-quoted facts are not in dispute, since the entire issue gets triggered on account of registration of the complaint. The complaint so far as it contains the allegations against the petitioners are as follows:

"ನಂತರ ಸುಮಾರು 15-20 ದಿನ ಬಿಟ್ಟು ಪುನಃ ನನ್ನ ಗಂಡ, ಅತ್ತೆ, ಮಾವ ಮತ್ತು ನಾದಿನಿ ರಫೀಯಾ ಇವರುಗಳು ನಿಮ್ಮ ಅಪ್ಪ ದುಡ್ಡಿನ ವಿಚಾರದಲ್ಲಿ ಚೆನ್ನಾಗಿದ್ದಾರೆ. ನೀನು ಒಬ್ಬಳೆ ಮಗಳೂ ಆಸ್ತಿ ಚೆನ್ನಾಗಿದೆ ನಮಗೂ ಒಂದು ಮನೆ ಸೈಟು 50 ಲಕ್ಷ ನಗದು ಕೊಡಲು ಕಿರುಕುಳ ನೀಡಿರುತ್ತಾರೆಂತಾ ಹೇಳಿದ್ದರಿಂದ ಈ ವಿಚಾರವನ್ನು ನಮ್ಮ ತಂದೆ ತಾಯಿಯವರಿಗೆ ತಿಳಿಸಿದಾಗ ಅವರು ನಮ್ಮ ಮಗಳು ಚೆನ್ನಾಗಿ ಇರಲಿ ಎಂದು ಹೇಳಿ 2019 ಮೇ ತಿಂಗಳಲ್ಲಿ ದಾವಣಗೆರೆ ನಗರದ ನಂದಿನಿ ಲೇಔಟ್ ನಲ್ಲಿ ಒಂದು ಸೈಟನ್ನು ನನ್ನ ಹೆಸರಿಗೆ ಸೈಟನ್ನು ಮಾಡಿಸಿಕೊಟ್ಟಿರುತ್ತಾರೆ. ನಂತರ ನನ್ನ ಗಂಡನಿಗೆ ಓಡಾಡಲು ಗಾಡಿ ಇಲ್ಲವೆಂದು ಒಂದು ಗಾಡಿಯನ್ನು ಸಹ ಕೊಡಿಸಿರುತ್ತಾರೆ. ಇದಾದ ನಂತರ ನನ್ನ ಗಂಡ ಅತ್ತೆ ಮಾವ ಮತ್ತು ನಾದಿನಿಯವರೆಲ್ಲಾರೂ ಸೇರಿ ನನಗೆ ನನ್ನ ನಾದಿನಿ

ರಫೀಯಾ ಇವರ ಹೆಸರಿಗೆ ಒಂದು ಮನೆಯನ್ನು ಕೊಡಿಸಲು ಒತ್ತಾಯ ಮಾಡಿ ನನಗೆ ಕೆಟ್ಟ ಕೆಟ್ಟ ಭಾಷೆಗಳಿಂದ ಬೈದಾಡಿ ಹೊಡೆ ಬಡೆ ಮಾಡಿ ಗಲಾಟೆ ಮಾಡಿ ನನ್ನ ನಾದಿನಿ ನನ್ನ ಗಂಡನಿಗೆ ಚಾಳಿ ಮಾತನ್ನು ಹೇಳಿಕೊಟ್ಟು ನನ್ನನ್ನು ಮನೆಯಿಂದ ಹೊರಹಾಕಿರುತ್ತಾರೆ.

ಇದೇ ವಿಚಾರವಾಗಿ ದಿನಾಂಕ: 06-12-2020 ರಂದು ರಾತ್ರಿ 9-30 ಗಂಟೆ ಸಮಯಕ್ಕೆ ನನ್ನ ತವರು ಮನೆಗೆ ಬಂದು ನಾನು ರೂಮಿನಲ್ಲಿದ್ದಾಗ ನನ್ನ ಗಂಡ ನನಗೆ ಅರ್ಜೆಂಟ್ ಆಗಿ ಕಾರು ಬೇಕು ಮತ್ತು ನಿಮ್ಮ ತಂದೆಗೆ ಹೇಳು ಅಂತಾ ಜೋರು ಮಾಡಿದ್ದರಿಂದ ಆಗ ನನಗೂ ನನ್ನ ಗಂಡನಿಗೆ ಮಾತಿಗೆ ಮಾತು ಬೆಳೆದು ನನ್ನ ಗಂಡ ನನಗೆ ಕೈಕಾಲುಗಳಿಂದ ಹೊಡೆದು ನಿನ್ನನ್ನು ಸಾಯಿಸಿದರೆ ನಿನ್ನ ಹೆಸರಿಗೆ ಇರುವ ಸೈಟು, ಬೈಕು ಎಲ್ಲಾವೂ ನನಗೆ ಬರುತ್ತೆ. ನೀನು ಸತ್ತ ಮೇಲೆ ನಾನು ಬೇರೆ ಮದುವೆಯಾಗುತ್ತೇನೆಂದು ಟಾವಲ್ ನಿಂದ ನನ್ನ ಕುತ್ತಿಗೆಗೆ ಸುತ್ತಿ ನನ್ನನ್ನು ಸಾಯಿಸಲು ಪ್ರಯತ್ನಿಸಿದ್ದು ಆಗ ನಾನು ಅವರಿಂದ ಬಲವಂತವಾಗಿ ಬಿಡಿಸಿಕೊಂಡು ಜೋರಾಗಿ ಕಿರುಚಿದೆ. ಆಗ ನನ್ನ ಅಪ್ಪ, ಅಮ್ಮ, ಅಣ್ಣ, ಮತ್ತು ಅಕ್ಕ-ಪಕ್ಕ ಒಂದು ಬಿಡಿಸಿರುತ್ತಾರೆ. ಆಗ ನನ್ನ ಗಂಡ ಅಲ್ಲಿಂದ ಓಡಿ ಹೋಗಿರುತ್ತಾನೆ. ನಂತರ ನನ್ನ ತಂದೆ ತಾಯಿ ನನಗೆ ನೀರು ಕುಡಿಸಿ ಉಪಚರಿಸಿ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಚಿಕಿತ್ಸೆಯನ್ನು ಕೊಡಿಸಿರುತ್ತಾರೆ. ನನ್ನ ಗಂಡನಿಗೆ ಕೊಟ್ಟಂತಹ ವರದಕ್ಷಿಣೆ ಬೆಳ್ಳಿ ಮತ್ತು ಬಂಗಾರ ನನ್ನ ಗಂಡನ ಬಳಿ ಇರುತ್ತದೆ. ನಡೆದ ಘಟನೆ ಬಗ್ಗೆ ಮನೆಯಲ್ಲಿ ಚರ್ಚಿಸಿ ಈ ದಿನ ತಡವಾಗಿ ಬಂದು ದೂರು ನೀಡಿರುತ್ತೇನೆ. ನನಗೆ ವರದಕ್ಷಿಣೆಗಾಗಿ ಹಿಂಸೆ ನೀಡಿದಲ್ಲದೇ ನನಗೆ ಸಾಯಿಸಲು ಪ್ರಯತ್ನಿಸಿದ ನನ್ನ ಗಂಡನಾದ ಅರ್ಫಾತ್ ವುಲ್ಲಾ ಮಾವ ಅಖಾನಿ ಅತಾವುಲ್ಲಾ ಅತ್ತೆ ಫಾಮಿದಾ ನಾದಿನಿ ರಫೀಯಾ ಇವರುಗಳ ಮೇಲೆ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಿ ಅಂತಾ ನನ್ನ ದೂರು."

9. The afore-quoted narration is the allegation against the petitioners, except making omnibus statements that the petitioners have instigated the husband to behave in the manner that he has behaved, which is undoubtedly reprehensible, there are no statements that would touch upon the offences under the IPC. Insofar as the offences under the Dowry Prohibition Act, 1961 is concerned, the complaint itself narrates that the petitioners are well-to-do family and have lots of money. Therefore, the probability of the allegations being made for demand of dowry would not hold water *qua* the petitioners.

10. The police after investigation have filed the charge sheet. Column No.17 of the charge sheet is in reiteration of what is narrated in the complaint. All the allegations in the charge sheet also point at instances of torture by the husband and instigation by the petitioners herein. Finding nothing that would touch upon the offences punishable under Section 498A or 323 or 307 of the IPC against the petitioners, I deem it appropriate to terminate the proceedings *qua* the petitioners. It is apposite to

refer to the judgment of the Apex Court in the case **KAHKASHAN KAUSAR @ SONAM AND OTHERS V. STATE OF BIHAR AND OTHERS**<sup>1</sup>, wherein it has held as follows:

*" 11. Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed?"*

*12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted*

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<sup>1</sup> **2022 SCC OnLine SC 162**

*in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.*

13. This Court in its judgment in *Rajesh Sharma v. State of U.P.*,<sup>4</sup> has observed:—

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression ‘cruelty’ in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are

*not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”*

*14. Previously, in the landmark judgment of this court in Arnesh Kumar v. State of Bihar<sup>5</sup>, it was also observed:—*

*“4. 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, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”*

15. Further in *Preeti Gupta v. State of Jharkhand*<sup>6</sup>, it has also been observed:—

“32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of

*that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.*

*34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*

*35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. 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.*

*36. 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.”*

*16. In Geeta Mehrotra v. State of UP<sup>7</sup>, it was observed.—*

*“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a*

*matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:*

*“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter*

*was that the courts would not encourage such disputes.”*

*17. Recently, in K. Subba Rao v. The State of Telangana<sup>8</sup>, it was also observed that:—*

*“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”*

*18. 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."*

11. In the light of the undisputed facts and the judgment of the Apex Court (*supra*), if further proceedings would continue, it would result in miscarriage of justice.

12. For the aforesaid reasons, the following:

**ORDER**

- i. Criminal Petition is allowed.
- ii. Proceedings pending in S.C.No.35/2021 before the I Additional District and Sessions Judge, Davanagere, stand quashed *qua* the petitioners.
- iii. It is made clear that the observations made in the course of this order is only for the purpose of consideration of the case under Section 482 of Cr.P.C. against the petitioners, the same shall not bind or influence the criminal Court

in the conduct of further proceedings against  
any other accused.

**Sd/-  
JUDGE**

SJK