

MANU/MP/0172/2017

Equivalent/Neutral Citation: II(2017)DMC186MP

**IN THE HIGH COURT OF MADHYA PRADESH**

M.Cr.C. No. 15803 of 2016

**Decided On:** 06.02.2017

Appellants: Sagar Gupta and Ors. **Vs.** Respondent: State of M.P. and Ors.

**Hon'ble Judges/Coram:**

*Anjuli Palo, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Mrigendra Singh, Sr. Adv. and Vikash Mahawar, Advocate*

*For Respondents/Defendant: Rajneesh Choubey, Penal Advocate*

**ORDER**

**Anjuli Palo, J.**

**1 .** This petition has been filed under Section 482 of Cr.P.C. for invoking the extraordinary jurisdiction of this Court for quashing the FIR in Crime No. 83/2016 registered at Police Station Manila Thana, Bhopal and the entire criminal proceedings of RCT No. 7076/2016 pending before the JMFC, Bhopal. Short facts of the case are that the applicant No. 1 is the husband of respondent No. 2. Applicant Nos. 2 and 3 are the father-in-law and mother-in-law of respondent No. 2. Marriage between applicant No. 1 and respondent No. 2 was solemnised at Durg on 19th March, 2016 by observing Hindu rites and rituals. Since 18.5.2016 onwards the respondent No. 2 is residing with her parents as she was not ready to live with the applicants without any sufficient cause and reason.

**2.** At the time of leaving the matrimonial house, the complainant/respondent No. 2 was 6-7 weeks pregnant. On 1.6.2016 the respondent No. 2 lodged an FIR bearing Crime No. 83/2016 at PS Mahila Thana, Bhopal against the applicants. After casual investigation police submitted a charge sheet on 13.7.2016 under Sections 498-A and 506 read with Section 34 of IPC and Sections 3/4 of Dowry Prohibition Act.

**3.** The applicants have alleged that the respondent No. 2 has levelled vague allegation of demand of dowry of Rs. 2,50,000, cruelty and harassment. In fact, the applicant Nos. 2 and 3 performed all the marriage ceremony at their own expenses, which is evident from the audio call recording dated 2.2.2016, transcription of which and CD is filed as Annexure-A/2. It is submitted by the applicants that the respondent No. 2 filed an application under the Domestic Violence Act against the applicants, wherein she has alleged that she was beaten by her husband which resulted abortion of the child. It is submitted by the applicants that from 16th May to 20th May, 2016 the applicant No. 1 was in Pune and Delhi and in the meanwhile the respondent No. 2 left for her paternal house of her own without any information to the applicant No. 1. She got herself aborted at Bhopal without informing the applicants. During her pregnancy the applicants provided best medical facilities at Durg. The applicants have filed tickets and medical bills. The applicants have alleged that the respondent No. 2 has falsely stated that on

25.3.2016 the applicant No. 1 visited Bhopal and subjected her to cruelty to create the jurisdiction at Bhopal Court. Whereas, on 25.3.2016 the applicant No. 1 was travelling from Durg to Bhopal accompanied with the respondent-No. 2 as they had to leave for Hong Kong, Macau and Thailand for their honeymoon from 28th March to 18th April. Copy of the travelling tickets from Durg to Bhopal and other documents have been filed by the applicants.

**4.** The applicant No. 1 has moved an application before the Manila Thana, Durg for calling the complainant/respondent No. 2 for reconciliation and for settling the issue. But the respondent No. 2 did not turn up. As far as FIR and charge sheet are concerned, there are no allegation to suggest that the applicant Nos. 2 and 3 ever participated in any of the offences. Such allegations are vague and exaggerated. These allegations are levelled to harass the applicants without any specific date, time and place of incident. The FIR does not show the participation of applicant No. 2 in the alleged act of cruelty. The applicants are aware that the father of the complainant is a retired person having a limited source of income. They accepted the respondent No. 2 because of her moral values. The applicant No. 1 himself wanted to take the respondent No. 2 to Switzerland, but due to Visa issue he had to take her to Hong Kong, Macau, Pataya. Therefore, the FIR would amount to abuse of the process of law and the applicants are unnecessarily being harassed by the investigating agency.

**5.** Learned Counsel for the applicants has placed reliance upon a judgment of Hon'ble Supreme Court in the case of State of Haryana v. Bhajanlal, MANU/SC/0115/1992 : 1990 (SLT Soft) 162 : I (2006) CCR 209 (SC) : AIR 1992 SC 604, Police Officer to subjectively satisfy himself as to existence of sufficient ground for entering on investigation.

**6.** Learned Panel Lawyer for respondent/State No. 1 has opposed the contentions advanced by learned Counsel for the applicants.

**7.** Learned Counsel appeared on behalf of respondent No. 2 has submitted that the complainant has specified the names of the applicants in the FIR and she has narrated in detail the specific acts of the applicants, therefore, the present petition under Section 482 of Cr.P.C. is not maintainable.

**8.** Heard learned Counsel for the parties and perused the case diary.

**9.** It is well-settled that power under Section 482 of Cr.P.C. should be sparingly exercised in rare cases. As has been laid down by the Apex Court in the case of Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors., MANU/SC/0261/1988 : 1988 (SLT Soft) 321 : (1988) 1 SCC 692 and Bobbili Ramakrishna Raja Yadad v. State of A.P. MANU/SC/0046/2016 : I (2016) DLT (CrI) 741 (SC) : I (2016) DMC 374 (SC) : (2016) 3 SCC 309 that when a prosecution at the initial stage was asked to be quashed, the test to be applied by the Court was as to whether the uncontroverted allegations as made in the complaint prima facie establish the offence. The Hon'ble Supreme Court in the case of Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., MANU/SC/1021/2016 : VII (2016) SLT 25 : IV (2016) BC 416 (SC) : IV (2016) DLT (CrI.) 235 (SC) : (2016) 10 SCC 458 has held that High Court cannot entertain disputed question of fact under Section 482 of Cr.P.C. High Court needs to exercise power under Section 482 of Cr.P.C. with great deal of caution. Even though defence of accused appears to be plausible but it should not be considered while exercising power under Section 482 of Cr.P.C. While dealing with quashing of complaints Court ordinarily has to proceed on the basis of complaint

averments. Defence of accused cannot be looked into at this stage.

**10.** In this case, charge sheet has been filed. The statements of the parents, relatives and the complainant-respondent No. 2 under Section 161 of Cr.P.C. go to show that the applicant No. 1 mainly involved in demand of dowry and he demanded the fare for Switzerland and subsequent harassment to the complainant. In the statements of complainant/respondent No. 2, she has clearly and ambiguously stated that the applicant No. 1 tortured her a lot in many ways and he has harassed the respondent No. 2 to fulfill his demand. He also harassed her at the maternal house at Bhopal. The statement of the complainant/respondent No. 2 is very clear and specifically indicated that the alleged act of the applicant No. 1 which involved him in the offence punishable under Sections 498A, 506 read with Section 34 of IPC and 3/4, Dowry Prohibition Act.

**11.** In this case the active involvement of applicant Nos. 2 and 3 has not been clearly stated in the FIR and the statement recorded under Section 161 of Cr.P.C. There has been only general allegations made against them. Facts and circumstances of the case and also the uncontroverted allegations made in the complaint do not constitute offences under Sections 498A, 506 read with Section 34 of Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the respondent Nos. 2 and 3. There is no sufficient ground for proceeding against the applicant Nos. 2, and, 3 only for non-opposing the act of the applicant No. 1, in my opinion, the allegations made in the complaint do not constitute an offence under Sections 498A, 506 of IPC and under Section 3 and 4 of the Dowry Prohibition Act against the applicant Nos. 2 and 3. Hence, continuation of the criminal proceeding against appellant Nos. 2 and 3 is not just and proper. The FIR is liable to be quashed as regarding applicant Nos. 2 and 3 only. Thus, the application under Section 482 of Cr.P.C. is partly allowed to the extent of applicant Nos. 2 and 3 only. However, proceedings against the applicant No. 1 not interfered with.

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