

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

561-A No.100/2011
Cr.M.A. No.98/2011

Date of Decision: **27.12.2012**

Rahul Sharma and anr. v. State of J&K & anr.

CORAM:

Mr. JUSTICE J. P. SINGH.

Appearing counsel:

For Petitioner(s) : Mr. Amit Sharma, Advocate.
For Respondent(s) : Ms. Zhainab Shamas Watali, Dy.AG.
 Mr. M.L.Gupta, Advocate.

- | | | | |
|-----|--|---|-------------|
| i) | Whether approved for reporting
in Press/Media | : | Yes. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes. |
-

J U D G M E N T

Petitioner No.1-Rahul Sharma was married to respondent No.2-Megha Kakkar on 19.02.2007 at Jodhpur. After their marriage, they resided at Gurgaon-Haryana where they were working at IBM DAKSH, Gurgaon.

Respondent No.2's father, however, brought her back to Jammu finding that petitioner No.1 and his relations had treated her with cruelty. He thereafter lodged Complaint with Police Station, Women Cell, Jammu on 10.08.2010, *inter alia*, indicating about the dowry items that he had given to petitioner No. 1 and his family members at the time of the marriage of his daughter. Petitioner No.1-Rahul Sharma, his mother Sarita Sharma

and sister Neha Sharma were accused in the Complaint of committing domestic violence against respondent No.2.

Although Rahul Sharma is stated to have threatened Megha Kakkar not to come back to Haryana without money yet she was sent to the matrimonial home where she was again stated subjected to malnutrition besides mental and physical torture. This Complaint remained pending with Police but without registration of any FIR thereon. It is alleged by the petitioners that they were forced to enter into compromise in terms whereof marriage between Rahul Sharma and Megha Kakkar was agreed to be dissolved on payment of Rs.9.00 lac. The Compromise, however, did not mature and thereafter respondent No.2 again approached the Police Station for registration of FIR against the petitioners. The Police having not obliged the respondent, she approached a Criminal Court at Jammu with fresh Complaint on which FIR No.3/2011 was registered at Police Station, Women Cell, Jammu, under Sections 498-A/109 RPC.

The Complaint, on the basis whereof FIR was registered, impleads Rahul Sharma, his mother Sarita Sharma, Sister Neha Sharma and Lt. Col. K.K.Sharma, the maternal uncle of Rahul Sharma,

as accused. It is indicated in the respondent's Complaint that when the accused came to Jammu they demanded one Car of City Honda Make threatening that in case their demand was not met, the complainant would be eliminated.

Petitioner No.1-Rahul Sharma, the husband and petitioner No.2-Sarita Sharma, his mother, have approached this Court seeking quashing of the FIR registered on respondent No. 2's Complaint.

Heard learned counsel for the parties and perused the material on records.

Perusal of the Complaint filed by Megha Kakkar on the basis whereof FIR was registered does not refer to any date, month or year when the complainant is stated harassed or maltreated. The manner in which she was maltreated, harassed or treated with cruelty too is missing from the Complaint. Not only that, the role played by each person accused of maltreating her, either individually or collectively, too is not there in the Complaint.

The Complaint, in short, raises general and vague allegations of maltreatment, harassment and domestic violence, without indicating the date, month or year of such alleged incidence(s) still less detailed account thereof.

Putting of Criminal Law into motion on such vague Complaint would certainly be abuse of the process of law, in that, no prosecution, in the ordinary course of things, may succeed on the basis of such type of Complaints shorn of necessary details and indicating existence of ingredients constituting penal offences.

This apart, the second Complaint on the basis whereof the FIR was registered under Section 156 of the Code of Criminal Procedure, though pursuant to the orders of the learned Magistrate, is materially different from the initial Complaint that was lodged by the complainant's father in Women Cell, Jammu and pursuant whereto an Agreement is stated to have been reached at between the two families. There is not even a whisper in the first Complaint about petitioners or any of their family members demanding Honda City Car when they came to Jammu on May 05, 2010. The event of May 05, 2010, *ex facie* appears to have been coined and introduced only to justify the maintainability of the Complaint at Jammu, in that, there is absolutely no mention of this event even in the Notice sent by the complainant's father to petitioner No.1's Advocate in answer to the latter's Notice. Had any such event happened on May 05,

2010, the event would have been referred in Notice sent by the complainant's father on 17.06.2010.

From the reading of the Complaint, it is explicit that all the alleged acts of omission and commission, attributed to the accused, had taken place at Gurgaon, a place outside the territory of the Jammu and Kashmir State. In any case, matrimonial disputes having been alleged by the petitioners to have been settled, there was absolutely no justification for the Criminal Court to have referred the respondent's Complaint for registration of FIR, to compel execution of the Compromise by putting the criminal law into motion.

The facts and circumstances of the case, therefore, eloquently demonstrate abuse of the process of Court and law in registration of FIR against the petitioners. I am supported in taking the above view by what was held by Hon'ble Supreme Court of India in *Neelu Chopra & anr. v. Bharti* reported as AIR 2009 SC (Supp) 2950, where while dealing with such like situation, it was observed as follows:-

"5. In order to lodge a proper complaint, mere mention of the Sections and the language of those Sections is not be all and end of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does

not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.

6. The High Court has merely mentioned that the allegation in the Complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the appellants. This is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them. Insofar as the offence under Section 498A, IPC is concerned, we do not find any material or allegation worth the name against the present appellants. All the allegations appear to be against the Rajesh.”

The petitioners' learned counsel's submission that registration of FIR against the petitioners and others is abuse of the process of law is, therefore, found well merited.

This Petition, accordingly, succeeds and is, therefore, allowed quashing FIR No.3/2011 registered at Police Station, Women Cell, Jammu under Sections 498-A/109 RPC.

**(J. P. Singh)
Judge**

JAMMU:
27.12.2012
Vinod.