

**HIGH COURT OF JAMMU & KASHMIR
AT JAMMU**

Case:CRMC No.364/2018 & IA No.01/2018

Reserved on: 21.05.2019
Pronounced on: 30.05.2019

Varinder Kumar and others

---Petitioner(s)

Through:- Mr. Pawan K. Kundal, Advocate

V/s

State of J&K and others

---Respondent(s)

Through: - Mr. Amit Gupta, AAG for respondent
Nos.1 & 2.

Mr. Kamal Kumar Gupta, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE SANJAY KUMAR GUPTA

JUDGMENT

1. Through the medium of instant petition filed under Section 561-A CRPC, petitioners *inter alia* seek quashing of Challan in case titled State vs. Varinder Kumar and others, pending before the court of learned JMJC, R.S.Pura in FIR No.158/2015 under Section 498-A RPC as well as order dated 26.09.2016 whereby the court below has framed the charge against the petitioners.
2. In the petition, it has been stated that petitioner No.1 is the husband of respondent No.3, petitioner No.2 is the father in law, petitioner No.3 is the mother in law, petitioner No.4 is the sister in law, who is married and living with her husband at Village Allah Tehsil Arnia; that marriage between petitioner No.1 and the complainant was solemnized at R.S. Pura and after about 3 to 4 months, the

respondent No.3/complainant started complaining that she is seeing some ghost and that ghost is torturing her; that respondent No.3 herself wrote a diary in which she has written that her relations with petitioners were very good but it is due to unnatural ghost that her relations got strained with her husband and she sees some unnatural person sleeping with her instead of her husband; that complainant without any reason starts blaming any member of the family that he or she wants to kill her; that the petitioners called the parents of respondent No.3/complainant and told them about the unnatural behaviour of the complainant. They took the complainant along with them and showed the complainant to some tantric; that after some days Aunt of petitioner No.1 came in the house of the petitioners to know the well being of the family and respondent No.3, where the complainant and the Aunt of the petitioners were cooking food and other family members were sitting in the lobby of the house and taking the food. The complainant came there and started shouting that petitioner No.6 while giving food to the family touched the private part of petitioner No.1 in front of other family members and after some time she started saying sorry to all; that family members of the petitioners became shocked on the attitude of the complainant; the complainant turned pregnant; that petitioner No.1 got the complainant medically examined, but the complainant refused to take the medicines.

3. The petitioners have challenged the complaint as well as the order of framing of charge on the ground that the trial court has passed

the order of framing of charge in a casual manner and the court cannot act as a post office and before framing of charge, the court must apply its judicial mind on the material placed on record.

4. I have considered the submissions of learned counsel for both the parties. Learned counsel for the petitioners during the course of arguments has reiterated all the grounds taken in the memo of the petition. Counsel for petitioners has relied upon **2017 (2) Crimes 75** case titled **Vineet Kumar and others vs. State of U.P. and anr.**, wherein principles have been laid down for exercising power under section 482 Cr.P.C; **2015 (2) SCC (Cri) 96** case titled **State Tr. Insp. Of Police vs. A. Arun Kumar and anr.**, wherein it is held that judge while framing of charge has undoubted power to sift and weigh the evidence and **2010 (95) AIC 115** case titled **Sajjan Kumar v. CBI**, wherein it is held that, if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge can discharge the accused.
5. Whereas the learned counsel for the respondents have supported the impugned order whereby the trial court has framed the charge against the petitioners.
6. I have given my thoughtful consideration to the complaint.
7. From perusal of the record, it appears that the complainant has filed the complaint before the learned Chief Judicial Magistrate, Jammu on 07.10.2015 against seven respondents including the petitioners herein. The relevant paras of the said complaint read as under;

“1. That accused No.1 is the husband of the complainant, accused No.2 is father in law, accused No.3 is mother in law and accused No.4 is brother in law, accused No.5 and 6 are sister in law and accused No.7 is aunt of the complainant.

2. That the marriage of the complainant with accused No.1 was solemnized on 17.11.2013 according to Hindu rites and customs at village Banota, Tehsil R.S.Pura with the consent of the accused No.1 and in the presence of accused No.2 to 7 and other bradri members.

3. That sufficient dowry articles and gold ornaments were given at the time of marriage.

4. That out of this wed lock no child has been born out.

5. That soon after the marriage the husband of the complainant did not show any love and affection towards the complainant and started ill treating and misbehaving with the complainant and also started torturing and beating the complainant mercilessly and accused No.2 to 7 also started supporting the accused No.1.

6. That the accused persons also started demanding more dowry and ultimately complainant was thrown out of the matrimonial house.

7. That the real facts are that the accused No.1 had illicit relations with the accused No.7 and when the complainant noticed their actions of illicit relations and narrated the same to the parents then the accused persons intensified beating and misbehaving with the complainant.

8. That the bradri members intervened and the complainant was dropped in the matrimonial house with assurance by the accused persons that they will keep the complainant in the matrimonial house with great love and affection and with full dignity.

9. That the accused No.1 also started demanding the Cash Rs.3.00 lacs for running some trading business.

10. That the complainant asked the accused persons that the parents of the complainant are poor and they are not able to give cash of Rs.3.00 lacs at this juncture on which the accused persons became more in furious and turned out the complainant from the matrimonial house on 31.05.2015 and now the complainant is residing in the parental house at village Banota, Tehsil R.S.Pura.

11. That at the time of marriage sufficient dowry as per the list enclosed and gold ornaments were entrusted to the accused persons.

12. That the gold ornaments which were given to the complainant were also take by the accused No.2 and 3 and were in their possession and the accused No.3 had kept the gold ornaments in her lock.

13. That all the dowry articles including the gold ornaments were in the possession of the accused persons having domain over the said property are dishonestly misappropriating and converting to their own use and are using the same and the said property was entrusted to the accused persons is meant for the complainant who is entitled to the same.

14. That the complainant has requested the accused persons a number of times to deliver the same to the complainant but they refused to do so.

15. That even the complainant approached the accused persons through the respectable persons including the Sarpanch of the village and the accused persons firstly delayed the same on the one or the other pretext but thereafter refused to give the same.”

8. This complaint was forwarded in original to the In-charge SHO Police Station, R. S. Pura for investigation in the matter in terms of Section 156(3) Cr.P.C. On the basis of this complaint, an FIR No.158/2015 under Section 498-A RPC was registered and the investigation was commenced. During investigation, statements of the witnesses were recorded and after completing the investigation, the police concluded that offence under Section 498-A RPC stands proved against the petitioners. Accordingly, the charge sheet was lodged before the learned JMIC, R.S.Pura and the learned JMIC after hearing the State counsel as well as learned counsel for the petitioners, framed the charge under Section 498-A RPC against

the five accused, but discharged one of the accused (petitioner no.6 herein) on 26.09.2016.

9. In 2008 (3) SCC 753 case titled **Som Mittal v. Govt. of Karnataka**, it has been held as under:-

“(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under [Section 482](#) of the Code in a routine manner. It has been consistently held that the power under [Section 482](#) must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under [Section 482](#) of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under [Section 482](#) of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice.

(13) [In State of Bihar v. J.A.C. Saldanha](#) (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

(14) [In Hazari Lal Gupta v. Rameshwar Prasad](#) (1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under [Section 561-A](#) of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged

cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

(15) In Jehan Singh v. Delhi Administration (1974) 4 SCC 522 the application filed by the accused under Section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) In Kurukshetra University v. State of Haryana (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.(emphasis supplied)

(17) In State of Bihar v. Murad Ali Khan (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.”

10. It is thus settled law that once charge framed by competent court after evaluation of the facts projected in police report under section 173 Cr.P.C, it can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression ends of justice and to prevent abuse of process of any court are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C, does not function as court

of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution.

11. In present case, from bare perusal of record, it is evident that there is ample evidence for framing of charges against petitioners under section 498-A RPC. The conduct of petitioners is also not acceptable as charge under section 498-A RPC was framed on 26.09.2016 and they allowed the trial to proceed, and after two years from framing of charge, have filed present petition. It is not the case of petitioners that there is some legal bar engrafted in any law for framing of charge, there is no dispute with regard to laws cited by counsel for petitioners, but is not applicable in present set of circumstances. Firstly, facts are to be seen, then law made after appreciating the facts of that particular case, is to be applied to the case in hand.
12. In view of the above, this petition is dismissed.

(Sanjay Kumar Gupta)
Judge

Jammu:
30.05.2019
Vijay