A.F.R.

Court No.32

Case :- CRIMINAL MISC. WRIT PETITION No. - 7081 of 2021

Petitioner :- Shri Abhishek Shukla
Respondent :- State Of U P And 3 Others
Counsel for Petitioner :- Nitin Chopra
Counsel for Respondent :- G.A.,Azad Khan

with

Case :- CRIMINAL MISC. WRIT PETITION No. - 7082 of 2021

Petitioner :- Smt. Sadhna Shukla And Another
Respondent :- State Of U P And 3 Others
Counsel for Petitioner :- Nitin Chopra,Prakhar Saran Srivastava,Tarun Agrawal
Counsel for Respondent :- G.A.

Hon'ble Siddhartha Varma, J.
Hon'ble Subhash Chandra Sharma, J.

These writ petitions have been filed with a prayer that the First Information Report dated 14.4.2021 under sections 498-A, 323, 506, 406, 342, 313, 351 I.P.C. and sections 3/4 of Dowry Prohibition Act be quashed. A further prayer has been made that the petitioners in pursuance of the aforesaid First Information Report be not arrested.

For the decision of controversy, the facts mentioned in Criminal Misc. Writ Petition No. 7081 of 2021 are being taken into consideration.

A perusal of the First Information Report shows that the respondent no.4 had married the petitioner on 6.5.2011 at Greater Noida, Uttar Pradesh. This marriage was also got registered as per law. It has been alleged in the First Information Report that

since the inception of the marriage, the petitioner used to forcefully take-away the salaries of respondent no.4 and in fact he had forced the respondent no.4 to transfer almost Rs.2,00,000/- to clear off his educational loans. He had further forced the respondent no.4 to give Rs.80,000/- to pay off some other loan. It has been alleged that the petitioner regularly used to transfer various amounts from the accounts of respondent no.4 to his accounts to pursue his higher studies in BITS Pilani. Respondent no.4 has stated that the petitioner had forced her to leave her job in India and to go to the USA on an H4 visa and had made her to work in the USA online despite the fact that the visa did not permit her to do so. It has been alleged in the First Information Report that despite the fact that respondent no.4 desired to pursue her higher studies in Pepperdine University, the petitioner had restrained her from studying. During their stay as husband and wife in the USA, in June, 2016, the respondent no.4 had got pregnant but because of the fact that the petitioner had pushed her, she had fallen-down and resultantly a miscarriage had taken place. Subsequently, in 2017, the respondent no.4 again got pregnant but during the pregnancy, it has been alleged, the petitioner had never cared for her and, therefore, from May 2017 to August 2017, the respondent no.4 stayed in India. It has been alleged that despite the fact that the husband did not care for the respondent no.4, she went back to USA to save her marriage for the sake of her child which she was bearing. It has also been

stated that despite requests from the in-laws that they may return her Stridhan, the same was not returned to her. Subsequently, when the respondent no.4 had gone back to USA and the child, was born, the petitioner, it has been alleged, did not take care of the respondent no.4 and did not even take any paternity leave to take care of the child. On top of that it has been alleged that the parents of the petitioner also came to USA and the respondent no.4 was required to conduct the household chores. In **June 2018**, the opposite party no.4 flew down to India once again with her son and in the following July, the petitioner sent her a notice for divorce. Thereafter, to save the marriage she again flew back in August 2018 to enquire why all the cruelty was being perpetrated. It has been alleged that the petitioner had throughout been ignoring the respondent no.4. In the USA the petitioner had cancelled all the credit cards which were there with the respondent no.4. The respondent no. 4 and her son were made to live in a state of penury without any medical support. Despite the fact the parents of the respondent no. 4 had sent money, she was not allowed to pursue her studies. At times, she was closed in the bath room and was beaten. When the respondent no.4 had desired the admission of the young child in a day-care centre, the petitioner had denied the same. It has been alleged in the First Information Report that when the respondent no.4 on 15.3.2019 had fallen ill, she had to herself go to the hospital and in the hospital when there was no money with her, the emergency

contact people in USA suggested her that she should go back to India. It has been alleged that after that she came back to India where she filed a complaint under the Domestic Violence Act. It has been alleged that behind the back of respondent no.4, the petitioner had also filed a case for divorce. When the respondent no.4 was in India, on 26.2.2021, two persons had come to the house of respondent no.4 and had threatened her and her parents to withdraw the cases otherwise they would kill both, the parents and the son of respondent no.4.

Challenging the instant First Information Report, the learned counsel for the petitioner Sri Prabhat Jauhar assisted by Sri Prakhar Saran Srivastava had argued that despite the fact that respondent no.4 had got admission in the USA, she never studied. He has submitted that on 14.1.2016, the petitioner had also purchased a house for the respondent no.4 in NOIDA from his own pocket. Learned counsel for the petitioner argued that when respondent no.4 had urged for the admission of the child in a day-care centre and when there was some dispute regarding that, the respondent no.4 had approached the US Police which had found that there was no merit in the complaint. This had happened on 15.3.2019 and the respondent no.4 had come back to India on 19.3.2019. Aggrieved by the actions of the respondent no.4, the petitioner had sent a legal notice through his attorney to respondent no.4 to return the minor child and also he had informed the respondent no.4 about the contemplated divorce

proceedings in the USA. Learned counsel for the petitioner has also stated that after the divorce petition was filed by the petitioner in USA on 4.3.2021, the respondent no.4, as a counter-blast to the filing of the divorce case in the US Court, filed the instant First Information Report on 14.4.2021. He submits that the order for the custody of the son was passed on 18.12.2020 and that was also a reason for the F.I.R. In the meantime, it is alleged that the petitioner had filed a Habeas Corpus Petition for the custody of the minor child before the Allahabad High Court which was still pending. Learned counsel for the petitioner has also stated that the respondent no.4 had filed a Special Leave Petition against the order of issuance of notice in the Habeas Corpus Petition and the Supreme Court had also tried reconciliation but that had failed and, therefore, the Habeas Corpus Petition in the High Court was to be heard. Learned counsel for the petitioner has submitted that if the First Information Report is perused, then it becomes abundantly clear that all the incidents which had been complained of had occurred in the USA and, therefore, the respondent no.4 had no cause of action in India. Learned counsel for the petitioner has also submitted that the ingredients of Section 498A I.P.C. were also not present in the First Information Report which was lodged by the respondent no.4. Learned counsel for the petitioner has stated that the cruelty of the husband or the relatives of the husband should have been to the extent that it would have driven the

respondent no.4 to a state when she would have committed suicide. If that had not happened then the cruelty should have caused a grave injury or a danger to the life, limb or health (whether mental or physical) to the respondent No.4. In the absence of the necessary ingredients as were to be found under section 498-A I.P.C., the First Information Report was required to be quashed. Learned counsel for the petitioner has further submitted that the respondent no.4 had hardly stayed with her in-laws and, therefore, it could not be said that they had subjected her to any cruelty or torture. In this regard, learned counsel for the petitioner has relied upon the decisions of the Supreme Court in **Ruchi Majoo vs. Sanjeev Majoo : (2011) 6 SCC 479; Vipin Jaiswal (A-1) vs. State of Andhra Pradesh : (2013) 3 SCC 684; Virala Bharath Kumar & Anr. vs. State of Telangana & Anr. : (2017) 9 SCC 413** and **Kamlesh Ghanshyam Lohia & Ors. vs. State of Maharashtra, Through the Commissioner of Police & Ors. : (2019) 4 RCR (Cri.) 169** and has submitted that if the necessary ingredients for constituting an offence under section 498-A I.P.C. and other accompanying sections were not present, the First Information Report ought to be quashed.

Learned counsel for the petitioner further stated that the lodging of the F.I.R. was an abuse of process of law and if it was established that there was no cruelty then the F.I.R. should be quashed.

Learned counsel for the petitioner has relied upon a reply of the respondent no. 4 of October 2019 which was sent to the notice which the petitioner had sent on 26.3.2019 and has stated that in the reply the respondent no. 4 had stated that if the petitioner filed a written apology and took the responsibility of his wife and son and provided a maintenance of $2000 per month for the basic sustenance and maintenance for his wife and son in India then she was ready for a settlement. He also relied upon that portion of the reply wherein it had been stated that if the petitioner came down to India and took his wife and son to USA then the respondent no. 4 was ready to condone his cruelty and submitted that when she was herself ready for rapprochement then no question of cruelty etc. arose. Learned counsel for the petitioner has also stated that for all the allegations which the respondent no. 4 had made in the first information report, namely, the fact that the petitioner was preventing the respondent no. 4 for pursuing her studies; maltreatment at USA; the abortion which had taken place in the year 2016; the maltreatment at his hands after the child was born and the maltreatment after the petitioner's parents had gone to USA no report to the Police in USA was made and, therefore, the allegations made in the first information report were baseless and an abuse of the process of law. He further stated that only to wreak vengeance and with malafide intentions the first information report was lodged. In this regard, he relied upon a judgement of the Supreme Court reported in

2019 (15) SCC 357 (Rashmi Chopra vs. State of U.P.) and has submitted that if the FIR was a counter-blast to the divorce petition which the petitioner had filed and if the ingredients of the various sections under which the FIR was filed were not fulfilled then the FIR ought to be quashed.

Learned counsel further relied upon a judgement of the Supreme Court reported in **2009 (7) SCC 712 (Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others)** and has submitted that if after the investigation was concluded and yet a charge sheet was filed against the accused then the same ought be quashed. He also submits that on the basis of what had been said in the judgement reported in **2009 (7) SCC 712 (supra)** in paragraph 32 that if from any particular fact of the case it was found that the FIR had been made with an ulterior motive to harass the accused then the continuance of criminal proceedings against the accused would amount to abuse of the process of the court.

Learned counsel for the petitioner further argued that since most of the offences had allegedly occurred in the USA the petitioner could not be investigated against and could not be tried in India as all the evidence were available only in the USA.

Learned counsel for the petitioner in the end submitted that there was a Look Out Notice and there was also a non-bailable warrant issued against the petitioner and if the High Court did not

protect the interest of the petitioner then the petitioners interest would be greatly jeopardized.

In reply, Sri Ashish Deep Verma assisted by Sri Azad Khan learned counsel appearing for respondent no.4 has submitted that if on the perusal of the First Information Report, a cognizable offence was disclosed, then in a writ petition, the genuineness or the credibility of the information would not be relevant. Learned counsel for the respondent no.4 has relied upon the decisions of the Supreme Court in **State of Haryana & Ors. vs. Bhajan Lal & Ors. : 1992 Supp (1) SCC 335; State of Kerela & Ors. O.C. Kuttan & Ors. : (1999) 2 SCC 651; State of Telangana vs. Habib Abdullah Jeelani & Ors. : (2017) 2 SCC 779; P. Chidambaram vs. Director of Enforcement : (2019) 9 SCC 24** and **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors. : 2021 SCC Online SC 315** and has submitted that the High Court should not interfere in the investigation which was to be done by the State as that would result in miscarriage of justice. From the judgement of the Supreme Court in **Neeharika Infrastructure Pvt. Ltd. (supra)** learned counsel for the respondent no.4 has stated that the following principles of law emerged, which are as follows :-

> "From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:
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> i) Police has the statutory right and duty under the relevant provisions of the Code of

Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the

> investigating agency/police to investigate the allegations in the FIR."

Learned counsel for the respondent no. 4 further states that even on facts the petitioner could not be exonerated of the charges of cruelty as he had though purchased the property in question in the name of his wife, he had yet to pay 40% of the cost of it and because he had stopped giving the various instalments the builder was after the life of the respondent no. 4 to pay remaining installments. Learned counsel for the respondent no. 4 also submitted that the offences which had been alleged against the petitioner were continuous in nature. The offences of cruelty had started off right from the date the couple had got married. The FIR was a result of all that had happened in the past so many years and, therefore, the petitioner could not get away by saying that there was no particular incident of cruelty.

Learned counsel for the respondent no. 4 further submitted that cruelty is a term which has a different meaning for every individual. For arriving at a conclusion as to whether there was cruelty against a particular individual all surrounding circumstances had to be looked into. In the instant case, he submits that the respondent no. 4 came from a very well-to-do family and was a well educated lady and, therefore, she expected a treatment which was of a nature which would go with her upbringing. He submits that when proper treatment was not meted out to her then it was definitely cruelty. Learned counsel for the respondent no. 4 has also submitted that not only the petitioner had filed the divorce petition in the USA but he had also filed a divorce suit in August 2019 in India (This fact has not been controverted by the learned counsel for the petitioner).

Learned counsel submitted that the reply which the respondent no. 4 had sent in October 2019 and the Email which she had sent showed how disgruntled she was with her situation and that she was in fact being cruelly deprived of her maintenance.

Learned counsel for the respondent no. 4 further submitted that under Section 498-A of the IPC, the cruelty had not only to be physical torture or atrocity. There could be a mental and emotional injury while physical injury was not present, which was a latent form of cruelty but was equally serious in the terms of the provisions of statutes and this cruelty would also embrace the attributes of cruelty in terms of Section 498-A of the IPC.

Learned counsel for the respondent no.4 also relied upon the provisions of Section 188 and 189 of the Cr.P.C. which are being reproduced here as under:-

> **"188. Offence committed outside India.** When an offence is committed outside India-
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> (a) by a citizen of India, whether on the high seas or elsewhere; or
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> (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:
>
> Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."
>
> **189. Receipt of evidence relating to offences committed outside India.** When any offence alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188, the Central Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the Court holding such inquiry or trial in any

> case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

He submits that the petitioner could be tried in India even for the offences which he had committed in the USA. He submits that for investigation, in fact, no sanction of the Central Government was also required. For this purpose, he relied upon **2011 (9) SCC 527 (Thota Venkateshwarlu vs. State of Andhra Pradesh through Principal Secretary and another)**. So far as the evidence was concerned, learned counsel for the respondent no. 4 submitted that under Section 189 Cr.P.C. all the evidence could be obtained by the investigating agency even from the USA.

Learned counsel for the respondent no. 4 replying to the arguments of the petitioner that a protection was required from the High Court because the look out notice had been issued against the petitioner and that a non-bailable warrant had been issued, submitted that the petitioner had throughout avoided investigation vis-a-vis the FIR which was lodged on 14.4.2021 and, therefore, no indulgence be granted to the petitioner. He further submits that if the offences were cognizable in nature the FIR could not be quashed and, therefore, the prayer for a protection could not be granted to the petitioner.

Learned counsel for the respondent no. 4 thus submitted that the case could very well be looked into by the police as also by the Courts at Gautam Budh Nagar under the provisions of Section 188 Cr.P.C. He also relied upon the decision of the Supreme Court in **Om Hemrajani vs. State of U.P. & Ors. :**

AIR 2005 SC 392 and submitted that the offence which were committed outside India could be very much tried in India.

Learned AGA Sri Arunendra Kumar Singh also submitted that the FIR could not be tinkered with lightly. He relied upon the judgements of the Supreme Court which had been relied upon by the learned counsel for the respondent no. 4.

Learned counsel for the State also submitted that the offences alleged in the FIR were of a continuing nature and they could not be taken lightly. Still further, learned AGA submitted that most of the judgements which had been cited by the learned counsel for the petitioner were for the quashing of the charge sheet.

Having heard learned counsel for the parties, the Court finds from the perusal of the First Information Report that there are allegations which reveal the commission of a cognizable offence. Respondent No. 4 has alleged various kinds of cruelties which had led her to various illnesses. The respondent no. 4 had also alleged that there was a miscarriage which had resulted because of the fact that the petitioner had pushed her. Still further the Court finds that the respondent no. 4 was being deprived of her financial resources and that had driven her to come back to India and in India also, the Court finds, there was a threat made vis-a-vis the respondent no. 4 and her parents on 26.2.2021 when two persons had reached her house at 5.30 PM and had threatened her with dire consequences. The arguments of the learned counsel

for the petitioner that the FIR was a counter-blast to the notice for divorce and that the FIR itself was a malicious persecution of the petitioner do not hold any water.

Under such circumstances, when the First Information Report definitely discloses the commission of cognizable offences the writ petition does not warrant any interference.

The Court also finds that under Section 188 and 189 Cr.P.C. the offences alleged to have been committed beyond the territory of India by an Indian citizen could be investigated into and also tried in India.

Both the writ petitions are, accordingly, dismissed.

Dismissal of the Criminal Misc. Writ Petition No. 7081 of 2021 and Criminal Misc. Writ Petition No. 7082 of 2021 would not in any manner come in the way of the petitioner in availing the remedies which might be available under the Cr.P.C.

Order Date :- 10.06.2022
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(Siddhartha Varma, J.)

(Subhash Chandra Sharma, J.)