

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 27.07.2022

Pronounced on:01.08.2022

CRM(M) No.383/2021

c/w

CRM(M) No.354/2021

JUNAID HASSAN MASOODI & ORS ... PETITIONER(S)

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Ms. Farhana, Advocate.*

Vs.

UT OF J&K & OTHERS ...RESPONDENT(S)

*Through: - Mr. Usman Gani, GA.
Mr. Wajid Haseeb, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common order, the afore-titled two petitions filed under Section 482 of the Cr. P. C seeking quashment of FIR No.28/2021 for offences under Section 498-A and 406 of IPC, are proposed to be disposed of.

2) It appears that respondent Shabeena Allaqband (hereinafter referred to as the complainant) lodged a written report with Women's Police Station, Rambagh Srinagar on 18.10.2021. In the said report, it was alleged that about seven years back, she had entered into a wedlock with petitioner Azhar Hassan Masoodi out of which one son was born. It was further alleged that she was being subjected to mental and

physical torture after her marriage in connection with demands of dowry and she was also being threatened with divorce. It was also alleged that her property has been grabbed and that she was not being paid the maintenance and that she is being harassed. She has also alleged that her husband has solemnized second marriage. She further went on to allege that on 29.09.2015 she was thrown out of her matrimonial house along with her minor child. She has also stated that there were talks of compromise going on between the parties, as a result of which she could not lodge the FIR well in time.

3) The petitioners in CRM(M) No.383/2021 happen to be the brother, sister and brother-in-law of the husband of the complainant whereas petitioner in CRM(M) No.354/2021 happens to be the husband of the complainant.

4) Heard learned counsel for the parties and perused the material on record including the Case Diary.

5) It has been contended by learned counsel for the petitioners that as per own showing of the complainant, she was thrown out of her matrimonial house on 29.09.2015 but she has filed the impugned FIR on 18.10.2021, i.e. more than six years after the occurrence. According to the learned Senior counsel, the instant prosecution is barred in terms of the provisions contained in Section 468 of the Cr. P. C. It has been further contended that the impugned FIR and the material collected by the investigating agency during investigation of the case do not disclose commission of any offence against the petitioners and, as such, the

impugned FIR deserves to be quashed. Lastly, it has been contended that the complainant has roped in all the relatives of her husband without there being any specific allegations against them.

6) On the other hand, learned counsel appearing for the respondents have argued that the impugned FIR and the material collected by the investigating agency during investigation of the case clearly discloses commission of cognizable offences against the petitioners and, as such, the prosecution cannot be scuttled at this stage. It has been further contended that the offences alleged to have been committed by the petitioners are continuing in nature, as such, the bar contained in Section 468 of the Cr. P. C is not applicable to the instant case. It has also been argued that the bar contained in the aforesaid provision is to taking of cognizance and not to undertaking of investigation of an offence.

7) In the instant case, after the registration of impugned FIR, the investigating agency has recorded the statements of witnesses acquainted with the facts and circumstances of the case. Although in the impugned FIR, the allegations made against the petitioners are not specific in nature but in her statement recorded during the investigation of the case, the complainant has clearly stated that it is her husband i.e. petitioner Azhar Hassan Masoodi, who has time and again given to her the threats of divorce. She has further stated that on 29.09.2015, it is her husband who gave a beating to her and turned her out of her matrimonial house. She has further stated that it is her husband who has

demanded dowry from her and it is he who did not fulfill her needs. Regarding other petitioners i.e. relatives of her husband, there are only general allegations in her statement and no specific act alleged to have been committed by these petitioners have been indicated in the statement. The statements of other prosecution witnesses are also on similar lines.

8) The Supreme Court in the case of **Rajesh Sharma v. State of U.P.**, (2018) 10 SCC 472, has, while dealing with the issue regarding the tendency of aggrieved wives to rope in all the relatives of the husband in the cases relating to matrimonial disputes, observed as under:

“14. Section 498A 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 women 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.⁸ It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have 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.”

9) Again, in **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273, the Supreme Court has observed as under:

“There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the 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 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 grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

10) In **Preeti Gupta v. State of Jharkhand**, (2010) 7 SCC 667, the Supreme Court has observed as under:

32. It is a matter of common experience that most of these complaints under section 498-A 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 498-A 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.

11) In **Subha Rao v. State of Telangana**, (2018) 14 SCC 452, the Supreme Court has observed that the courts should be careful in proceeding against the relatives in crimes pertaining to matrimonial disputes and dowry deaths. It has been further observed that 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.

12) Having regard to the aforesaid analysis of the legal position on the subject, it is clear that on the basis of the omnibus allegations made in the impugned FIR as well as statements of prosecution witnesses recorded during investigation of the case, the petitioners in CRM(M) No.383/2021, who happen to be relatives of the husband of the complainant, cannot be roped in. These allegations are required to be carefully scrutinized before initiation of prosecution against the relatives of the husband. There being no mention of the specific instances of cruelty alleged to have been committed by the relatives of the husband in the instant case, the prosecution against them cannot be sustained. However, the same cannot be said about the petitioner in CRM(M) No.354/2021 i.e. the husband of the complainant, against whom there are specific allegations in the statements of the prosecution witnesses.

13) That takes us to the question as to whether it was open to the investigating agency to undertake investigation of the offences in view of the fact that the alleged acts of misappropriation and cruelty are stated to have taken place about six years prior to the lodging of the FIR.

14) If we have a look at the provisions contained in Section 468 of the Cr. P. C, it creates a bar to taking of cognizance after a lapse of period of limitation. Cognizance of an offence is taken only after final report of investigation of the FIR is laid before the Court. Registration of an FIR does not amount to taking of cognizance, therefore, the bar contained in Section 468 of the Cr. P. C cannot be made applicable to

the registration of FIR and undertaking investigation into an offence. Even otherwise, an offence under Section 498-A of IPC is continuing in nature and, as such, investigation into such an offence can be undertaken at any point in time.

15) Apart from this, the material collected by the investigating agency during the investigation of the case shows that there were talks of compromise going on between the parties, as a result of which the complainant restrained herself from lodging the FIR in respect of the acts that had taken place prior to **29.09.2015**.

16) Apart from the above, Section 473 of the Cr. P. C gives jurisdiction to a Court to take cognizance of an offence beyond the prescribed period of limitation in certain cases and the Courts have time and again held that in the matters relating to offences pertaining to cruelty to women, cognizance of offences should be taken by extending the period of limitation in a liberal manner. Even otherwise, mere delay on the part of the complainant in lodging the complaint cannot by itself be a ground to quash the FIR. I am supported in my aforesaid view by the judgment of the Supreme Court in the case of **Skoda Auto Volkswagen (India) vs. State of UP**, (2021) 5 SCC 795. The contention of learned counsel for the petitioners in this regard, as such, has no merit and is, accordingly, rejected.

17) For the forgoing reasons, a case for quashment of the impugned FIR and the proceedings emanating therefrom to the extent of petitioners in CRM(M) No.383/2021 is made out and the said petition

is allowed whereas the petition bearing CRM(M) No.354/2021 lacks merit and, as such, the same is dismissed.

18) The Case Diary be returned to the learned counsel for the official respondents.

(SANJAY DHAR)
JUDGE

Srinagar,
01.08.2022
"Bhat Altaf, PS"

Whether the order is speaking: *Yes/No*
Whether the order is reportable: *Yes/No*

