



GAHC010260092022

Page No.# 1/11



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1297/2022

1. ADHIR CHANDRA GHOSH AND 2 ORS
S/O LATE SUREN GHOSH
R/O RESIDENTS OF VILL- DHUBRI, WARD NO. 7 (C.R. DAS ROAD),
P.O. DHUBRI, P.S. SADAR THANA, DHUBRI, DIST. DHUBRI, ASSAM

2: SRI PANKAJ GHOSH
S/O SRI ADHIR CHANDRA GHOSH
R/O RESIDENTS OF VILL- DHUBRI
WARD NO. 7 (C.R. DAS ROAD)
P.O. DHUBRI
P.S. SADAR THANA
DHUBRI
DIST. DHUBRI
ASSAM

3: SMTI. JHUMA GHOSH
W/O SRI PANKAJ GHOSH
R/O RESIDENTS OF VILL- DHUBRI
WARD NO. 7 (C.R. DAS ROAD)
P.O. DHUBRI
P.S. SADAR THANA
DHUBRI
DIST. DHUBRI
ASSA

VERSUS

ANUPAMA GHOSH
W/O SRI MANTU GHOSH
D/O SRI AKUL CH. GHOSH
R/O VILL- BILASIPARA WARD NO. 4,
P.O., P.S. AND DIST. DHUBRI, ASSAM

Advocate for the Petitioner : MRS. S ROY

Advocate for the Respondent : N. UDDIN

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

Date : 02.06.2023.

Heard Ms. S. Roy, learned counsel for the petitioners and also heard Mr. M.I. Hussain, learned counsel appearing for the sole respondent.

2. In this petition, under Section 482 of the Code of Criminal Procedure, 1973, three petitioners, namely, Shri Adhir Chandra Ghosh, Sri Pankaj Ghosh and Smti. Jhuma Ghosh have put to challenge the correctness or otherwise of the order dated 10.12.2021, passed by the learned Sub-Divisional Judicial Magistrate (M), Bilashipara in C.R. Case No.174/2021, whereby the learned Magistrate took cognizance of the offence under Section 498(A)/406/506/34 of the IPC, against the present petitioners and another person, and all other subsequent orders thereto.

3. The factual background, leading to filing of the present petition, is adumbrated herein below:-

“The respondent herein - Smti Anupama Ghosh married with Shri Mantu Ghosh on 28.01.2012, as per Hindu rites and rituals. Thereafter, they started their conjugal life. The petitioner No.1 -Shri Adhir Chandra Ghosh is the father-in-law of the respondent and petitioner No.2 - Sri Pankaj Ghosh is her brother-in-law and Smti. Jhuma Ghosh is her sister-in-law and they used to live jointly. After few years, the respondent lodged a complaint before the learned Sub-Divisional Judicial Magistrate, Bilashipara against her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law, being C.R. Case No.174/2021 alleging inter-alia amongst others that they have subjected her to both physical and mental torture demanding dowry and also demanding a sum of 7,00,000/ lacs

from her. Then the learned Magistrate, on perusal of the complaint and evidence of the complainant and other witnesses, under Section 200 Cr.P.C. took cognizance of the offence under Section 498(A)/406/ 506/34 IPC and issued process against all the accused persons, including the present petitioners, vide impugned order dated 10.12.2021.”

4. Being highly aggrieved by the impugned order, dated 10.12.2021, the petitioners approached this Court, challenging the correctness or otherwise of the said order and contended to set aside the same, *inter alia*, on the following grounds amongst others:-

- (i) That, the learned Court below erred in law as well as in facts while passing the impugned order resulting into abuse of the process of law and miscarriage of justice;
- (ii) That, the learned Court below had failed to take into consideration of the facts that there is no prima facie case against the petitioners and all the allegations were general allegations just to harass the petitioners by dragging them to the Court and the learned court below took cognizance of the offence and issued process against the petitioners, which is nothing but an abuse of the process of law;
- (iii) That, the complaint petition and the evidence on record shows that the complainant made general allegations with regard to demand of dowry and harassment and nothing has been disclosed on which date or time and month by whom the alleged demand was made and the manner by which she was subjected to cruelty and how she was tortured and harassed, and the allegations against the petitioners are extremely vague and omnibus and appears to be leveled on account of hit of anger of the complainant with her husband;
- (iv) That, the learned Magistrate while taking cognizance and issuing process against the petitioners ought to have ascertained that there is prima facie material of the accused overt and covert act in doing the offences, but, in the instant case the allegation against the petitioners are omnibus and

general allegation and the prosecution of the like nature would not be maintainable;

- (v) That, the complainant never made any specific allegation against the petitioners in committing the offence. Therefore, without making any specific allegation against the petitioners, they were made accused in the case illegally and as such the learned Court below committed an abuse of the process of the Court in taking cognizance of the offence and issued process against them;
- (vi) That, in any view of the matter the impugned order is an abuse of the process of law and liable to be quashed under Section 482 of the Cr.P.C.

5. Mrs. S. Roy, learned counsel for the petitioners submits that a bare perusal of the complaint fails to disclose any prima facie case against the present petitioners, namely, Shri Adhir Chandra Ghosh, Shri Pankaj Ghosh and Smt. Jhuma Ghosh. Ms. Roy further submits that the petitioner No.1 - Shri Adhir Chandra Ghosh, is the father-in-law of the respondent, and he is 79 years old, and the petitioner No. 2 Shri Pankaj Ghosh and the petitioner No.3 - Smt. Jhuma Ghosh are her brother-in-law and sister-in-law respectively, and there is no specific allegation against them, and whatever allegation are there in the complaint, the same are omnibus statement, and the same failed to make out even a prima-facie case against them. Ms. Roy also submits that while taking cognizance upon the complaint, the learned Court below had failed to take into account the same and casually took cognizance of the offence and issued process to them. However, Ms. Roy submits that there is specific allegation against the husband of the respondent, and the petitioners herein are living in a separate household and therefore, Ms. Roy contended that the impugned order of taking cognizance, against the present petitioners, is illegal and needs to be set aside. Ms. Roy has also referred following case laws of Hon'ble Supreme Court to bolster her submission:-

- (i) **Rajesh Sharma & Ors. vs. State of Uttar Pradesh & Anr. (2018)10 SCC 472;**
- (ii) **Geeta Mehrotra & Anr. vs. State of Uttar Pradesh & Anr. (2012)10 SCC 741;**

6. Per contra, Mr. M.I. Hussain, learned counsel for the respondent submits that there is specific allegation against the present petitioners apart from the allegation against the husband of the respondent and the learned Court below had taken into account all these facts and circumstances while taking cognizance of the offences. Mr. Hussain also submits that the impugned order suffers no infirmity or illegality and as such, it requires no interference of this Court. Therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record, and also perused the impugned order, passed by the learned Court below.

8. In order to appreciate the submission of the learned counsel of both the parties, with greater precision, this Court deemed it fit and proper to reproduce the impugned order herein below:-

“10.12.2021:

Complainant is present with three witnesses. Due to paucity of time only one witness could be examined today. Witness examined on oath u/s 202 CrPC and discharged.

Heard. Perused the CR as well as statement of complainant recorded u/s 202 CrPC and that of its witness under Section 202 CrPC and on perusing the materials on record sufficient materials punishable u/s 498(A)/406/506/34 IPC has been meted out against the accused persons and accordingly cognizance is taken against the accused persons under the aforesaid Section of law. Issue summon to the accused persons. Complainant to take step.

I have also heard learned Counsel for complainant as well as complainant for issuance of search warrant against the accused persons for recovery of stridhan articles of the complainant. However on perusing the materials on record as a whole, it appears that there is no any such immediate threat to the stridhan articles of the complainant. Hence prayers of the

complainant to issue search warrant for recovery of stridhan articles of the complainant is rejected hereby.”

9. The law, in respect of taking cognizance, is well settled by Hon’ble Supreme Court in catena of decisions. In the case of **Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. & Ors.**, reported in **2021 SCC OnLine SC 806**, the Hon’ble Supreme Court has held that:-

“As held by this Court in the case of *GHCL Employees Stock Option Trust v. India Infoline Limited* reported in (2013)4 SCC 505, in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is *sine qua non* for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.”

10. Again, in the case of **Neelu Chopra & Anr. v. Bharti**, reported in (2009) 10 SCC 184, the Hon’ble Supreme Court has held in paragraphs 9 and 10 as under:-

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not to be all and end all 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.

10. 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 the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”

11. In the case of **M/S. Pepsi Foods Ltd. & Anr vs. Special Judicial Magistrate & Ors.**, reported in **1997 4 Crimes (SC) 212**, it has been held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate, summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

12. The legal proposition that can be crystallised from the aforementioned decisions is that the Magistrate has to record his satisfaction about a prima facie case against the accused and the role played by each of them in their respective capacities which is *sine qua non* for initiating criminal proceedings against the accused. Initiation of criminal proceeding and summoning of an accused is a serious matter, and it relates to the life and liberty of an individual, and carries with it grave consequences.

13. Here in this case, it appears that the learned court below had taken cognizance of the offence under Section 498(A)/406/506/34 IPC against the petitioners. But, nowhere in the impugned order, had the learned court below indicated the grounds for deriving prima-facie satisfaction of making out a prima-facie case against the petitioners, nor it had indicated the role played by each of the petitioners.

14. Besides, a careful perusal of the complaint petition, as well as the statement of the respondent, recorded under Section 200 of the CrPC and of her father, recorded under section 202 of the CrPC, reveals that no specific averment is being made against the petitioners. Though some averments are here and there in the complaint and in the statement of the respondent, the same appears to be an omnibus statement and no specific role is assigned to

each of the present petitioners. The father of the respondent, in his statement under section 202 of the CrPC had never whispered any words against the present petitioners, though he had implicated the husband of the respondent only.

15. Further, it appears that the learned court below has examined the respondent as P.W.1, in the meantime. There also she has implicated her husband only for demand of money and dowry and subjecting her to torture etc., not the present petitioners. Of course, her evidence was not in existence at the time of taking cognizance. But, the learned counsel for the petitioners has made a reference to the same at the time of argument and pointed out that the allegations are against her husband only. And having gone through the same I find substance in the same. The contention, so taken by the petitioners and the submission so made by their learned counsel stands vindicated by the evidence of the respondent as P.W.1.

16. I have carefully gone through the case laws, referred by the learned counsel for the petitioners, and I find that the ratio laid down therein, also fully fortified the submission so advanced by her. In the case of **Rajesh Sharma** (supra), the Hon'ble Supreme Court has held in paragraph 14 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. [Explanation to Section 498A] It is a matter of serious concern that large number of cases continued 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. This Court had earlier observed that a serious review of the provision was warranted [Preeti Gupta (supra)]. The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued

directions to check such abuse. In **Arnesh Kumar [(2014) 3 SCC 273 : (2014) 3 SCC (Cri) 449]** this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.”

17. Again in the case of **Geeta Mehrotra** (supra), the Hon’ble Supreme Court has held as under:-

“20. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

18. Here in this case also, whatever references against the petitioners are there in the complaint and in the statement of the respondent, the same, seems to be casual reference and appears to have been made only being the family members of the husband of the respondent. And even if the same are accepted in their entirety and taken in their face value, this court afraid, a prima-facie case for taking cognizance of the offences, under section 498(A)/406/506/34 IPC are made out against the petitioners. It is to be noted here that the expression ‘cruelty’, as contemplated in Section 498(A) IPC, covers only those conducts 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.

19. Without there being any allegation of active involvement of the petitioners in the matter, there is no justification of taking cognizance against the petitioners. As held in the case of **Geeta Mehrotra** (supra), there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute. Under these facts and circumstances, the complaint so made against the present petitioners, appears to be not a bona-fide one.

20. In the case of **State of Haryana & Ors. v. Ch. Bhajan Lal & Ors.**, reported in **1992 Supp (1) 335**, Hon’ble Supreme Court has held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the

Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

21. Thus, it appears that the case in hand is squarely covered by point No.1 and 7 of paragraph No.102 of the case of **Bhajan Lal (supra)**. On account of absence of specific material in the complaint and also in the statement of the witnesses and also in view of absence of prima facie case, being made out against the petitioners, and further, in view of



absence of any indication in the impugned order about the role played by the petitioners, this Court is of the view that a case for quashing the impugned order, so far it relates to taking of cognizance against the present petitioners are concerned, invoking the jurisdiction under Section 482 of the Cr.P.C., appears to be made out. The impugned order of taking cognizance, thus, fails to withstand the test of legal scrutiny.

22. Accordingly, this petition stands allowed. The impugned order dated 10.12.2021, passed by the learned Sub-Divisional Judicial Magistrate, (M) Bilashipara, in C.R. Case No.174/2021, so far it relates to taking cognizance against the present petitioners, stands quashed. Stay, if granted earlier, stands vacated. The parties have to bear their own costs.

JUDGE

Comparing Assistant