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IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 16th OF JULY, 2024

MISC. CRIMINAL CASE No. 57067 of 2021

[redacted]

VS

STATE OF MADHYA PRADESH AND ANOTHER)

Appearance:
(SHRI SUDHANSHU VYAS – ADVOCATE FOR THE PETITIONERS)
(SHRI AMAY BAJAJ – PANEL LAWYER FOR RESPONDENT NO.1/STATE)

Whether approved for reporting : YES

ORDER

1. Petitioners have preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") for quashment of the FIR bearing Crime No.272/2021 registered at P.S. Rajpur, District Badwani (M.P.) for the offences punishable under Section 498-A, 323/34 of the Indian Penal Code, 1860 (in short "IPC"), Section 3/4 of the Dowry Prohibition Act, 1961 and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (in short Act of 2019) as well as all the consequential proceedings pending before the Judicial Magistrate First Class, Rajpur in RCT No.376/2020 thereto.

2. Brief facts of the case are that the complainant/respondent No.2 Salma lodged an FIR at P.S. Rajpur, District Badwani against the present petitioners and her husband Faizan Saiyyad by stating that her Nikah was taken place with the accused Faizan on 15.4.2019, as per the

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Muslim rites and rituals. Petitioner No.1 Smt. Aliya is her mother-in-law and petitioner No.2 Farad Saiyyad is her sister-in-law. After the marriage her husband, mother-in-law and sister-in-law physically and mentally harassed her for demand of dowry. They pressurized her to bring Rs.2 Lakh from her parents. When she denied, then the petitioners and her husband used to beat her by using kicks and fists. Thereafter her husband uttered 'Talaq' thrice and kicked her out. Since then she is living with her parents at Badwani. Thereafter she lodged FIR against the petitioners and her husband. Accordingly offences under Section 498-A, 323/34 of IPC, Section 3/4 of the Dowry Prohibition Act and Section 4 of the Act of 2019 has been registered against the present petitioners and husband of respondent No.2.

3. Learned counsel for the petitioners further contended that the alleged offence has been committed within the jurisdiction of the Mumbai Court, therefore, P.S. Rajpur is not having any jurisdiction to register the FIR in question. Provisions of Section 4 of the Act of 2019 is applicable only against the Muslim husband and not against the in-laws. Omnibus allegations have been levelled against the petitioners for demand of dowry. FIR has been lodged with a huge delay of more than 14 months. No such incident has taken place. No date of such incident has been shown in the FIR. Petitioner No.2 is the sister-in-law of the complainant. Being a married lady she is living separately along with her husband and children at her matrimonial house. She has no occasion to regularly visit at her parent's home. Respondent No.2 and his brother always used to misbehave with the petitioner No.1. No offence is made

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out against the petitioners under Section 498-A, 323/34 of IPC. Hence, he prays for quashment of the FIR and all the consequential proceedings thereto.

4. Per contra, learned counsel for the respondent No.1/State opposes the prayer and prays for its rejection by submitting that on the basis of FIR reveals harassment and demand made by the petitioners, therefore, it is not a fit case for quashment of FIR.

5. Nobody is appeared on behalf of respondent No.2.

6. Both the parties heard at length and perused the case diary.

7. Learned counsel for the petitioners firstly raised a legal contention regarding the jurisdiction of the trial court by stating that as per the FIR the entire alleged offence has been done in Machchhi Market, Chirag Nagar, Ghatkopar, West Mumbai (Maharashtra) and no part of crime has been committed at the jurisdiction of P.S. Rajpur. Therefore, Police Station Rajpur is having no jurisdiction to register the said FIR.

8. It is a settled position of law that “ordinary rule” engrafted in Section 177 of Cr.P.C. by allowing courts in another local area to take cognizance of the offence. In addition, if an offence committed in one locality is repeated in another, the courts in the other location are competent to hear the case. If an offence is committed in another jurisdiction as a result of the consequences of a criminal act, the court in that jurisdiction is likewise competent to take cognizance under Section 179. As a result, if an offence is committed in part in one location and

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part in another, the exception to the "ordinary rule" would be attracted if the offence is a continuing offence or if the consequences of a criminal act result in an offence being committed at a different location, and the courts within whose jurisdiction the criminal act is committed would lose exclusive jurisdiction to try the offence.

9. The Hon'ble Supreme Court 3 judge bench in the case of **Rupali Devi Vs. State of U.P. (2019) 5 SCC 384**, the court observed that "Courts in the location where the wife seeks refuge after fleeing or being driven from the matrimonial home due to acts of cruelty committed by the husband or his relatives also have jurisdiction to hear a complaint alleging commission of offences under Section 498-A of the Indian Penal Code." Judgment in the case of **Rupali Devi** (supra) is a landmark that settled the conflict regarding the jurisdiction of the court from which a victim of domestic violence can file a case. It resolved all existing doubts regarding the jurisdiction of courts in the parental house.

10. It is next contended by learned counsel for the petitioners that in fact the incident is an afterthought and the FIR has been lodged against the petitioners after lapse of 14 months without any proper explanation, therefore, the entire case of the prosecution is doubtful. It is noteworthy that it is a case of matrimonial dispute and the complainant herself mentioned in the FIR that as she wants to live with her husband and does not want to spoil her marital life, therefore, she did not lodge any FIR earlier.

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11. Delayed filing of FIR and its consequences should be considered after recording evidence of both the parties. Hon'ble Apex Court in the case of **Skoda Auto Volkswagen (India) Private Limited Vs. The State of U.P. reported in (2021) 5 SCC 795** has held that "in a petition for quashing the FIR, the court cannot go into disputed question of fact. The mere delay on the part of complaint in lodging the complaint, cannot by itself be a ground to quash the FIR. Therefore, this Court cannot embark upon any enquiry as to the reliability or genuineness or otherwise of the allegation made in FIR ought not to scuttled at initial stage." Therefore, there is no force in the contention made by learned counsel for the petitioners and mere delay in lodging the FIR by itself would not be a ground to quash the proceeding.

12. The next contention of learned counsel for the petitioners is that provisions of Section 3 & 4 of the Act of 2019 is applicable only against the Muslim husband. It is not applicable against the in-laws and other relatives of the Muslim wife. Section 3 & 4 of the Act of 2019 provides as follows:-

> "**3. Talaq to be void and illegal**.- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.
>
> **4. Punishment for pronouncing talaq**.- Any Muslim husband who pronounces talaq referred to in Section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine."

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13. In view of Section 3 of the Act of 2019 pronouncement of Talaq by Muslim husband upon his wife has been rendered void and illegal. As per the provisions of Section 4 of the Act of 2019 a Muslim husband, who pronounces Talaq thrice upon his wife, as referred to in Section 3, is punishable with imprisonment for a term which may extend to three years. Therefore, it is crystal clear that the provisions of Section 3 & 4 evidently operates in relation to Muslim husband alone.

14. The Hon'ble Apex Court in the case of **Rahna Jalal Vs. State of Kerala and Another reported in (2021) 1 SCC 733** held as under:-

> "11. The provisions of Section 7(c) apply to the Muslim husband. The offence which is created by Section 3 is on the pronouncement of a talaq by a Muslim husband upon his wife. Section 3 renders the pronouncement of talaq void and illegal. Section 4 makes the Act of the Muslim husband punishable with imprisonment. Thus, on a preliminary analysis, it is clear that the appellant as the mother-in-law of the second respondent cannot be accused of the offence of pronouncement of triple talaq under the Act as the offence can only be committed by a Muslim man."

15. In view of the aforesaid, this Court is of the considered opinion that Section 3 & 4 of the Act of 2019 applies only against the Muslim husband. Therefore, the petitioner who are the mother-in-law and sister-in-law of the complainant cannot be prosecuted for the offence of pronouncement of triple Talaq under the Act of 2019, as the aforesaid offence can only be committed by a Muslim husband. Therefore, the

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offence registered against the petitioners under Section 4 of the Act of 2019 deserves to be quashed.

16. But so far as the other offences are concerned, in the FIR specific allegation has been made against the petitioners regarding the mental and physical harassment of the complainant for non-fulfilment of demand of dowry. Although it is contended that petitioner No.2 being a married lady living separately with her husband and children in her matrimonial house, but the address of petitioner No.2 is the same as that of the husband and mother-in-law of the complainant. Therefore, the aforesaid defence taken by the petitioner No.2 shall be considered after recording of the evidence. Both the petitioners have been named in the FIR.

17. In the case of **Chirag M. Pathak and others Vs. Dollyben Kantilal Patel and others, (2018) 1 SCC 330** the Hon'ble Supreme Court has held that:-

> "High Court, in exercise of its power under Section 482 of Criminal Procedure Code, cannot undertake a detailed examination of facts contained in FIR, by acting as an appellate Court and draw its own conclusion. It is only when no prima facie cognizable offence is made out of its mere reading due to absurdity in allegation."

18. In the case of **Ramveer Upadhyay and Anr. Vs. State of U.P. & Anr. passed in Special Leave Petition (Crl.) No.2953 of 2022**, Hon'ble Apex Court has held as under:-

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> ".....Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any ofence. ...."

19. Thus, it is crystal clear that Section 482 of Cr.P.C. has been incorporated to prevent abuse of process of law and not to encourage the offence. This court cannot make roving inquiry at this stage, but if the uncontroverted allegations do not make any offence, only then this Court can quash the FIR. Therefore, the claim of the petitioner that there is no evidence available against them, cannot be accepted at this stage.

20. In view of the prima facie evidence available on record against the petitioners, this Court is of the considered opinion that this petition under Section 482 of Cr.P.C. deserves to be partly allowed only in respect of the offence under Section 4 of the Act of 2019. But in view of the prima facie evidence available on record, it is not a fit case where this Court can exercise the power conferred under Section 482 of Cr.P.C. to quash all other offences registered against the petitioners.

21. This matter pertains to the Muslim Women (Protection of Rights on Marriage) Act, 2019. Triple talaq is a serious issue. However, this Court before parting with the judgment, finds it necessary to make the following observations:-

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(i) Talaq is a word used in Muslim personal Law for divorce, denoting dissolution of marriage, when a Muslim man severs all marital ties with his wife. Under the Muslim law, Triple Talaq simply means liberty from the relationship of marriage in instant and irrevocable, where the man, by simply uttering the word 'talaq thrice, is able to end his marriage. This kind of instantaneous divorce is called Triple Talaq, also known as 'talaq-e-biddat.'' It is obvious that in Talaq-e-Biddat or triple talaq, the marriage could be broken within seconds and the clocks cannot be turned back. Unfortunately this right lies only with the husband and even the husband wants to correct his mistake it is the women who has to face the atrocities of nikah halala.

(ii) In the celebrated case of Shayara Bano Vs. Union of India and others (AIR 2017 SC 4609) the practice of Triple Talaq has already been declared illegal by the Constitutional Bench of Hon'ble Supreme Court. The law against Triple Talaq has been enacted to give matrimonial justice and protection to the women of Muslim community. Muslim Women (Protection of Rights on Marriage) Bill, 2019, was passed by the Indian Parliament as a law, to make instant Triple Talaq a criminal offence. It is definitely a great move towards equality and social amendments. It took many years for the Law makers to realise that triple talaq is unconstitutional and bad for society. We should now realise the need for a "Uniform Civil Code" in our country.

(iii) There are a lot of other deprecating, fundamentalist, superstitious and ultra-conservative practices prevalent in the society that are

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clothed in the name of faith and belief. Though the Constitution of India already encapsulates Article 44 that advoactes a uniform civil code for the citizens, yet the same needs to become a reality not just on paper. A well-drafted uniform civil code could serve as a check on such superstitious and evil practices and would strengthen the integrity of the nation.

22. Accordingly this petition under Section 482 of Cr.P.C. is partly allowed and the FIR bearing Crime No.272/2021 registered at P.S. Rajpur, District Badwani (M.P.) in respect of the offences punishable under Section 3/4 of the Act of 2019 against both the petitioners are hereby quashed, but the trial Court is directed to proceed in the trial against the petitioners in respect of the other remaining offences except offences under Section 3/4 of the Act of 2019.

23. Before parting with the order, it is made clear that this Court has not expressed any opinion on the merits of the case. The trial Court shall continue the trial against petitioners without being influenced or prejudiced by the observations made in this order.

(ANIL VERMA)
JUDGE

Trilok/-