

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 28th OF MAY, 2024

MISC. CRIMINAL CASE No. 19711 of 2024

BETWEEN:-

**R. D. MISHRA S/O LATE RAMADHAR MISHRA,
AGED ABOUT 72 YEARS, OCCUPATION: RETIRED
LINE SUPERVISOR MPEB BEHIND BLOOMS
SCHOOL SAAI KUTI SAAI NAGAR WARD NO. 29
PATERI POLICE STATION CIVIL LINE TEHSIL
RAGHURAJNAGAR DISTRICT SATNA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI RAM BIHARI GAUTAM - ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH
THROUGH THE WOMEN POLICE STATION
PANNA DISTRICT PANNA (MADHYA
PRADESH)**

**2. SMT. SONAM SHUKLA W/O PRAVEEN
GAUTAM, AGED ABOUT 28 YEARS, R/O
SOUTH PATERI DISTRICT SATNA AT
PRESENT R/O BEHIND INDANE GAS
GODOWN PANNA P.S. KOTWALI DISTRICT
PANNA (MADHYA PRADESH)**

**3. THE SUPERINTENDANT OF POLICE
DISTRICT PANNA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court passed the following:

ORDER

This application under Section 482 of Cr.P.C. has been filed seeking following relief(s):-

“It is, therefore, prayed that, this Hon'ble court may kindly allow the present application U/s. 482 of Cr.P.C. and quash the FIR/Crime No.0021/2024, dt/ 02/04/2024 registered at Women Police Station, Panna, District Panna (M.P.) against the present applicant, in the interest of justice.”

2. According to the prosecution case, the respondent No.2 lodged an FIR that she got married to Praveen @ Rohit on 05.05.2018. Her parents had given Rs.8 Lakh in cash, ornaments of 7 Tola Gold, 1 Kg. Silver and house hold articles. When, she reached her matrimonial house, she was kept properly for one year. On 15.06.2019, at about 12:00 PM, she was working in her house. At that time, her husband returned back and alleged that she has not prepared food and started assaulting her by fists and kicks. He also alleged that her father had not given an amount Rs.2 Lakh in cash and a four wheeler. Even, the applicant does not know to work. When, she made a complaint of this behavior of her husband to her in-laws including the applicant, then applicant started abusing her in the name of mother and sister and stated that Praveen is alleging correctly and father has not given anything in dowry and he would settle the score. When, she made a complaint to her parents, then her father came to her matrimonial house and tried to convince her in-laws including the applicant but they

did not agree. Thereafter, on 28.08.2023, her brother Saurabh Shukla came to her matrimonial house to take her back to celebrate the festival of Rakshabandhan. From thereafter, she is staying back in her parental home along with her four year old child. She is a victim of cruelty meted out by her in-laws including the applicant.

3. It is submitted by counsel for applicant that the applicant is a victim of false implication. In fact he is residing in a house, which is approximately two and half Km. away from the matrimonial house of the respondent No.2. The applicant is not on talking terms with the family of respondent No.2 for the last 30 years. The applicant has also made a complaint to the Superintendent of Police, Panna for free and fair investigation.

4. Considered the submissions made by counsel for the applicant.

5. The present application under Section 482 of Cr.P.C. is second in number. In the first application, which was registered as M.Cr.C.No.17064/2024, the applicant had also projected himself to be the State President (Ex Officio) Vidyut Pensioners Hit Rakshak Association. Since, the counsel for applicant could not point out the reasons of mentioning his elected/nominated office in the cause title, therefore, the first application was rejected with liberty to file a properly constituted second application.

6. In order to prosecute the near and dear relatives of the husband of the complainant, the allegations must be clear, specific and should not be vague, omnibus and general.

7. The Supreme Court in the case of **Kans Raj v. State of Punjab**, reported in (2000) 5 SCC 207, **Monju Roy v. State of W.B.**, (2015) 13 SCC 693, **Chandralekha & Ors. v. State of Rajasthan & Anr.** reported in 2013 (1) UC 155, **Geeta Mehrotra Vs. State of U.P.** reported in (2012) 10 SCC 741, **Preeti Gupta Vs. State of Jharkhand**, reported in (2010) 7 SCC 667 has held that in absence of specific allegations, the near and dear relatives of husband of the complainant should not be made to face the ordeal of trial. Therefore, the allegations made in the present application shall be considered in the light of the law laid down by the Supreme Court concerning the prosecution of near and dear relatives of the husband of the complainant.

8. In the FIR, it is specifically alleged that on 15.06.2019, she was beaten by her husband and she also alleged that her father had not given Rs.2 Lakh and four wheeler in dowry. When she made complaint to the applicant and other in-laws, then it is specifically alleged in the FIR that the applicant replied that her husband is alleging correctly and the father of the respondent No.2 has not given anything in the dowry and he would deal with the situation.

9. This challenge given by the applicant that he would deal with the situation appears to be correct because in the first application for no reason the applicant had tried to impress upon the Court by claiming that he is the State President (Ex Officio) Vidyut Pensioners Hit Rakshak.

10. Be that whatever it may be.

11. There are specific allegations that not only he supported the act of husband of the respondent No.2 in assaulting the respondent No.2 on the allegation of non grant of dowry but the applicant also threw a challenge that he would deal with the situation.

12. The Supreme Court in the case of **Taramani Parakh v. State of M.P.**, reported in **(2015) 11 SCC 260** has held as under:-

12. In *Kailash Chandra Agrawal v. State of U.P.* [*Kailash Chandra Agrawal v. State of U.P.*, (2014) 16 SCC 551] , it was observed (SCC p. 553, paras 8-9):

“8. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In *Kans Raj v. State of Punjab* [*Kans Raj v. State of Punjab*, (2000) 5 SCC 207 : 2000 SCC (Cri) 935 : (2000) 3 SCR 662] it was observed (SCC p. 217, para 5):

“5. ... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their overenthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible

material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

9. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to *K. Ramakrishna v. State of Bihar* [*K. Ramakrishna v. State of Bihar*, (2000) 8 SCC 547 : 2001 SCC (Cri) 27] , *Pepsi Foods Ltd. v. Judicial Magistrate* [*Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] and *Asmathunnisa v. State of A.P.* [*Asmathunnisa v. State of A.P.*, (2011) 11 SCC 259 : (2011) 3 SCC (Cri) 159] ”

13. In the present case, the complaint is as follows:

“Sir, it is submitted that I was married on 18-11-2009 with Sidharath Parakh s/o Manak Chand Parakh r/o Sarafa Bazar in front of Radha Krishna Market, Gwalior according to the Hindu rites and customs. In the marriage my father had given gold and silver ornaments, cash amount and household goods according to his capacity. After the marriage when I went to my matrimonial home, I was treated nicely by the members of the family. When on the second occasion I went to my matrimonial home, my husband, father-in-law and mother-in-law started harassing me for not bringing the dowry and started saying that I should bring from my father 25-30 tolas of gold and Rs 2,00,000 in cash and only then they would keep me in the house otherwise not. On

account of this my husband also used to beat me and my father-in-law and my mother-in-law used to torture me by giving the taunts. In this connection I used to tell my father Kundanmal Oswal, my mother Smt Prem Lata Oswal, uncle Ashok Rai Sharma and uncle Ved Prakash Mishra from time to time. On 2-4-2010 the members of the family of my matrimonial home forcibly sent me to the house of my parents in Ganj Basoda along with my brother Deepak. They snatched my clothes and ornaments and kept with them. Since then till today my husband has been harassing me on the telephone and has not come to take me back. Being compelled, I have been moving this application before you. Sir, it is prayed that action be taken against husband Sidharath Parakh, my father-in-law Manak Chand Parakh and my mother-in-law Smt Indira Parakh for torturing me on account of demanding dowry.”

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.”

13. Merely because the applicant has made an application to the Superintendent of Police for free and fair investigation, the applicant

cannot claim that the Police must investigate from his point of view also.

14. The Supreme Court in the case of **Romila Thapar and others vs. Union of India and others** reported in **(2018) 10 SCC 753** has held as under:-

“24. Turning to the first point, we are of the considered opinion that the issue is no more res integra. In *Narmada Bai v. State of Gujarat*, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)

“64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them.”

(emphasis supplied)

25. Again in *Sanjiv Rajendra Bhatt v. Union of India*, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)

“68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in *Union of India v. W.N. Chadha*, *Mayawati v. Union of India*, *Dinubhai Boghabhai Solanki v. State of Gujarat*, *CBI v. Rajesh Gandhi*, *CCI v. SAIL* and *Janata Dal v. H.S. Chowdhary*.”

(emphasis supplied)

26. Recently, a three-Judge Bench of this Court in *E. Sivakumar v. Union of India*, while dealing with the appeal preferred by the “accused” challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

“10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki v. State of Gujarat*, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on *Narender G. Goel v. State of Maharashtra*, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.”

27. This Court in *Divine Retreat Centre v. State of Kerala*, has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.

28. Be that as it may, it will be useful to advert to the exposition in *State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.*¹³ In paragraph 70 of the said decision, the Constitution Bench observed thus:

“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 38 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.”

29. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. 39 Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named

accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organization and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal 40 remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.....”

15. The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat**, reported in (2014) 4 SCC 626 has held as under:-

“50. In *W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171]* , the High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr W.N. Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this Court held as follows: (SCC pp. 290-91 & 293, paras 89, 92 & 98)

“89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the

Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

51. In *Rajesh Gandhi case* [CBI v. *Rajesh Gandhi*, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , this Court again reiterated the law as follows: (SCC pp. 256-57, para 8)

“8. There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. We also fail to see any provision of law for recording reasons for such a decision. ... There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons are required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. Under Section 173(8) CrPC, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.”

The aforesaid observations would clearly support the course adopted by the High Court in this matter. We

have earlier noticed that the High Court had initially directed that the investigation be carried under the supervision of the Special Commissioner of Police, Crime Branch, of the rank of the Additional Director General of Police. It was only when the High Court was of the opinion that even further investigation was not impartial, it was transferred to CBI.

52. Again in *Sri Bhagwan Samardha* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court observed as follows: (SCC pp. 742-43, paras 10-11)

“10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] . The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

These observations also make it clear that there was no obligation for the High Court to either hear or to make the appellant a party to the proceedings before directing that the investigation be conducted by CBI.

53. We had earlier noticed that the High Court had come to the prima facie conclusion that the investigation conducted by the police was with the motive to give a clean chit to the appellant, in spite of the statements made by the independent witnesses as well as the allegations made by the father of the deceased. The legal position has been reiterated by this Court in *Narender G. Goel* [*Narender G. Goel v. State of Maharashtra*, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] : (SCC pp. 68-69, paras 11-13)

“11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] this Court observed: (SCC p. 743, para 11)

‘11. ... There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.’

12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of

the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.

13. We are of the view that what is the evidentiary value can be tested during the trial. At this juncture it would not be proper to interfere in the matter.”

16. Furthermore, this Court in the light of judgment passed by the Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others**, reported in **(2014) 2 SCC 532** cannot supervise the investigation. There is a distinction between supervision and monitoring.

17. Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that *prima facie* case is made out warranting investigation.

18. Accordingly, the application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*