

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CRM(M) No. 912/2024

Reserved on: 31.05.2025

Pronounced on: 08.07.2025

Usha Kiran and anr.

....Petitioner(s)

Through :- Mr. Ashish Singh Kotwal, Advocate

V/s

UT of J&K &Ors.

....Respondent(s)

Through: Mr. Sumeet Bhatia, GA for R-1
Mr. Sandeep Singh, Advocate for R- 2 & 3.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Petitioners have invoked inherent jurisdiction of this Court, in terms of Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS"), for quashment of FIR No. 0024, under Sections 498-A, 323, 504, & 506 IPC of Police Station, Women Cell, Udhampur, the charge sheet presented in the Court of learned Chief Judicial Magistrate, Udhampur ["the trial Court"] and the consequent cognizance taken by the trial court against the petitioners and proforma respondents vide order dated 12.11.2024.

2. As factual narration of the present case would unfurl, on 05.11.2024 Police Station, women Cell Udhampur received an application dated 04.11.2024 from SSP, Udhampur, filed by respondent No. 2 against her husband-the proforma respondent and the petitioners-

parents-in-laws for registration of FIR, stating *inter alia* that she was married to the proforma respondent on 26.11.2023 as per Hindu Rites and they cohabited after the marriage. It was alleged by the complainant that one and a half month after the marriage, petitioners and proforma respondent asked for divorce on the pretext that she was unable to conceive. It was also alleged that petitioner No.1 demanded dowry in the shape of LCD, motor cycle and gold ornaments and that all the accused persons i.e. petitioners and proforma respondent had beaten and harassed the complainant several times and neither she was not allowed to enter the matrimonial house nor paid the maintenance.

3. Pertinently, the complainant goes on to allege that on 19.03.2024 at 11:30 p.m., accused persons abused her in the name of her parents, beat and threw her out from the matrimonial home. She made several attempts to return to the matrimonial fold after 19.03.2024 but was not allowed. She was subjected to physical and mental cruelty and threatened to be killed. It was also alleged that on 28.10.2024 she filed an application and reported the incident to SHO, Women Cell, Police Station Udampur, but no action was taken.

4. On the receipt of this report, FIR in question came to be lodged against the petitioners and proforma respondent-husband of the complainant. The investigation culminated in the impugned charge sheet and vide impugned order dated 12.11.2024, learned trial Court took cognizance of the matter.

5. The case set up by the petitioners is that petitioner No. 1 being M.A., B.Ed. is a highly qualified entrepreneur and is running a hotel in

the name and style of “M/S Hotel Chanakaya” at Udhampur and petitioner No. 2 retired as a Senior Executive from J&K Bank Ltd. Their son, the proforma respondent married the complainant/respondent No. 2 on 26.10.2023 without dowry.

6. It is alleged by the petitioners that right from the inception of the marriage, behavior of respondent No. 2 was abusive and she forced her husband to live separately and demanded partition of the property. Petitioners were harassed and threatened. However, their son started living separately with his wife-the complainant. According to the petitioners, since demand of the complainant for partition was not met, she of her own left the matrimonial house in March, 2024 and did not return thereafter. On 19.09.2024, it is stated, the complainant along with her father, respondent No. 3 made an attempt to force their entry into the house of the petitioners. They filed a complaint, under Section 12 of Protection of Women from the Domestic Violence Act, 2005 [for short, DV Act] against the complainant and her father on 21.09.2024 in the trial court, which subsequently came to be withdrawn on 05.10.2024 due to the intervention of senior members of respective families. The private respondents, according to the petitioners, conspired and filed the impugned FIR with false accusations, to avenge the said complaint.

7. It is also alleged by the petitioners that since the concerned SHO, refused to lodge FIR, due to delay of seven months from the alleged incident of 19.03.2024, father of the complainant/respondent No.3, being a retired police officer wrote a letter and influenced SP, Udhampur. As a result SP, Udhampur directed the concerned SHO, respondent No. 1 for

necessary action. This is how, according to the petitioners, the impugned FIR came to be lodged without following the due procedure and the concerned Police Station completed the investigation within five days and presented the impugned charge sheet on 11.11.2024.

8. Petitioners are aggrieved of the impugned FIR, charge sheet and the cognizance order of learned trial court *inter alia* on the grounds that since the date of alleged occurrence of the crime is prior to 01.07.2024, the investigating Agency was required to follow the procedure prescribed under BNSS and not IPC, in terms of Circular dated 01.07.2024, issued by Director General of Police, J&K. The allegations made in the FIR, the challan and the evidence collected during investigation do not disclose the commission of any offence by the petitioners. The complainant lodged the impugned FIR to wreck vengeance and put pressure on them for partition of the family business. It is contention of the petitioners that impugned criminal proceedings are manifestly attended with malafides and are maliciously instituted with ulterior motive for wrecking vengeance on them with a view to spite them due to private and personal grudge. Petitioners have also alleged violation of the guidelines issued by Hon'ble Supreme Court in *Lalita Kumari v. State of UP and ors.*; (2014) 1 SCC (CrI) 524 which mandates that a preliminary enquiry before registration of FIR in matrimonial disputes/family disputes and in case of abnormal delay/laches, because, according to the petitioners, impugned FIR came to be registered against them after a period of seven months from the alleged incident.

9. It is allegation of the petitioners that impugned FIR, charge sheet and the criminal proceedings is a result of pressure exerted by SP Udhampur at the instance of respondent No. 3, father of the complainant, a retired Police Officer.

10. Countervailing the stand of the petitioners, the official respondents, at the foremost, have denied the violation of Circular dated 01.07.2024 issued by DGP J&K and submitted that investigation has been conducted in accordance with the Code of Criminal Procedure and not as per BNSS. The official respondent is affront with the contention that as per the investigation, offences under Sections 498-A, 323, 504 & 506 IPC are made out against the petitioners.

11. Learned counsel for private respondents has adopted the response filed by the official respondent.

12. Heard learned counsel for the parties and perused the record.

13. Learned counsel for the petitioners has relied upon **Dara Lakshmi Nayarana and ors. v. State of Telangana and anr.; AIR 2025 SC 173** and **Rajesh Chaddha v. State of Uttar Pradesh [SLP (Crl) No. 2353-2354 dated 13.05.2025]** to reiterate the grounds urged in the memo of petition and contended that vague and generalized accusations made by the complainant in the impugned FIR do not disclose the commission of any offence by the petitioners.

14. On the other hand, learned counsels for the respondents have argued that the impugned FIR *prima facie* constitute offences against the petitioners and since investigation has culminated in the charge sheet, the present petition is liable to be dismissed.

15. At the foremost, the petitioners have alleged infraction of the Circular issued by DGP, Jammu. It is contention of the petitioners that since date of alleged occurrence of crime is prior to 01.07.2024, the investigating agency was required to follow the procedure prescribed under BNSS and not IPC.

16. The only occurrence alleged by private respondent No. 2 against the petitioners and proforma respondent is of 19.03.2024 i.e. before BNSS came into force on 01.07.2024. Since the said occurrence is alleged to have taken place prior to coming into force of Bharita Nyaya Sahita, 2023 ["BNS"], the petitioners and proforma respondent have been charged under the provisions of IPC. However, since the Police Station received the complaint of private respondent No. 2 on 05.11.2024, after coming into force of BNSS, it has rightly followed the procedure under BNSS because criminal law is set in motion on registration of FIR and the law applicable on the date of registration of FIR is the governing law. Therefore, after registration of the FIR against the petitioners under IPC, the investigating agency recorded statement of the complainant and witnesses under Section 180 BNSS and issued notice to the petitioners and proforma respondent i.e. accused persons in terms of section 35(3) BNSS. The investigating agency has proceeded with the investigation in accordance with the law and no provision of penal law or procedural code is found to have been breached.

17. Petitioners have next contended that private respondent No. 2 has made vague and generalized allegations against them, which is not countenanced in law.

18. The legislature, designed and inserted Section 498-A IPC, into the legal framework, by way of amendment to protect women against cruelty, harassment and other offences committed by husbands and his family members. The object of the anti dowry and anti domestic violence laws was a shield to the genuine victims than a weapon. However, such a beneficial legislation, conceived for the protection of women, in particular the victims of dowry, has been misused by none other than the women, who have used it as an instrument of oppression against the husband and his family members. The ramifications are that society has started questioning the very credibility and authenticity of the dowry and domestic violence laws.

19. The pace at which false accusations of dowry demand, dowry harassment and domestic violence have surged in recent past is a matter of concern for the society as a whole. Such accusations not only erode the trust between a married couple, but tends to damage the marital cord. Therefore, courts are obliged to balance justice and fairness, that is, to ensure that such laws are in place to protect the genuine victims of dowry harassment and domestic violence and to safeguard the rights of accused from false accusations.

20. Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar and another; 2014 AIR SCW 3930** has observed that Section 498-A IPC got a dubious place of pride amongst the provisions, due to the fact it is a cognizable and non bailable offence. It is used as weapons rather than shield by disgruntled wives, as the simplest way to harass is to get the husband and his relatives arrested under this provision and in quite a

number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades were arrested. Taking note of the phenomenal increase in matrimonial disputes in recent years, the Apex Court issued a slew of guidelines to ensure that a police officer does not arrest an accused unnecessarily and magistrate do not authorize detentions casually and mechanically. Therefore, all the State Governments were directed to instruct its police officers not to automatically arrest when a case under section 498-A IPC is registered, without satisfying themselves about the necessity of arrest under the parameters flowing from Section 41 Cr.P.C.

21. Again, Hon'ble Supreme Court in **Dara Lakshmi Narayana and Rajesh Chaddha** having recognized the problem of misuse of section 498-A IPC, which addresses cruelty by a husband or his relative, against complainant wife, for personal vendetta, acknowledged the harm caused by false cases of dowry harassment and domestic violence exhorted upon the Courts to strike a balance between protection of genuine victims and prevention of abuse of these laws. The Apex Court clarified that vague, omnibus, generalized and sweeping accusations against a husband or his family members arising out of a matrimonial dispute without indicating their active involvement should be nipped in the bud.

22. If the impugned FIR and the final report are approached with the aforesaid principles of law, expounded by Hon'ble Supreme Court, it is manifest that complainant respondent No. 2 not only preferred compliant on 28.10.2024 to the concerned SHO against the petitioners and the proforma respondent after a delay of about seven months of the alleged

incident of 19.03.2024 but made generalized accusations of dowry against them.

23. The impugned FIR is comprised of two parts.

It is alleged by the complainant-respondent No. 2 that on 19.03.2024 at about 11:30 p.m. petitioners and proforma respondent abused her in the name of her parents, beat and threw her out of the matrimonial home. Ever since 19.03.2024, she made repeated attempts to return to the matrimonial fold but was not allowed, as such, it is alleged, that she was subjected to mental and physical cruelty. Notably, the complainant has nowhere alleged in the incident of 19.03.2024 that accused demanded dowry from her, though it is alleged by the complainant, in earlier part of the complaint that within one and a half month of her marriage, accused demanded divorce as she was unable to conceive and petitioner No. 1 demanded dowry in the shape of LCD, motor cycle and gold ornaments.

24. The investigating agency, during investigation, recorded statement of the complainant on 06.11.2024, in which she has stated that all the accused persons, the petitioners and proforma respondent demanded money and other items like jewellery as dowry and when she refused to fulfil their demand she was beaten. She alleged that on 19.03.2024 at 11:30 p.m., she was abused by her husband and in-laws for dowry and was beaten and was thrown out from the matrimonial home. Similarly, father of the complainant-respondent No. 3 recorded his statement on 06.11.2024 before the investigating officer and made the same allegations that on 19.03.2024, her daughter was beaten by her husband

and in-laws and was thrown out of the house and she was told that if she did not bring LCD, jewellery and a car in dowry, she will not be allowed to come back to the matrimonial home.

25. It is evident from a careful perusal of the contents of the FIR, statements of the complainant and her father during investigation that she made omnibus and generalized allegations against the petitioners without providing the time, date, place or manner of alleged harassment. Though in earlier part of the FIR, the complainant has alleged that the accused/petitioner No.1 demanded dowry in the shape of LCD, motor cycle and gold ornaments and all the accused persons had beaten and harassed her, however, the complainant in her statement to the investigating officer on 06.11.2024 has only alleged that all the accused persons kept demanding for money and other items like jewellery. Here the complainant has not mentioned about the demand of LCD/LED or the motor vehicle. According to the complainant, she was turned out of the matrimonial house on 19.03.2024, however, she has not mentioned about any demand of dowry in the said incident. In her statement to the investigating officer, though she has alleged that on 19.03.2024 her husband and in-laws abused her for dowry and turned her out of the matrimonial home, but she did not provide any time or details of the dowry items demanded by the petitioners or the proforma respondent. It is evident that the complainant/respondent No.2 has made vague and omnibus accusations against the petitioners without specific date, time and details.

26. Mr. Ashish, learned counsel for the petitioners, has produced a copy of the complaint, dated 19.10.2024, filed by the complainant-respondent No. 2, in the court of learned CJM, Udhampur, under the DV Act, after the alleged incident of 19.03.2024 and just before the registration of the impugned FIR on 05.11.2024, where she has nowhere alleged any demand of dowry by the petitioners or the proforma respondent.

27. It appears that complainant-respondent no. 2, due to matrimonial discord, has implicated her parents in-laws, the petitioners in false and frivolous accusations of dowry demand and lodged the impugned FIR with ulterior motive to feed fat the grudge. The contents of the impugned FIR and the final report, on the face of it, do not disclose the commission of any offence against the petitioners.

28. There is another aspect which needs attention. It is contention of the petitioners that when respondent No.1 refused to register FIR on the ground of delay, father of the complainant respondent No. 3, who happens to be a retired Police Officer used his influence in the Police Department, wrote a letter to SP Udhampur and accordingly SP, Udhampur directed respondent No. 1 to take necessary action, as a result of which, impugned FIR came to be registered. Interestingly, the private respondents-the complainant and her father have not filed objections to the present petition and adopted the response filed by the official respondent. In the circumstances, allegations of the petitioners that impugned FIR came to be registered and charge sheet came to be presented by the official respondents, within five days of registration of

FIR with the influence of father of the complainant, a retired Police Officer, remains unrebutted and amounts to admission on their part that impugned FIR was registered and resulted in the final report against the petitioners with the influence and at the instance of the father of the complainant, a retired police officer.

29. For the foregoing reasons, present petition is allowed and the impugned FIR, charge sheet, and order of cognizance dated 12.11.2024 *qua* petitioners are quashed.

30. Disposed of accordingly.

31. Interim direction, if any shall stand vacated.

(RAJESH SEKHRI)
JUDGE

Jammu:
08.07.2025
Paramjeet

Whether the order is speaking? **Yes**
Whether the order is reportable? **Yes**

