

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

...  
CRM(M) no.83/2020

*Reserved on: 05.08.2021*

*Pronounced on: 25 .08.2021*

**Syed Rafie ul Akmal Andrabi**

.....Petitioner(s)

Through: Mr Tasaduq H. Khawja,  
Advocate and Mr H.Suhail Ishtiaq,  
Advocate

**Versus**

**Irshad Ahmad Kamili and others**

.....Respondent(s)

Through: Mr Naveed Gul, Advocate

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Quashment of FIR no.12/2020 dated 5<sup>th</sup> March 2020 registered by police station Rainawari, Srinagar, for commission of offences under Sections 498A and 506 is sought for in petition on hand.
2. The case set up in the petition is that nephew of petitioner has been living and working in Dubai long before his marriage with respondent no.2, which was solemnized on 16<sup>th</sup> July 2016 and after marriage, petitioner's nephew and respondent no.2 travelled to Dubai and after staying for about three months, respondent no.2 returned on 6<sup>th</sup> October 2016. Respondent no.2 is stated to have again travelled to Dubai on 20<sup>th</sup> February 2017 and returned on 10<sup>th</sup> May 2017. Out of the wedlock one child was born on 10<sup>th</sup> June 2017. Petitioner's nephew travelled to

Srinagar. Respondent no.2 travelled to Dubai on 6<sup>th</sup> January 2018 and returned on 5<sup>th</sup> May 2018. It is contended that nephew of petitioner has deserted his wife, i.e., respondent no.2, since April 2018 when in fact at that time she was with her husband in Dubai. According to petitioner, he has no knowledge of any dispute till 3<sup>rd</sup> February 2020, when his nephew and his family were threatened by respondent no.1 and his relatives and it on petitioner's advice that a complaint was lodged before concerned Superintendent of Police and it is due to this fact that petitioner has been roped in and arraigned as accused in impugned FIR. It is also case of petitioner that prior to incident of February 2020, respondent no.2 was in cordial relationship with her in laws and petitioner, and had visited his home along with her son on 9<sup>th</sup> March 2019; even respondent no.2 had been visiting her in-laws, where birthday of her son was celebrated.

3. I have heard learned counsel for parties and considered the matter.
4. Learned counsel for petitioner states that impugned FIR has been lodged not by the lady, who has been projected to be victim of cruelty but by her father, respondent no.1 herein, which is not permissible in law as the person who has been subjected to cruelty can only seek registration of an FIR for being subjected to cruelty and any other person, who has not been eye witness to occurrence of such offence, has no locus to seek registration of an FIR as the same would be based on hearsay and not the knowledge of actual occurrence. His further contention is that impugned FIR has been lodged after inordinate and unexplained delay. Learned counsel invites attention of this Court to

provisions of Section 498A of the Indian Penal Code, to contend, and rightly so, that any willful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty and such willful conduct, which is likely to cause grave injury or danger to life, limb or health, whether mental or physical, of a woman would also amount to cruelty. According to him cruelty would mean harassment of a woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, would also constitute cruelty for the purpose of Section 498A IPC. It is also averred that every harassment does not amount to cruelty within the meaning of Section 498A IPC. After saying that, he correctly insists that impugned FIR does not specify a single incident of harassment on the part of petitioner to attract clause (a) or clause (b) to Explanation of Section 498A IPC, nor there has been any mental torture or physical abuse, inasmuch as FIR is silent to that extent. He has placed reliance on *State of Haryana v. Bhajan Lal*, 1992 Supp.(1) SCC 335; *Lalita Kumari vs. State of Uttar Pradesh*, (201) 2 SCC 1.

5. There is a substance in submissions of learned counsel for petitioner that contents of FIR do not specify any incident of harassment on the part of petitioner. FIR, on its bare perusal, does not relate or connect petitioner with the allegations made mention of therein. In the backdrop of facts and circumstances of the case as also case set up by petitioner and submissions made by learned counsel, it would be appropriate to

consider the settled principles of law laid down by the Supreme Court in the case of *Lalita Kumari* (supra), which held as follows:

“Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

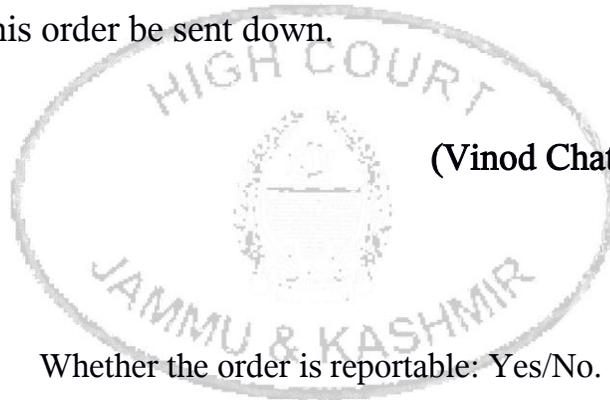
vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

6. From the above quoted passage of the judgement passed in *Lalita Kumari's* case (supra), it is clear that preliminary inquiry is to be conducted, amongst others, in the cases relating to matrimonial/family

disputes. When case in hand is looked into within the parameters of law laid down in *Lalita Kumari's* case, it becomes self-evident that preliminary inquiry has not been conducted as was required to be conducted and petitioner has been unnecessarily arraigned as accused in impugned FIR. To this extent impugned FIR is liable to be quashed.

7. For the reasons discussed above, impugned FIR no.12/2020 dated 5<sup>th</sup> March 2020 registered by police station Rainawari, Srinagar, for commission of offences under Sections 498A and 506, qua petitioner is quashed.
8. Disposed of as above.
9. Copy of this order be sent down.



(Vinod Chatterji Koul)  
Judge

Srinagar  
25.08.2021  
Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.