

IN THE HIGH COURT OF KARNATKA AT BANGALORE
DATED THIS THE 15th DAY OF APRIL , 2005
BEFORE
THE HON'BLE JUSTICE A.C. KABBIN
CRIMINAL PETITION NO 4121/2003

BETWEEN

1. Pandurang Katti
S/o Srinivasa Ramachandra Katti
Aged about 33 years
R/at no B-002 , Mantri Paradise
Billekahalli
Bannerghatta Rd
Bangalore
2. Sulabha S Katti
W/o Srinivasa Ramachandra Katti
Aged about 63 years
R/at IIRD Lane aruna Road
Jaisinghpur dist: Kolhapur Petitioners

(By Sri. R.L. Patil and
M/s Patil and Patil , Advs)

AND

1. State of Karnatka
By Basvanugudi Police station
2. Smt Trupti Katti
W/o Pandurang Srinivasa Katti
Aged about 33 years
R/at no B-002 , Mantri Paradise
Billekahalli
Bannerghatta Rd
Bangalore
And Also working at
M/s Component Insights
4th Floor Crescent Towers
Near Mallige Hospital
Crescent Road
BangaloreRespondents

(by S.G Rajendra Reddy , HCGP for R-1
C.H. Jadhav , Adv for R-@

This Criminal Petition is filed under Section 482 of Code of Criminal procedure Praying to quash the complaint registered in crime number 66/2003 on the file of the (1st respondent), Basvanugudi Police station. This petition coming on for final disposal this day the court made the following

ORDER

The petitioner No.1 herein the husband, and the petitioner No. 2 is the mother -in-law of the respondent no. 2 complainant. Challenging the registration of a case against them in Basvanugudi Women Police station Cr No. 66/2003 for offenses punishable under section 498-A of the IPC and section 3 and 4 of the DPWRY Prohibition Act, they have filed this petition u/s 482 of the CRPC with a prayer that the FIR may be quashed

2. On 3/10/2003 at about 1 P.M the respondent no. 2 filed a complaint in Basvanuguddi Womens Police Station. The complaint read as under

“ I Trupti Katti got married to Mr. Pandurang Katti on 18th June 1999 at Gwalior , M.P My father spent around Rs. 4:00 Lakhs in marriage that includes gold worth Rs 1.5 Lakhs . My mother -in-law was not satisfied because her demands were not fulfilled.

From the First day of the marriage my mother in Law Mrs. Sulabha Katti was harassing me. But even then both husband and wife lived peacefully because my mother-in-law used to stay in Jaisinghpur

I am a software Engineer Working with Component Insights, Crescent Towers, Crescent Road Bangalore . My husband is also a software Engineer, working with IT solutions, Bull Temple road, Bangalore. His contact numbers are : 6678322 (o) and 9845062209 (M)

I delivered a male child at my parent's place Bhopal on 04-02-2003. At the time of delivery the ultrasound report showed that the child has abnormality called “ duodenal Attresia” and heart problems. He underwent two major surgeries after birth, One at Bhopal and one at Indore.

My husband changed his attitude towards me after knowing about the abnormality of the child, possible expenditures and life long liability. My mother-in-law was instrumental in poisoning his mind.

My husband refused to spend money on the child's medical treatment. But my father spent about 4.5 Lakhs on his medical treatment. After a lot of convincing he came to see the child

After delivery when I came back to my house in Bangalore in the last week of May 2003 , I stayed with him for three days. He harassed me in all respects, called his mother and compelled me to leave the house at 12:00 o'clock

I stayed at my sisters' place up to 9th August 2003 for about 21/2 months. In the meantime I constantly tried to persuade him and go to my house but he constantly refused. He kept condition that unless I transfer property in his name, he will not allow me to live peacefully.

He wanted the following property

1. Flat No. B-002 Mantri Paradise which is in joint name of both of us to be transferred in his name
2. Plot in Fern Habitat on outer ring road, which is my sole ownership to be transferred to joint name

He also said that he will not bear the expenses of the child, arranged compromise meetings at his home town Jaisingpur and also at Bangalore . But he and his mother were repeatedly putting the condition of transferring the property

My parents came to Bangalore on 9th August 2003 with their help I managed to get in my flat. But my husband Refused to give me the keys of the house entrance door, key of the bank locker, house telephone number etc and harassed me.

I went to Mico Layout police station to seek help. The police inspector arranged counseling and MOU was drawn . A copy of MOU is enclosed

After the period of MOU was expired. My mother in law came back to Bangalore on 29th September 2003.

She started giving harassment and mental torture. She said I have not brought cash dowry during marriage, also I am not transferring the property, and therefore I will not allow you to live in the flat peacefully, She said that she has come here only to harass me because I took the help of Police. After Quarrel she and my husband tried to throw me out of my flat. She also started beating me up, I went to police station with my child on 30th September 03 with my child seeking help at night. The inspector promised me all help. During this time my mother was also admitted in St. John's hospital who underwent surgery.

When on 17/08/2003, the bank locker was opened my husband in my presence, as per MOU, following gold ornaments were missing :-

HE said he will not return these gold ornaments to me

1. Mangalsutra worth Rs 15000/- approx
2. My necklace (gold) worth Rs 28000/- approx
3. Bangles Gold worth approx Rs 3000
4. Tode Bangales (gold) worth Rs 2000 approx
5. Haar (gold) worth Rs 29000 approx

My parents kept supporting me morally and financially all through my married life .

I want police to help launch FIR against my mother-in law Mrs Sulbha Katti and my husband Mr. Pandurang Katti S/o Srinivas Katti . Please take immediate action against them “

3. On the basis of the said complaint, a case was registered at CR No. 66/2003 and FIR was dispatched. It is stated that petitioners have been granted anticipatory bail. Subsequently they filed this petition challenging registration of the case on the ground that the allegation that the petitioner No2 demanded Dowry was false and the real dispute between Petitioner No. 1 and Respondent No2 regarding ownership of certain propertied has been camouflaged by the false allegation of dowry demand and dowry harassment

4. During the pendency of the petition, this court made effort to conciliate between the husband and wife, but it was not successful. Therefore the arguments of Sri R.L. Patil , learned counsel for the petitioners and Sri C.H. Jadhav , learned counsel for respondent no.2 and also arguments fo Sri. S.G. Rajendra Reddy, Learned High Court Govt. Pleader has been heard.

5. Before considering the matter, the principles required to be considered a prayer for quashing the F.I.R will have to kept in mind. The Supreme Court in the case of State of Karnataka Vs. Bhajan Lal reported in AIR 1992 S.C 604 disapproved the tendency in scuttling investigation and observed as follows.

“ the investigation of cognizable offense is the field exclusively reserved for the police officers whose powers that field are unfettered so long as the power to investigate into cognizable offenses is legitimately exercised in strict compliance with the provisions falling under chapter XII of the code and the Courts are not justified in oliberating the track of investigation when the investigation agencies are well within the legal bounds as afore mentioned . Indeed a noticable feature of the scheme inder Chapter XIV of the code is that a Magistrate is kept in picture at all teh stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how the investigation is to be conducted . But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serous prejudices to the personal liberty and also property of a citizen , then the court on being approached by the person aggrieved for the redress of any grievence , has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of the police echleons since human dignity is a dear value of consitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of such power willbe tantamount to recognition of “Devine Power” which no authority on earth can enjoy.

In the same decision it was observed by the supreme court that where allegations in the First information report and other material any accompanying the FIR do not disclose a cognizable offense justifying an investigation by police officers under sec 156(1) of the code of, the power u/s 482 of the Cr. P.C> should not be exercised. It is observed that where in allegations made in the FIR or the complaint are so absurd and improbably on the basis of which no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused, then also intervention by court is also permissible.

6. In the support of his contention that neither there was dowry demand or Dowry harassment, Sri R.L. Patil Learned counsel for the petitioners submits that even as per the complaint, the marriage took place in Gwalior on 18-6-1999, that for about 31/2 years the couple i.e. the Petitioner No. 1 and respondent No. 2 were residing happily and therefore allegation of dowry demand is baseless. He invites attention of the court to the following sentence in the complaint

“ From the First day of the marriage my mother in Law Mrs. Sulabha Katti was harassing me. But even then both husband and wife lived peacefully because my mother-in-law used to stay in Jaisinghpur”

7. The learned counsel for the petitioner submits that this sentence from the first day of marriage my mother in law Smt Sulabha Katti was harassing me, is the conclusion without any facts stated herein and it is inconceivable as to how the complainants mother in law i.e. petitioner no.2 was harassing the complainant when the couple were living in Bangalore, where as petitioner No2 , even according to the complainant was living in Jaisinghpur . He further submits that the very sentence indicates the resentment of the complainant towards the mother -in law coming and residing with the couple for a few days, which led to the present complaint. He points out that the petitioner no.2 who had prudently stayed away from the couple for 3 1/2 years succumbed to the lure of seeing her grandchild in 2003 and that this was the beginning of the nightmare for her. He submits that this is not a case of mother-in-law harassing her daughter in law, but a daughter in-law hounding her mother in law, since the latter committed the mistake of coming for few days to see her son and grandson 31/2 years after her sons marriage. The difference widened, as argued by the learned counsel for petitioners with complainants father sending on 26-06-2003 a notice to his son in law to send the amount spent by him for the treatment of the couple's child. It is an admitted fact that the child of petitioner no. 1 and respondent no. 2 was born On 04-01-2003at Bhopal and he is having the birth Defect “ duedonum Attresia” . According to the notice dated 26-06-2003 issued by respondent no.2 parents through their advocate, the petitioner no.1 did not come to see the child, , that the expense of the operations and ICU ere borne by parents and that the Petitioner No. 1 was liable to pay Rs 4,20,000/- spent by them , within a fortnight by demand draft failing which they threatened to initiate civil and criminal proceedings against petitioner No. 1 . The learned Counsel for petitioner submits that this was probably the starting point for the intensified friction between petitioner no.1 and respondent no.2. He submits that as regards to alleged demand for dowry and dowry harassment, the answer is found in the complaints itself where in the respondent has specified as to what property had been demanded by the petitioners.

8 In the complaint reproduced above it is stated that according to petitioner No. 1, flat no. B-002, Mantri Paradise, which is in joint name, was required to be transferred to the name of the petitioner no1 and the plot in fern habitat on outer ring road, which is in name of respondent no. 2 to be transferred to joint names. It is also mentioned that petitioner no.1 will not bear the expenses of the child. On the basis of this, It is submitted by the learned counsel for the petitioner that there is absolutely no reference anywhere in the complaint about any other demand and the demand for transfer of properties undoubtedly indicates that it is a dispute for properties between husband and wife who are both earning members.. It is argued that dispute regarding ownership of properties can in no way be termed as dowry demand. As regards to Dowry harassment except for stray allegation of the petitioner no.2 beating Respondent no2 who resided with the couple with only one day i.e. 29-09-2003, there being no other allegation, it is highly improbable that a mother in law who had no courage to reside with the couple for about 31/2 years , would within a day that too in flat standing in joint ownership of Petitioner no.1 and a respondent no.2 would be dare

enough to beat her young daughter in law .

9. Replying to these contentions, Sri S.C. Jadhav , learned counsel for the respondent no.2 argues that truthfulness or otherwise of any of the allegations referred to by the learned counsel for the petitioners are matters which have to be investigated by the trial court and it would be premature for the high court dealing with petition u/s 482 of the CR. P.C. to go into detail about all such matters. In this regard he relies on the following principles in different decisions.

1. The court should not monitor investigation process unless such investigation transgresses any provision of law (**Dukhishyam Benupani, Asst Director Vs Arun Kumar Bajoria 1998 S.C.C (CRL) 261**)

2. If FIR prima facie discloses commission of an offense, the high court should be reluctant to interfere (**Satvinder Kaur Vs State (Govt. of NCT Delhi and Other) reported in (1999) 9 S.C.C. 728**)

3. *A criminal prosecution cannot be thwarted merely because civil proceedings are also maintainable. It is also further observed that quashing of FIR or a complaint in exercise of the inherent powers of the high court should be limited to very extremes. Merely because an act has civil profile is not sufficient to denude it of its criminal outfit (**Trisun chemical Industry Vs Rajesh Agarwal and others reported in (1999) 8 S.C.C 636**)*

10. In reply to it R.L. Patil , learned counsel for the petitioners has relied upon the observation of the supreme court in **Ajay Mitra Vs State of M.P. and others reported in 2003 (3) KCCR 2043** where in it is held that *the FIR which does not allege or disclose essential requirement of a penal provision are prima facie satisfied , cannot form the foundation or constitute the starting point of lawful investigation.*

11. In the case of **Pepsi Food Limited and another Vs Special Judicial Magistrate and others reported in AIR 1998 S.C 128**

Summoning an Accused in a criminal is a serious matter. Criminal Law cannot be set into Motion as matter of course. It is not that complainant has to bring only two witnesses to support his allegations in the complaint to have 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 there to .He has to examine the nature of the of allegations made in the complaint and the evidence both oral and documentary in support there on and would that be sufficient for the complainant to succeed in bringing charge home to the accused.

12. Of course this observation by the Supreme Court is in case of a private complaint and it not a case of FIR registered on the basis of information by an aggrieved person. As mentioned by Sri C.H. Jadhav , Learned counsel for respondent no. 2 , the matter was still required to be investigated and all the material could not have been in the complaint lodged by respondent no.2 before the police. But in cases where in the allegations of dowry demand and the dowry harassment are made by an aggrieved wife, if the complaint itself shows that the demand was not for dowry and the alleged dowry harassment was not dowry harassment but a material dispute, the courts can certainly interfere

13. In light of the principles mentioned above, I have carefully gone through the complaint and have considered the submissions of both the learned advocates. The complaint itself shows that the marriage was performed in Gwalior in 1999 and though the complaint has alleged that from the day of the marriage itself the harassment by mother in law started, what type of harassment given has not been stated and it also appears to be absurd to say that the mother in law harassed daughter in law when according to the complaint for about 3 1/2 years from the date of marriage, the mother in law did not reside with the newly married couple. Therefore the allegation of the complainant will have to be considered carefully.

14. As to what demands of the petitioners. The respondent no. 2 has specified in the complaint as under
“He wanted the following property

1. Flat No. B-002 Mantri Paradise which is in joint name of both of us to be transferred in his name
2. Plot in Fern Habitat on outer ring road, which is my sole ownership to be transferred to joint name

He also said that he will not bear the expenses of the child, arranged compromise meetings at his home town Jaisingpur and also at Bangalore . But he and his mother were repeatedly putting the condition of transferring the property “

15. The contention of the petitioner no.1 is that the flat no B-002 , Mantri Paradise was purchased in joint names of both husband and wife , the bulk of the payments were made by him as could be demonstrated from the amounts transferred from his bank accounts. . With regard to the transfer of the plot in Fern Habitat, His contention is that he has contributed for the purchase. That is the matter for the decision of the family court before which two original suits with regards to these properties are pending. However, this shows that the dispute was regarding ownership of properties and not about dowry as such.

16. The complaint also shows that there was no harassment prior to 04-01-2003 when the child was born. The complaint shows two factors, which started the dispute. The one was the abnormality of the child, which according to the respondent no.2 the expenses were borne by her parents. They issued a lawyers notice to the petitioner no.1 to pay an amount of more than 4 Lakh failing which they threatened to initiate civil and criminal complaint. The second is the arrival of the mother in law on 29-09-2003 and according to the complainant the quarrel was on the next day i.e. 30th September 2003. On that night only the complainant went to the police station. . Therefore it has to be seen whether that quarrel of one day, where in according to the complainant she was beaten can be considered as cruelty referred to in section 498a of the IPC.

17. According to the complainant the difference started with the birth of the child and for sharing of the possible expenditures for treatment of the child. In the complaint it is stated as under

“ My mother in law was instrument in poisoning his mind”

It is not stated in the complaint as to how the petitioner no.2 poisoned petitioner no.2 mind.

18. After the delivery of the child the complainant is stated to come to Bangalore to reside with petitioner no.1 for 3 days in last week of may 2003 according to her she stayed with him for only 3 days . She alleges that she was compelled to leave the house at 12:00 midnight. Shri S.C.Jadhav , learned counsel for resident no.2 submits that this itself is cruelty indicative of harassment suffered by respondent no.2 when a young mother of a child was asked to leave the house at 12:00 midnight. In the absence of positive assertion, this cannot be taken as dowry harassment. A marital disharmony for a period of three days does not assume the character of dowry harassment

19. It is further stated that the respondent number 2 resided with her sister for 21/2 months and after her father came to Bangalore on 09-08-2005, she managed to get back possession of the flat. Then she went to the Mico Layout police station to seek help and after intervention of the police an understanding was reached on 16-08-2003, where in the following terms are stated to have been agreed between parties by memo of understanding

“on 16-08-2003 one Mrs Trupti w/o Pandurang Katti approached Mico Layout police station Bangalore to lodge a complaint against her in-laws and husband and as a result of the counseling by inspector of Police Mr. Ashok the following MOU has been reached between both the parties.

1. Mr Pandurang Katti shall hand over the duplicate keys of his flat to his wife Trupti in front of Police Inspector Ashok of Mico Layout police station
2. Locker will be opened on 19-08-2003 in front of the advocate, Mr Pandurang Katti , Mrs Trupti and her father Mr. M.G.Vilatkhar , From Hence Mrs Trupti will have the possession of the locker.
3. Mrs Trupti will return the computer to Mr Pandurang within a week from now.
4. No major household articles shall be removed from the flat except with permission of both the parties.
5. NO court cases pending between Mr Pandurang Katti and Trupti will pursue and status quo will be maintained for three months. No documents bearing the signature of either parties. No other agreement will be drawn by both of them with each other for a period of 3 months.

6. For purpose of holding harmony no relatives from both sides will not be allowed inside the flat.

7. The agreement will come into effect from 25-08-2003 except clause no 5 “

20 . There was another memo of understanding dated 18-08-2003 under which locker no 237 of Vishveshwarriaya bank .BTM Layout was opened and the following articles were listed which apparently were given to the custody of respondent no. 2

“As per memorandum of understanding dated 18.8.03 the locker number 237 of Vishweriaahh bank of BTM layout was opened and following item listed were found and handed over to Trupti

Items :

1. Lota, Vati of silver
2. Diya made of Silver
3. Plate made of silver
4. Attardani made of silver
5. 2 Bangles made of gold
6. Two bangles not of gold
7. Chick set made of gold and earrings
8. NSC worth Rs 45000
9. IDBI tax savings bond single folio - Folio number 121FB!341900 Distinctive number 0124152131 to 012415232
- 10 1 small gold ring “

21. These developments clearly show that the dispute is not regarding any demand for dowry but about the ownership of the properties and sharing of the expenses of the child, which was unfortunately born with an abnormality. The complaint also has some grievance about some golden ornaments missing. Copy of the notice issued by the parent of the respondent number 2 to the petitioner no.1 to the pay the expenditure of the child's treatment appears to be on of the reasons for differences between husband and wife.

22. In traditional dowry harassment cases, we find ill treatment of the husband and also by the husband's relatives, where their demand for dowry is not met. Such type of harassment may be existing even when wife is educated and earning members. However friction between husband and wife, where both are earning members may not in all cases be regarding dowry

23. Nowadays more and more girls acquire technical education particularly in technical field. Economic independence achieved by such has changed the place of wife in the family. She may still continue be docile partner in marriage despite her capacity to earn or she may assert her rights. Day by day latter type of females are increasing and that many times starts friction between couple. Every such quarrel cannot be termed as dowry. There may arise quarrel between a husband and equally or more qualified wife and earning wife for many reasons and unless such quarrels, where the wife alleges harassment and relatives is relatable to dowry cannot be termed as dowry harassment

24. It is clear from a reading of section 498-A IPC that to consider an act of cruelty covered by section 498a of the IPC

a. It shall be of such a nature to drive the women to commit suicide or cause grave injury or danger to life limb and health (whether mental or physical) of woman.

or

b. It shall be a harassment 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 .

25. In the case of **Punjab National Bank and others Vs Surendra Prasad Sinha reported in AIR 1992 SC 1815** it is observed that judicial process should not be an instrument of oppression or needless harassment and that the court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances before issuing process lest would be an instrument in hands of private complainant as vendetta to harass the persons needlessly.

26. In the case of Ashok Chaturvedi and other Vs Shitul H Chanchani and another reported in (1998) 7 S.C.C. 698 it was held that allowing the criminal proceeding to continue even when the allegation of the complaint petition do not make out any offence would be tantamount to abuse of the process of the court . And therefore cannot be any dispute that in such a case u/s 482 of code can be exercised.

27. In the present case it is crystal clear that the dispute was not regarding any demand by petitioners for dowry but regarding dispute of ownership of flat and site. This dispute is also between only petitioner no.1 and respondent no 2 . In fact the memos of understanding not only confirm it, but show that respondent no2 was given possession of ornament sin the locker. The dispute regarding the sharing of the expenses of the child is the second reason for the complaint. Another factor which lead to the complaint appears to be arrival of the mother in law who had safely kept away from the couple for 31/2 years. Her brief stay for one or two days brought her into difficulties.

28. As regards to the alleged beating of the respondent number 2 by the petitioner no 2 it is submitted by the learned counsel for the petitioners that it is absurd even to think that an old lady of 65 years would beat an independent minded educated young lady who also happens to be a state cricket player. I refrain from expressing any opinion regarding the truthfulness or otherwise of the matter but find that even if such a beating as alleged had been done for one day that can be termed only as a quarrel between mother in law and daughter in law and by no stretch of imagination it can be brought under the purview of an offense under section 498a of the IPC. Not only is the alleged beating is so trivial in present case, even if it is accepted at face value the said one days incident is clearly covered by the provisions of section 95 o f the IPC. Considering the matter , which are evident from the complaint , registering a case for offenses punishable under section 498a and DP act 3 and 4 and proceeding with investigation would be an abuse of the process of the law. With regards to this the observations made by the Andhra Pradesh High Court in the case of Saritha Vs R.Ramachandra reported in (I) (2003) DMC 37 (DB) may be referred to

“The court would like to go on record that for nothing the educated women are approaching the courts for divorce and resorting to proceedings against in-laws under section 498A, IPC implicating not only the husbands but also their family members whether in India or Abroad. This is nothing but misuse of the beneficial provision intended to save the women from unscrupulous husbands. It has taken a reverse trend now. In some cases this kind of actions is coming as a formidable hurdle in the reconciliation efforts made by either well meaning people or the court and the sanctity attached to the marriage in Hindu Religion and the statutory mandate that the courts try to save the marriage through conciliatory efforts till last, are being buried neck-deep. It is for the law commission and the parliament either to continue that provision (section 498a IPC) in the same form or to make that offense non cognizable and bailable so that ill-educated women of this country do not misuse the provision to harass innocent people for the sin of contracting marriage with egoistic women “

29. Seen from any angle, I find from the complaint itself that the allegation made do not amount to any of the offenses punishable under section 3 and 4 of DP act or section 498a of the IPC and they are merely allegations regarding the claims between the husband and wife for the ownership of property and friction between mother in law and daughter in law. As regards the dispute between the couple, the matter is already ceased of by the family court before which the suits are pending and the decision will be given in accordance with the law. There is also no possibility of harassment by petitioner no 2 since the petitioner no 2 had stayed away from the couple for a number of years and had come only for a brief period would dare to stay once again with the couple. Taking into consideration these factors, I am of the opinion that continuing the complaint or any investigation of such complaint would be an abuse of the process of the law

30. In the result and for the reasons stated above, the petition is allowed and the FIR on the basis of the complaint by

the respondent no 2 is hereby quashed. The bail bonds of the petitioner shall stand cancelled. The observations made by these courts are only for the purposes of considering this petition and shall in no way influence the concerned court in deciding the original suits on merits of Each Case

Sd/
FC Kabbin
Judge