

order of cancellation of allotment of government accommodation of the Trust in his capacity as District Magistrate on 15-5-2009.

a **25.** We are satisfied that the impugned order² cannot be sustained and has to be set aside as the writ petition filed by the appellants (petitioners before the High Court) deserves fresh consideration and hearing after receipt of the response from the respondents.

b **26.** The appeal is allowed to the above extent. The impugned order is set aside. Civil Miscellaneous Writ Petition No. 49841 of 2009, *Martyrs Memorial Trust v. Union of India* is restored to the file of the High Court of Judicature of Allahabad for fresh consideration and disposal, as noted above. The parties shall bear their own costs.

(2012) 10 Supreme Court Cases 741

c (BEFORE T.S. THAKUR AND GYAN SUDHA MISRA, JJ.)
GEETA MEHROTRA AND ANOTHER . . . Appellants;

Versus

STATE OF UTTAR PRADESH AND ANOTHER . . . Respondents.

d Criminal Appeal No. 1674 of 2012[†], decided on October 17, 2012

e **A. Criminal Procedure Code, 1973 — S. 482 — Matrimonial dispute — Casual reference to family members of husband (unmarried sister and elder brother of husband, appellants) in FIR as co-accused (as well as to parents of husband) — Absence of any specific allegation and prima facie case against co-accused — Proceedings quashed by Supreme Court itself — Penal Code, 1860 — Ss. 498-A, 323, 504 and 506 — Dowry Prohibition Act, 1961, Ss. 3 and 4 (Paras 14 to 28)**

B. Criminal Procedure Code, 1973 — Ss. 482 and 177 to 181 — Exercise of inherent powers — Issue of territorial jurisdiction — Held, said issue cannot be determined in proceedings for quashment and has to be determined by trial court (Para 19)

f **C. Criminal Procedure Code, 1973 — Ss. 190, 193, 319 and 482 — Cognizance of case in matrimonial dispute — Considerations for — Requirement of allegations to be specific and disclosure of active involvement of accused, emphasised — Held, where large number of family members had been included in FIR by casually mentioning their names and contents did not disclose their active involvement, cognizance of matter against them would not be justified — Under such conditions, cognizance would result in abuse of judicial process — Quashment of such proceedings would be justified — Penal Code, 1860, Ss. 498-A, 323, 504, 506, 304-B and 306 (Paras 20 and 25)**

h ² *Martyrs Memorial Trust v. Union of India*, Civil Misc. Writ Petition No. 49841 of 2009 (Writ-C: 49841/2009), order dated 16-9-2009 (All)

[†] Arising out of SLP (Crl.) No. 10547 of 2010. From the Judgment and Order dated 6-9-2010 of the High Court of Judicature of Allahabad in Misc. Application No. 22714 of 2007

742

SUPREME COURT CASES

(2012) 10 SCC

D. Constitution of India — Art. 136 — Remand by Supreme Court — When not warranted — Held, where remanding matter would result in protracted and vexatious proceedings, remand by Supreme Court not warranted — Criminal Procedure Code, 1973, S. 482 (Para 24)

There was matrimonial discord between the Respondent 2 wife and her husband. She lodged a complaint against her husband and his family members including the appellant-accused, the unmarried sister and the elder brother of husband respectively. The appellant-accused filing an application for quashment mainly on the issue of territorial jurisdiction (that the complaint if at all it was maintainable should have been filed in Faridabad and not Allahabad) and other grounds such as a prima facie case not being made out and absence of specific allegations against them. The High Court declined to interfere holding that the issue of jurisdiction was a matter of trial and refused to consider the other issues raised. Hence this appeal.

Allowing the appeal, the Supreme Court

Held :

Though the contents of the complaint made out a prima facie case against the husband of Respondent 2 wife and some other family members, but no such case was made out against the appellant-accused. There were no specific allegations against the appellant-accused (sister and brother of the husband) so as to make them liable for bickering between Respondent 2 wife and her husband. There was no specific allegation against the appellant-accused that they demanded any dowry from Respondent 2. Casual reference to a large number of members of the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. Respondent 2 wife had obtained an ex parte divorce decree against her husband. This was also a relevant fact. Under these conditions, the High Court erred in not considering the entire circumstances of the case with regard to the appellant-accused. It disposed of the matter only on the issue of territorial jurisdiction without even looking at the other issues raised. Though it was justified in not deciding the issue of territorial jurisdiction under Section 482 CrPC but it failed to apply its mind to the case and determine whether the appellant-accused be subjected to trial. The High Court ought to have considered that even if the trial court had the jurisdiction to hold the trial, the question still remained as to whether the trial against the appellant brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court. As the contents of the FIR indicated that the appellant-accused were casually referred to and no prima facie case was made out against them, in the absence of specific allegations, criminal proceedings against them are quashed without remanding the matter to High Court for reconsideration.

(Paras 14, 15, 18 to 20 and 24 to 28)

Ramesh v. State of T.N., (2005) 3 SCC 507 : 2005 SCC (Cri) 735, *followed*

G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733; *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675 : 2003 SCC (Cri) 848, *relied on*

Geeta Mehrotra v. State of U.P., Criminal Misc. Application (under Section 482 CrPC) No. 22714 of 2007, order dated 6-9-2010 (All), *reversed*

G-D/50973/CRV

Advocates who appeared in this case :

Anoop G. Chaudhari, Senior Advocate (K.B. Rohatgi, Ms Aparna Rohatgi Jain and Sanjay Kr. Singhal, Advocates) for the Appellants;

- a Ajay Kr. Misra and Ms Sobha Dixit, Senior Advocates (Ms Anuradha D. Misra, Ms Tulika Mukherjee, Bharat Dubey, M/s Anuradha & Associates, Pradeep Misra, Ms Malvika Trivedi and Manoj Kr. Sharma, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

- | | | |
|---|---|------------------------|
| | 1. Criminal Misc. Application (under Section 482 CrPC) No. 22714 of 2007, order dated 6-9-2010 (All), <i>Geeta Mehrotra v. State of U.P. (reversed)</i> | 743c-d |
| b | 2. (2005) 3 SCC 507 : 2005 SCC (Cri) 735, <i>Ramesh v. State of T.N.</i> | 747f, 748b, 748d, 750f |
| | 3. (2003) 4 SCC 675 : 2003 SCC (Cri) 848, <i>B.S. Joshi v. State of Haryana</i> | 749g |
| | 4. (2000) 3 SCC 693 : 2000 SCC (Cri) 733. <i>G.V. Rao v. L.H.V. Prasad</i> | 749c-d |

The Judgment of the Court was delivered by

- c **GYAN SUDHA MISRA, J.**— This appeal by special leave in which we granted leave has been filed by the appellants against the order dated 6-9-2010 passed by the High Court of Judicature of Allahabad in *Geeta Mehrotra v. State of U.P.*¹ whereby the High Court had been pleased to dispose of the application moved by the appellants under Section 482 CrPC for quashing the order of the Magistrate taking cognizance against the appellants under Sections 498-A/323/504/506 IPC read with Sections 3/4 of the Dowry Prohibition Act, 1961 with an observation that the question of territorial jurisdiction cannot be properly decided by the High Court under Section 482 CrPC for want of adequate facts. It was, therefore, left open to the appellants to move the trial court for dropping the proceedings on the ground of lack of territorial jurisdiction. The High Court however granted interim protection to the appellants by directing the authorities not to issue coercive process against the appellants until disposal of the application filed by the appellants with a further direction to the trial court to dispose of the application if moved by the appellants, within a period of two months from the date of moving the application. The application under Section 482 CrPC was thus disposed of by the High Court.

- f 2. The appellants in spite of the liberty granted to them to move the trial court, have filed this appeal for quashing the proceedings which had been initiated on the basis of a case lodged by Respondent 2, Smt Shipra Mehrotra (earlier known as Shipra Seth) against her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law. This appeal has been preferred by the sister-in-law, who is Appellant 1 and brother-in-law of the complainant, who is Appellant 2.

- g 3. The case emerges out of the first information report lodged by Respondent 2 Smt Shipra Mehrotra under Sections 498-A/323/504/506 IPC read with Sections 3/4 of the Dowry Prohibition Act bearing FIR No. 52 of 2004. The FIR was registered at Mahila Thana Daraganj, Allahabad wherein the complainant alleged that she was married to Shyamji Mehrotra s/o Balbir Saran who was living at Eros Garden, Charmswood Village, Faridabad, Suraj

h ¹ Criminal Misc. Application (under Section 482 CrPC) No. 22714 of 2007, order dated 6-9-2010 (All)

Kund Road at Faridabad, Haryana as per the Hindu marriage rites and customs. Prior to marriage the complainant and her family members were told by Shyamji Mehrotra and his elder brother, Ramji Mehrotra who is Appellant 2 herein and their mother, Smt Kamla Mehrotra and her sister, Geeta Mehrotra who is Appellant 1 herein that Shyamji is employed as a Team Leader in a top IT company in Chennai and is getting salary of Rs 45,000 per month. After negotiation between the parents of the complainant and the accused parties, the marriage of the complainant Shipra Seth (later Shipra Mehrotra) and Shyamji Mehrotra was performed after which the respondent complainant left for the house of her in-laws.

4. It was stated that the atmosphere in the house was peaceful for some time but soon after the wedding, when all the relatives left, the maid who cooked meals was first of all paid off by the aforesaid four persons who then told the complainant that from now onwards, the complainant will have to prepare food for the family. In addition, the abovementioned people started taunting and scolding her on trivial issues. The complainant also came to know that Shyamji was not employed anywhere and always stayed in the house. Shyamji gradually took away all the money which the complainant had with her and then told her that her father had not given dowry properly, therefore, she should get rupees five lakhs from her father in order to enable him to start business, because he was not getting any job. When the complainant clearly declined and stated that she will not ask her parents for money, Shyamji, on instigation of other accused family members, started beating her occasionally.

5. To escape everyday torture and for financial status of the family, the complainant took up a job in a call centre at Convergys on 17-2-2003 where the complainant had to do night shifts due to which she used to come back home at around 3 a.m. in the morning. Just on her return from work, the household people started playing bhajan cassettes after which she had to get up at 7 o'clock in the morning to prepare and serve food to all the members in the family. Often on falling asleep in the morning, Shyamji, Kamla Devi and Geeta Mehrotra tortured the complainant every day mentally and physically. Ramji Mehrotra often provoked the other three family members to torture and often used to make the complainant feel sad by making inappropriate statements about the complainant and her parents. Her husband Shyamji also took away the salary from the complainant.

6. After persistent efforts, Shyamji finally got a job in Chennai and he went to Chennai for the job in May 2003. But, it is alleged that there was no change in his behaviour even after going to Chennai. The complainant often called him on phone to talk to him but he always did irrelevant conversation. He never spoke properly with the complainant whenever he visited home and often used to hurl filthy abuses. The complainant states that she often wept and tolerated the tortures of the accused persons for a long time but did not complain to her family members, as that would have made them feel sad. At last, when the complainant realised that even her life was in danger, she was compelled to tell everything to her father on phone who was very upset on hearing her woes.

7. On 15-7-2003 the complainant heard some conversation of her mother-in-law and sister-in-law from which it appeared to her that they want to kill the complainant in the night only. Thereupon, the complainant apprised her father of the situation on phone to which her father replied that he will call back her father-in-law and she should go with him immediately and he will come in the morning. The father-in-law, Satish Dhawan and his wife who were living in Noida thereafter came in the night and somehow took the complainant to their home who also came to know of everything. The complainant's father and brother later went to her matrimonial home on 16-7-2003. On seeing her father and brother, Kamla Mehrotra and Geeta Mehrotra started speaking loudly and started saying that Shyamji would be coming by the evening and so he should come in the evening for talking to them. Her father and brother then went away from there. That very day, her husband Shyamji and brother-in-law Ramji also reached home. On reaching there, Shyamji abused her on phone and told her to send her father.

8. When the father and brother of the complainant went home in the evening, they were also insulted by all the four and video camera and tape were played and in the end they were told that they should leave from there. Insulted, they came back from there and then came back to Allahabad with the complainant. For many days the complainant and her family members hoped that the situation would improve if the matter was resolved. Many times other people tried to persuade the in-laws but to no avail. Her brother went to their house to talk to her in-laws but it came to his knowledge that the in-laws had changed their house. After much effort, they came to know that the father-in-law and mother-in-law started living at B-39, Brahma Cooperative Group Housing Society, Block No. 7, Sector 7, Dwarka, Delhi.

9. On 19-9-2004 evening, the complainant's father talked to Kamla Mehrotra and Geeta Mehrotra regarding the complainant using bad words and it was said that if his daughter came there she will be kicked out. After some time Shyamji rang up at the complainant's home but on hearing the complainant's voice, he told her abusively that now she should not come his way and she should tell her father not to phone him in future. At approximately 10.30 p.m. in the night Ramji's phone came to the complainant's home. He used bad words while talking to her father and in the end said that he had got papers prepared in his defence and he may do whatever he could but if he could afford to give Rs 10 lakhs then it should be conveyed after which he will reconsider the matter. If the girl was sent to his place without money, then even her dead body would not be found.

10. On hearing these talks of the accused, the complainant believed that her in-laws will not let the complainant enter their home without taking rupees ten lakhs and if the complainant went there on her own, she will not be safe. Hence, she lodged the report wherein she prayed that the SHO, Daraganj should be ordered to do the needful after registering the case against the accused Shyam Mehrotra, Ramji Mehrotra, Kamla Mehrotra and Geeta Mehrotra. Thus, in substance, the complainant related the bickering at her matrimonial home which made her life miserable in several ways and

compelled her to leave her in-laws' place in order to live with her father where she lodged a police case as stated hereinbefore.

11. On the basis of the complaint, the investigating authorities at PS Daraganj, Allahabad started investigation of the case and thereafter the police submitted charge-sheet against the appellants and other family members of the complainant's husband. Hence, the appellants who are the sister and brother of the complainant's husband filed a petition under Section 482 CrPC for quashing of the charge-sheet and the entire proceedings pending in the Court of the learned Judicial Magistrate, Court No. 4, Allahabad, inter alia, on the ground that FIR has been lodged with mala fide intentions to harass the appellants and that no case was made out against the appellants as well as other family members. But the principal ground of challenge to the FIR was that the incident although was alleged to have taken place at Faridabad and the investigation should have been done there only, the complainant with mala fide intention, in connivance with the father of the complainant, got the investigating officer to record the statements by visiting Ghaziabad which was beyond his territorial jurisdiction and cannot be construed as legal and proper investigation. It was also alleged that the father of the complainant got the arrest warrant issued through George Town Police Station, Allahabad, in spite of the cause of action having arisen at Faridabad.

12. This appeal has been preferred by Kumari Geeta Mehrotra i.e. the sister of the complainant's husband and Ramji Mehrotra i.e. the elder brother of the complainant's husband assailing the order of the High Court and it was submitted that the Hon'ble High Court ought to have appreciated that the complainant who had already obtained an ex parte decree of divorce, is pursuing the present case through her father with the sole purpose to unnecessarily harass the appellants to extract money from them as all efforts of mediation had failed. However, the ground of challenge before this Court to the order of the High Court, inter alia, is that the High Court had failed to appreciate that the investigation had been done by the authority without following the due process of law which also lacked territorial jurisdiction. The relevant documents/parcha diary for deciding the territorial jurisdiction had been overlooked as the FIR has been lodged at Allahabad although the cause of action of the entire incident is alleged to have taken place at Faridabad (Haryana). It was, therefore, submitted that the investigating authorities of Allahabad have traversed beyond the territorial limits which is clearly an abuse of process of law and the High Court has failed to exercise its inherent powers under Section 482 CrPC in the facts and circumstances of this case and allowed the proceedings to go on before the trial court although it had no jurisdiction to adjudicate the same.

13. It was further averred that the High Court had failed to examine the facts of the FIR to see whether the facts stated in the FIR constitute any prima facie case making out an offence against the sister-in-law and brother-in-law of the complainant and whether there was at all any material to constitute an offence against the appellants and their family members. Attention of this Court was further invited to the contradictions in the statement of the complainant and her father which indicate material

a contradictions indicating that the complainant and her father have concocted the story to implicate the appellants as well as all their family members in a criminal case merely with a mala fide intention to settle her scores and extract money from the family of her ex-husband Shyamji Mehrotra and his family members.

b **14.** On a perusal of the complaint and other materials on record as also analysis of the arguments advanced by the contesting parties in the light of the settled principles of law reflected in a catena of decisions, it is apparent that the High Court has not applied its mind to the question as to whether the case was fit to be quashed against the appellants and has merely disposed of the petition granting liberty to the appellants to move the trial court and raise contentions on the ground as to whether it has territorial jurisdiction to continue with the trial in the light of the averment that no part of the cause of action had arisen at Allahabad and the entire incident even as per the FIR had taken place at Faridabad.

c **15.** The High Court further overlooked the fact that during the pendency of this case, Respondent 2 complainant has obtained an ex parte decree of divorce against her husband Shyamji Mehrotra and the High Court failed to apply its mind whether any case could be held to have been made out against Kumari Geeta Mehrotra and Ramji Mehrotra, who are the unmarried sister and elder brother of the complainant's ex-husband. The facts of the FIR even as it stands indicate that although a prima facie case against the husband Shyamji Mehrotra and some other accused persons may or may not be constituted, it surely appears to be a case where no ingredients making out a case against the unmarried sister of the accused Shyamji Mehrotra and his brother Ramji Mehrotra appear to be existing for even when the complainant came to her in-laws' house after her wedding, she has alleged physical and mental torture by stating in general that she had been ordered to do household activities of cooking meals for the whole family. But there appears to be no specific allegation against the sister and brother of the complainant's husband as to how they could be implicated in the mutual bickering between the complainant and her husband Shyamji Mehrotra, including his parents.

d **16.** Under the facts and circumstances of a similar nature in *Ramesh v. State of T.N.*², SCC (Cri.) at p. 738, allegations were made in a complaint against the husband, the in-laws, husband's brother and sister who were all the petitioners before the High Court wherein after registration of the FIR and investigation, the charge-sheet was filed by the Inspector of Police in the Court of the IIIrd Judicial Magistrate, Trichy. Thereupon, the learned Magistrate took cognizance of the offence and issued warrants against the appellants on 13-2-2002. Four of the appellant-accused were arrested and released on bail by the Magistrate at Mumbai. The appellants had filed a petition under Section 482 CrPC before the Madras High Court for quashing the proceedings in the complaint case on the file of the IIIrd Judicial Magistrate, Trichy. The High Court by the impugned order dismissed the petition observing that the grounds raised by the petitioners were all

subject-matters to be heard by the trial court for better appreciation after conducting full trial as the High Court was of the view that it was only desirable to dismiss the original criminal petition and the same was also dismissed. However, the High Court had directed the Magistrate to dispense with the personal attendance of the appellants.

17. Aggrieved by the order of the Madras High Court dismissing the petition under Section 482 CrPC, the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz.: (*Ramesh case*², SCC p. 509, para 4)

“(i) that the allegations are frivolous and without any basis;

(ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence; and

(iii) taking cognizance of the alleged offences at [that] stage [was] barred under Section 468(1) CrPC as it was beyond the period of limitation prescribed under Section 468(2) CrPC.”

Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

18. Their Lordships of the Supreme Court in *Ramesh case*² had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband’s relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant’s husband who was undisputedly not living with the family of the complainant’s husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

19. Insofar as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482 CrPC wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of IPC. The High Court has failed to exercise its jurisdiction insofar as the consideration of the case of the appellants is concerned, who are only brother

2 *Ramesh v. State of T.N.*, (2005) 3 SCC 507 : 2005 SCC (Cri) 735

a and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court.

b **20.** Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

c **21.** It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad*³ wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p. 698, para 12)

d “12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their ‘young’ days in chasing their ‘cases’ in different courts.”

e The view taken by the Judges in that matter was that the courts would not encourage such disputes.

f **22.** In yet another case reported in *B.S. Joshi v. State of Haryana*⁴ it was observed that: (SCC p. 682, para 14)

g “14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code was to prevent torture to a

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3 (2000) 3 SCC 693 : 2000 SCC (Cri) 733

4 (2003) 4 SCC 675 : 2003 SCC (Cri) 848 : AIR 2003 SC 1386

750

SUPREME COURT CASES

(2012) 10 SCC

woman by her husband or by relatives of her husband. Section 498-A was added with a view to [punish the] husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry.” a

But if the proceedings are initiated by the wife under Section 498-A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent the woman from settling earlier. Thus, for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 CrPC would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power. b

23. In the instant matter, when the complainant and her husband are divorced as the complainant wife secured an ex parte decree of divorce, the same could have weighed with the High Court to consider whether the proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant’s husband and whether continuing with this proceeding could not have amounted to abuse of process of court. The High Court, however, seems not to have examined these aspects carefully and has thus sidetracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the Magistrate conducting the trial. c d

24. In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in *Ramesh v. State of T.N.*² that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in that matter on this aspect were although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498-A IPC and Sections 3/4 of the Dowry Prohibition Act against the appellants who are the sister and brother of the complainant’s husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them. e f g h

2 (2005) 3 SCC 507 : 2005 SCC (Cri) 735

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of

a overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named

b accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the

c court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance

d of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

26. In the case at hand, when the brother and unmarried sister of the principal accused Shyamji Mehrotra approached the High Court for quashing the proceedings against them, inter alia, on the ground of lack of territorial

e jurisdiction as also on the ground that no case was made out against them under Sections 498-A/323/504/506 IPC including Sections 3/4 of the Dowry Prohibition Act, it was the legal duty of the High Court to examine whether there were prima facie material against the appellants so that they could be directed to undergo the trial, besides the question of territorial jurisdiction. The High Court seems to have overlooked all the pleas that were raised and

f rejected the petition on the solitary ground of territorial jurisdiction giving liberty to the appellants to approach the trial court.

27. The High Court in our considered opinion appears to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of

g inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR do not disclose specific allegation against the brother and sister of the complainant's

h husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of

752

SUPREME COURT CASES

(2012) 10 SCC

the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498-A/323/504/506 IPC and Sections 3/4 of the Dowry Prohibition Act. a

28. We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of Respondent 2 complainant without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings insofar as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal is accordingly allowed. b
c

(2012) 10 Supreme Court Cases 752

(BEFORE S.S. NIJJAR, J.)

FUGRO SURVEY (INDIA) PRIVATE LIMITED .. Petitioner; d

Versus

RAMUNIA INTERNATIONAL SERVICES LIMITED .. Respondent.

Arbitration Petition No. 25 of 2011, decided on September 7, 2012

Arbitration and Conciliation Act, 1996 — Ss. 11(6) & (10) and 20 — Ex parte appointment of sole arbitrator by court — Permissibility — Dispute arose between petitioner sub-contractor and respondent contractor — Legal notice invoking arbitration clause not replied to by respondent — None appeared despite service, before Court — In view of averments made in petition remaining uncontroverted, sole arbitrator appointed with liberty to fix his own remuneration and other proper terms and conditions for arbitration — Seat of arbitration fixed as Mumbai, as per arbitration clause (Paras 6 to 8) e
f

Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd., (2012) 10 SCC 754;
Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd., Arbitration Application No. 118 of 2011, order dated 5-8-2011 (Bom), referred to

Petition allowed PK-D/50992/CV g

Chronological list of cases cited on page(s)

1. (2012) 10 SCC 754, *Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.* 753a-b
2. Arbitration Application No. 118 of 2011, order dated 5-8-2011 (Bom), *Fugro Survey (India) (P) Ltd. v. Ramunia International Services Ltd.* 754b h