

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

CRM(M) no.931 /2023
CrLM No. 1826/2023

Nisha Devi and ors.

....Petitioner (s)

Through :- Mr. Ankesh Chandel, Advocate.

V/s

UT of J&K & anr

....Respondent(s)

Through :-

M

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

30.10.2023

1. The petitioners, through the medium of the instant petition, has called in question the order dated 23.08.2023 passed by the Court of learned 3rd Additional Munsiff, Jammu whereby FIR has been directed to be registered against the petitioners under Section 156(3) of the Code of Criminal Procedure and pursuant thereto, an FIR bearing No. 0050/2023 dated 15.09.2023 has been registered with the Police Station, Women Cell, Jammu under Section 498-A and 34 IPC insofar as the petitioners are concerned.
2. Learned counsel for the petitioners, Mr. Chandel, has vehemently argued that the impugned order dated 23.08.2023 has been passed by the court below without appreciating the true import of law as has been laid down

by the Apex Court in case titled “**Lalita Kumari Vs. Govt. of U.P. and ors**” reported in **2014 (2) SCC 1** and the same has been passed without following the mandate of the aforesaid judgment, which provides that in matrimonial disputes, holding of preliminary enquiry is must before registration of FIR.

3. Learned counsel for the petitioners further submits that no preliminary enquiry or investigation into the allegations alleged by the respondent No. 2 in her complaint has ever been conducted and thus, the registration of the aforesaid FIR bearing No. 0050/2023 dated 15.09.2023 registered with the Police Station, Women Cell, Jammu insofar as the petitioners are concerned is illegal and contrary to the provisions of the law laid down by the Apex Court in **Lalita Kumar’s case** (Supra) and deserves to be quashed.
4. Learned counsel for the petitioners, with a view to fortify his claim, has referred to the judgment of the Apex Court rendered in case titled “**Lalita Kumari Vs. Govt. of U.P. and ors**” reported in **2014 (2) SCC 1** and also the judgment of the Coordinate Bench of this Court rendered in case titled “**Syed Rafie Ul Akmal Andrabi vs. Irshad Ahmad Kamili and ors**”, CRM(M) No. 83/2020 decided on 25.08.2021.

5. Learned counsel for the petitioners has referred to the conclusions drawn in Lalita Kumari's case (supra) which, for the facility of reference, is reproduced as under:

“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 perusal of the aforesaid judgment passed by the Apex Court, it is manifestly clear that preliminary enquiry is required to be conducted among other cases in the cases of matrimonial/family disputes. Prima facie, it becomes evident, from the facts and circumstances of the case, that the preliminary enquiry has not been conducted in the instant case as was required to be conducted and the impugned FIR is liable to be stayed.
7. Heard learned counsel for the petitioners.
8. Prima facie case is made out.
9. Issue notice in the main petition as also in application, which is waived by Mr. P.D. Singh, Deputy Advocate General on behalf of respondent No. 1. He seeks and is allowed four weeks time to file response.
10. List again on 02.12.2023.

- 11.** In the meantime, subject to objections and till next date of hearing, the impugned FIR bearing No. 0050/2023 dated 15.09.2023 registered with the Police Station, Women Cell, Jammu insofar as the petitioners are concerned shall remain stayed. Alteration/modification on laying motion.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
30.10.2023
Naresh/Secy.

