

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

Case:- CRM(M) No. 1026/2023

Madan Gopal Samyal and Ors.Appellant(s)/Petitioner(s)

Through: Mr. F. A. Natnoo, Advocate.

Vs

UT of J&K & Ors.

..... Respondent(s)

Through: Mr. P. D. Singh, Dy. AG vice
Mr. Dewakar Sharma, Dy. AG.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(06.12.2023)

- 01.** Respondent no. 3 is married to the petitioner no. 1. The marriage between the respondent no. 3 and the petitioner no. 1 is of the year 2003 out of which two children are born both of them being sons and now out of whom the surviving son is in the age of majority.
- 02.** The matrimonial relationship between the respondent no. 3 and the petitioner no. 1 is ridden with discord and distress which is gatherable from the fact that the petitioner no. 1 is facing proceeding under the Protection of Women from Domestic Violence Act, 2005 initiated at the instance of the respondent no. 3, and whereas the petitioner no. 1 is said to have filed a divorce petition

against the respondent no. 3 before the court of learned Principal District Judge, Kathua.

- 03.** It is in this backdrop that the respondent no. 3 has come forward with registration of FIR no. 0010/2023 dated 22.08.2023 registered with the Women Police Station, Kathua for alleged commission of offences under Sections 498-A, 342, 504, 506 & 34 IPC.
- 04.** In this FIR, the respondent no. 3 has not only named her husband i.e. petitioner no. 1 but the other family members of the petitioner no. 1 which includes the brothers, sisters and other collaterals all of whom are not forming part of the joint family. Given the fact that the marriage is of 2003 and registration of the FIR is of 2023 this fact is safely gatherable that marriage has lasted too long to be in a phase where dowry related misconduct can be said to be actual intent.
- 05.** Pursuant to this FIR, Final Police Report no. 08/2023 dated 26.09.2023 has come to take place meaning thereby within a period of one month the Women Police Station, Kathua has come to investigate the case and come forward with the challan against all the accused for alleged commission of offences under Sections 498-A/342/109/504/506/341 IPC.

- 06.** Learned counsel for the petitioners submits that registration of FIR is actuated with *mala fide* as the respondent no. 4 did not disclose the fact that the respondent no. 3 and the petitioner no. 1 are in a state of split and separation in terms of their marital company from the year 2010 onwards and, as such, there was no occasion for involvement of the petitioner no. 1 and his brothers and sisters for alleged commission of offence under Section 498-A IPC.
- 07.** The petitioners are invoking inherent powers of this Court as reserved under Section 482 of the Code of Criminal Procedure, 1973, though, the petitioners have caused their appearance in the criminal case before the court below but are seeking its quashment.
- 08.** *Prima facie* case is made out.
- 09.** Issue notice to the respondents.
- 10.** Mr. Pawan Dev Singh, the learned Dy. AG appearing vice Mr. Dewakar Sharma, the learned Dy. AG accepts notice on behalf of the respondent no. 1 & 2 to submit reply/response to the writ petition.
- 11.** Notice will go to respondent no. 3 only.

- 12.** Petitioner to furnish registered postal cover for the service of respondent no. 3 within a period of 7 days, whereupon the Registrar Judicial, Jammu to issue notice to the respondent no. 3. Registrar Judicial, Jammu shall be entitled to extend time for furnishing of registered postal cover if not submitted within time given.
- 13.** List on 05.02.2024.
- 14.** In the meantime, proceedings in the case before the court below shall remain stayed. This direction is, however, subject to objections from the other side.

JAMMU
06.12.2023

Bunty

