
(2009) 03 DEL CK 0326

In the Delhi High Court

Case No : Criminal M.C. 3819 of 2006 and Criminal M.A. 6286 of 2006

Abdul Muneer and Others

APPELLANT

Vs

Moinuddin

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2009) 03 DEL CK 0326

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sameer Chandra, for the Appellant; Braham Singh and N.S. Vidhudi, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This petition u/s 482 CrPC seeks the quashing of the summoning order dated 5th August 2002 passed by the learned Metropolitan Magistrate (MM.) in Criminal Complaint No. 12/1/6.6.94 u/s 302 read with 498A IPC and all proceedings consequent thereto.

2. The aforementioned complaint was filed by the Respondent on 11th March 1993 alleging that the daughter of the complainant, who had been married to Petitioner No. 1 Abdul Muneer on 14th January 1986 had died under mysterious circumstances on 22nd February 1990 and that she was given poison by the accused persons (the Petitioners herein). As part of the pre-summoning evidence of Ruby, the child born to Petitioner No. 1 and the deceased, was recorded on 3rd February 1995. The other witnesses examined were Nargis (CW-1), the mother of the deceased, Om Prakash (CW-3), Record Clerk from LNJP Hospital (where the deceased was stated to be admitted), Mirajuddin (CW-4), an uncle of the deceased, Jameela Begum (CW-5), the aunt of the deceased, Moinuddin (CW-6), the complainant, Mohd. Habib (CW-7), Mohd. Saleem (CW-8) and Shahida Begum (CW-9), a niece of the complainant.

3. By an order dated 5th August 2002 the learned MM came to the following conclusion:

14. On the perusal of the file, I find that the statement of witnesses was written by SI Kuldeep Singh. The file also finds annexed the photocopy of death certificate of Nazneen Fatima W/o. Abdul Munir dated 22.2.90 at 9.30 AM. The cause of death is written as some acute intestinal obstruction. The duration of the deceased is written as 2 years. The witness who has come from the hospital had stated that he can bring the register regarding the admission etc but thereafter he was never examined.

15. The letter written by the deceased suggest that she was continuously given some kind of food which she could not be digested and which was painful. Because of that she had some acute intestinal obstruction, which may be the ultimate cause of death. All the witnesses who are the near relatives of the complainant have clearly stated that the accused-persons had not informed about the death despite they being the close relatives of the deceased and her father and mother had gone to Pakistan. They did not inform them also in time. The child i.e. the daughter of the deceased stated that her mother had eaten some goli which her father had brought. Immediately after consuming the same she had died. This also raises strong suspicion that the deceased was being continuously given some kind of poison which has ultimately resulted in her death. Although, this case had needed a strong and thoroughful investigation but for the reasons best known to the police they have not chosen so despite the fact that there was clear allegations from the parents i.e. the complainant and other relatives and the above conduct of accused also suggests same foul play. The deceased had also written such letters which suggests that she was being mal-treated and made to eat the food which was not even cooked alongwith the food for other members and which causes burning sensation in her chest. Accordingly, I am of the opinion that there are sufficient grounds to proceed against accused Abdul Munir (husband), Abudul Mukid (father-in-law) who had informed that the deceased was ill/sick; Amtul Hasin (mother-in-law); Anjum Bano W/o. Abdul Moied; (Jhethani); Nasima; Yasmin; Shabnam (nanands) for offence punishable u/s 302 read with Section 498A IPC. Issue NBWs against all accused persons vide PF for 27.8.2002.

4. Aggrieved by the aforementioned order, the Petitioners preferred Criminal Revision Petition No. 39 of 2005 in the court of the learned Additional Sessions Judge ("ASJ"), Delhi. By a judgment dated 4th February 2006 the learned ASJ held that the Revision Petition cannot be entertained in view of the judgment of the Supreme Court in Adalat Prasad v. Roop Lal Jindal 113 (2002) DLT 356. Thereafter the present petition has been filed.

5. Learned Counsel for the Petitioners challenges the summoning order on various grounds. It is pointed out that within six months of the marriage on 16th July 1986, the deceased filed a petition u/s 125 CrPC. On 14th August 1989 a compromise was arrived at between the parties and thereafter they resumed

living together. On 2nd November 1989 the Respondent and his family went to Karachi in Pakistan and returned to India only on 18th July 1990. It is pointed out that the complaint failed to disclose that the police of Police Post Turkman Gate, SI Kuldeep Singh made an enquiry into the complaint of the Respondent and concluded that the deceased died on account of "subacute intestinal obstruction". The police concluded that no foul play was suspected and that from the statement of the witnesses nothing incriminating was forthcoming. The said report dated 6th May 1993 of Kuldeep Singh, submitted before the learned Chief Metropolitan Magistrate, has been annexed to this petition. The medical record showing the treatment given by the Petitioners to the deceased for tuberculosis and other medical ailments has also been produced on record.

6. Learned Counsel for the petitioner also refers to the deposition of CW-2 Ruby Fatima. It is submitted that this deposition is in fact inconsistent with what is alleged in the complaint and in any event does not inspire confidence for summoning the Petitioners for an offence as serious as 302 read with 498A IPC. It is further submitted that the explanation given by the complainant for not coming to India immediately upon knowing of the death of his daughter is not convincing. It is pointed out that the letters alleged to have been written by the deceased to the Respondent when he was in Pakistan have not been proved in accordance with law.

7. Learned Counsel for the Respondent on the other hand sought to support the summoning order stating that at this stage the learned MM only had to be satisfied that a prima facie case had been made out against the Petitioners for the aforementioned offences. It is submitted that the depositions of the witnesses examined at the pre-summoning stage substantiated the complaint and therefore no interference was called for with the summoning order.

8. The trial court record has been perused. It reveals that after the filing of the complaint on 11th March 1993 a report was indeed submitted to the court of the learned MM on 6th March 1993 by SI Kuldeep Singh. This report pointed out that the marriage between the deceased and the Petitioner No. 1 was an unusual one in the sense that the deceased had allegedly been raped by Petitioner No. 1 when she had gone to stay at the house of her maternal uncle. When this fact came to light in order to keep prestige of the family, the marriage was solemnised. Five months after the marriage, a child was born.

She thereafter decided on her own to stay with her parents due to lack of compatibility between the spouses. She however filed a petition u/s 125 CrPC on 16th July 1986. Certain orders were passed in the said petition which were challenged by way of a revision petition in this Court. The said revision petition was fixed for hearing on 16th August 1989. On 14th August 1989, the deceased decided to stay with her in-laws after her in-laws approached her parents for a compromise offering to keep the deceased and the daughter with them.

9. It is pointed out in the report of SI Kuldeep Singh that the complainant along

with his family went to Karachi and did not return for several months on account of two deaths there. In the meanwhile, the deceased was suffering from tuberculosis which was diagnosed at the New Delhi Tuberculosis Centre. She was given treatment for the same. It is pointed out that despite proper medical care and attention she did not recover from the disease and her condition deteriorated day by day. The deceased was admitted to Jai Prakash Narain Hospital but did not get any relief as a result of which she was discharged from the hospital and returned to her in-laws' house. The deceased had earlier complained of chest pain and breathlessness for which she was given medical treatment. What happened on 22nd February 1990 is stated as under in the said report of Kuldeep Singh:

However, on 22.02.90, the condition of Nazneen Fatima deteriorated a great deal and the father-in-law Abdul Muqeed told several relatives of the complainant staying nearby that the condition of her daughter-in-law was very serious. She was taken to LNJP Hospital but she died at 9.30A.M. and the doctor has opined the cause of death is subacute Intestinal Obstruction and that she had been suffering from the disease for the last two years. Since, the in-laws of Nazneen Fatima provide her medical attention and she was suffering from old disease no foul play suspected. The complainant was himself not present and therefore, expressed his apprehension about the death. The statement of the witnesses were recorded and nothing incriminating has come to light from them.

10. A perusal of the complaint shows that according to the complainant when the wife of the complainant visited the house of the accused on 2nd November 1989 she came to know that the deceased had been ill-treated by the accused persons. It is thereafter stated in paras 8 to 12 as under:

8. That on 2nd Nov. 1989 the Complainant and his family members went to Karachi (Pakistan) on the death of complainant's brother Mehboob Bux from where they could return to India only on 18.7.90. Though the complainant's got the information of the death of his daughter on that very date on 22.2.90 but he could not come earlier because of continuous death of his other relative in Pakistan i.e. namely first his sister Rehmat Begum died in March, 1990 and her husband Babu died in the month of January, 1990.

9. That on his return from Pakistan the complainant along with his wife went to house of accused persons where the Accused persons particularly accused No. 1 was very harsh and rude towards complainant and his wife and stated that his daughter had died her natural death.

10. That the complainant thereafter came to know from the neighbours and his relatives who were at that time in Delhi that his daughter had died unnatural death i.e. by giving poison. The Accused persons had given poison to his daughter and she died due to the said reason.

11. That Ruby Fatima daughter of deceased & Accused No. 1 told that her mother was alright on that particular day in the morning and was doing her work

as usual and that after taking her tea, her condition immediately became serious and a Doctor also came to attend on her but she died immediately. The complainant enquired from Accused about the name of the doctor who attended on the deceased but the accused refused to do so.

12. That the complainant also came to know that the Accused persons immediately took the dead body of his daughter to the Kabristan where she was buried. The Accused were heard saying that the deceased died in the hospital. The complainant also went to the Hospital (J.P. Narain Hospital) and enquired from the concerned persons about the death of Nazneen Fatima but he could not get the information from them. It is beyond doubt that the Deceased Nazneen Fatima never admitted in the hospital.

11. It is stated that the complainant approached the Commissioner of Police with a written complaint on 30th July 1990 but no action was taken thereon.

12. The aforementioned averments, in the considered view of this Court, do not give a satisfactory explanation for the conduct of the complainant in not returning to India immediately upon knowing of the death of his daughter. This is rather unusual if indeed the wife of the complainant came to know even on 2nd November 1989 that her daughter was being ill-treated by the accused persons. Further the complainant's conduct in waiting till 11th March 1993 to file a complaint after given a written complaint to the police on 30th July 1990 is even more unusual. Absolutely no satisfactory explanation is forthcoming on this extraordinary delay in approaching the Court particularly when the offence is allegedly a serious one.

13. In the impugned order dated 5th August 2002 the learned MM has noticed that the cause of the death is shown as "acute intestinal obstruction" and no poisoning as alleged by the complainants. The evidence of CW-2, the daughter of the deceased has been referred to by the learned MM for concluding that "the deceased was being continuously given some kind of poison which was ultimately resulted in her death." In her deposition before the Court, the child Ruby (CW-2) inter alia, stated as under:

My mummy died by consuming goli. I did not see the gold consuming by my mother. My mummy used to be beaten by my Papa. Many people gathered at the time of death of my mummy. Goli was brought by my papa and the same was consumed by my mummy on her own. She consumed goli with water and just after consumption she died.

14. This Court is unable to conclude from the above statement that the deceased was continuously been administered poison as alleged by the complainant. Strangely, the complaint itself does not make any such averment. Unless there is some kind of a medical or scientific evidence to substantiate the charge of poisoning, it would be unsafe for the court to come to a prima facie conclusion to that effect merely on the statement of a child witness. Certainly on the basis of the above pre- summoning evidence, when the medical evidence is that the

deceased died of acute intestinal obstruction, there was no material for the learned MM to conclude that there was "strong suspicion" that the deceased was being continuously given some kind of poison. This finding of the learned MM is clearly unsustainable in law.

15. Learned Counsel for the Respondent referred to the letters allegedly written by the deceased to her father while he was in Pakistan. It is seen that one letter bears the postal stamp of the Post Office at Karachi town dated 27th December 1989. This letter has apparently not been written by the deceased but has been sent to the Respondent by M. Tahir and Marghoob Hussain neither of whom has been examined as a witness. A second letter stated to have been written by the deceased on 30th January 1990 does not bear any stamp of a post office at Pakistan. There is no reference to these letters in the complaint itself and there is no explanation forthcoming for this. In the impugned summoning order the learned MM fails to notice the above features of the letters and has simply chosen to rely on the same without satisfying himself that they are as such not admissible in evidence.

16. Having examined the pre-summoning evidence of the witnesses, it appears that there is no material to come to the conclusion that a prima facie case has been made out against the Petitioners for the offence u/s 302 IPC. As regards the offence u/s 498A IPC it is seen that at no point of time did the deceased herself give any complaint in that regard. She appears to have gone back to her matrimonial home after a compromise was reached. The delay in filing the complaint would be fatal to the complaint itself and without adverting to this aspect the learned MM erred in proceeding to summon the Petitioners for the offence u/s 498A IPC as well.

17. For the aforementioned reasons, this Court finds that the impugned order dated 5th August 2002 passed by the learned MM is unsustainable in law. It is accordingly set aside. The Petitioners stand discharged in Criminal Complaint No. 12/1/6.6.94 and all proceedings consequent thereto.

18. The petition is accordingly allowed. Application also stands disposed of. The trial court record be sent back.

19. A copy of this order be sent to the learned MM concerned forthwith.