

(2021) 10 JH CK 0016

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1547 Of 2018

Ajit Agarwa And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 18-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 24, 34, 323, 379, 384, 406, 415, 418, 420, 506
Hindu Marriage Act, 1955 — Section 13B
Code Of Criminal Procedure, 1973 — Section 192, 204

Citation : (2021) 10 JH CK 0016

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Vijay Shankar, Ritu Kumar, Mahavir Poddar, Shekhar Sinha

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Vijay Shankar Prasad, learned counsel for the petitioners, Mrs. Ritu Kumar assisted by Mr. Mahavir Poddar, learned counsel for opposite party no.2 and Mr. Shekhar Sinha, learned P.P. for the opposite party-State.

2. The petitioners have filed this petition for quashing the order taking cognizance dated 28.09.2016 passed in Complain Case No.1195/2016 by the learned Judicial Magistrate, 1st Class, Jamshedpur.

3. The opposite party no.2 has filed a complaint petition stating therein that the marriage between the complainant and petitioner no.1 was solemnized on 08.05.2014 at Jamshedpur. On demand of the petitioner no.1, a sum of Rs.5 Lakhs in cash along with ornaments and other articles worth Rs.10 Lakhs were given by the parents of the complainant to the petitioner. From the very beginning of stay of complainant in her matrimonial house at Mumbai (Maharashtra), the petitioners used to comment regarding less quantum of dowry paid to them by the side of complainant. They started demanding Rs.5

Lakhs from the complainant asking her to bring the alleged amount of Rs.5 Lakhs from her parents. It was also alleged that the accused persons forcibly threatened her and deposited a sum of Rs.8.60 Lakhs in their accounts from the salary of the complainant as she was employed and she was earning a good salary. She was paid a sum of Rs.5,000/- only for her expenses. On 05.11.2014, complainant was removed from her matrimonial house by the accused persons came to residence of the complainant at Jamshedpur and they were paid Rs.2 Lakhs. On such payment, complainant was again tortured by the accused persons and she went with her father though later on she came back to her matrimonial house. She reported the said incident to the Mumbai police on 20.05.2015 and 22.05.2015, but no action was taken by the Mumbai police as against the accused persons. Importantly, a compromise was entered into between the parties at the residence of the complainant in Jamshedpur on 21.09.2015 in presence of witnesses wherein a mutual settlement between them was arrived in which total amount of Rs.11,00,000/- was agreed to be paid to the complainant by the accused persons. It was further alleged that till date only Rs.5,00,000/- is deposited by the accused persons, but the amount of Rs.6,00,000/- and the ornaments belonging to the complainant which is in possession of the accused persons are not yet returned to her by the accused persons.

4. Pursuant to that the learned court has taken cognizance vide order dated 28.09.2016 under Sections 379, 323, 384, 420, 406, 506 and 34 of the Indian Penal Code against the petitioners.

5. Mr. Vijay Shankar Prasad, learned counsel for the petitioners assailed the impugned order on the ground that there is no ingredient of Sections on which cognizance has been taken against the petitioners. He submits that the amount of Rs.11 Lakhs have already been paid to opposite party no.2. He further submits that mutual agreement has been entered between the petitioner no.1 and opposite party no.2, whereby, it has been decided that petitioner no.1 will pay a sum of Rs.11 Lakhs to opposite party no.2 in full and final settlement of all present and future claims and maintenance, both the parties are required to exchange the ornaments given to each other and both the parties will file mutual divorce petition. He further submits that for non-filing of mutual divorce, the complaint case has been filed. He also submits that the matter is civil in nature and the cognizance order is bad in law. He further submits that there are judgments to that effect that if the nature of complaint is civil in nature, the criminal proceeding will not proceed.

6. Per contra, Mrs. Ritu Kumar, learned counsel for opposite party no.2 submits that the complainant was examined on solemn affirmation by the concerned court and she has stated about the torture of taking money forcefully from her and the allegations have been made in solemn affirmation against all the accused persons. She further took the Court to the deposition of D.W.1 and D.W.2 and by way of placing their statements, she submits that there are ingredients of

Sections under which cognizance has been taken against the petitioners.

7. The Court has perused the complaint petition. In paragraph 6, there is allegation of threat and torture and snatching of golden chain, ear ring, two ring, gold kangan from the possession of the complainant. In paragraph

8 of the complaint petition also, there is allegation of torture. In paragraph 15 of the petition, there is allegation of threat to dire consequences.

8. Earlier, the petitioners were provided much opportunity to settle the dispute, which transpires from the order dated 23.01.2019, wherein, it has been recorded that the petitioner no.1 has not filed the petition under Section 13-B of the Hindu Marriage Act, 1955 as agreed between the petitioner no.1 and opposite party no.2 and the matter was adjourned for 14.02.2019. Again on 14.02.2019, time was sought on behalf of the petitioners and the interim order granted earlier by this Court vide order dated 07.08.2018 was vacated. On 14.03.2019, again the petitioners took time. On 11.06.2019, on the request of the petitioners, by way of last indulgence the matter was adjourned and it was recorded that if the case is not prosecuted, necessary order shall be passed as per materials available on record. Again time was allowed at the instance of the petitioners on 31.08.2021.

9. It is apparent that in spite of entry of mutual agreement between the parties for divorce to be filed under Section 13-B of the Hindu Marriage Act, the petitioner no.1 is not filing such petition although the agreement has been entered between the parties. The court below has taken cognizance vide order dated 28.09.2016 looking into the solemn affirmation as well as the statements of C.W.1 and C.W.2 and considering the allegations made in the complaint petition. In the complaint petition, there are ingredients of the Sections, which the court below has already recorded, as stated above. Sections 192 and 204 of the Cr.P.C. has been fulfilled in the case in hand. The mens rea can only be decided at the time of trial and not at the stage of issuing summons. When prosecution relies upon the materials, strict standard of proof is not to be applied at the stage of issuance of summons nor to examine the probable defence which the accused may take. All that the Court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused and the Court is not required to weigh the evidentiary value of materials on record.

10. The contention of Mr. Vijay Shankar Prasad, learned counsel for the petitioners with regard to civil nature of case is also not helpful to the petitioners as it is well settled that if the ingredients of the criminal case is disclosed, the civil as well as the criminal case will go simultaneously. A reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., reported in (2000) 3 SCC 269, in paragraphs 15, 16, 17, 18 and 19, which are quoted herein

below:

" 15. In the matter under consideration, if we try to analyse the guidelines as specified in Shivalingappa case can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused? In the present case, the complaint as noticed above does not, however, lend credence to the questions posed. It is now well settled and one need not dilate on this score, neither do we intend to do so presently that the allegations in the complaint will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the Court at this earliest stage as noticed above: whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial and the observations on this score in the case of Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna ought to be noticed. In para 3 of the Report this Court observed:

"3. We have perused the complaint carefully. In our opinion it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously."

16. Be it noted that in the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction. Recently, this Court in Trisuns Chemical Industry v. Rajesh Agarwal observed:

"5. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute is purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned Single Judge has approved both the contentions and quashed the complaint and the order passed by the Magistrate thereon.

6. On the first count learned Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction can be resolved through arbitration. The High Court made the following observations:

'Besides supplies of processed soyabean were received by the complainant Company without any objection and the same have been exported by the complainant Company. The question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution.'

7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide *State of Haryana v. Bhajan Lal* and *Rajesh Bajaj v. State NCT of Delhi*).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10)

'10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.'

9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal*."

17. On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact

they "are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import".

18. Mr Mishra, the learned Senior Advocate for the respondents herein being the accused persons, strongly relied upon the decision of this Court in the case of Dr Sharma's Nursing Home v. Delhi Admn. wherein this Court observed:

"We find that both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement."

Mr Mishra relying upon Dr Sharma case also contended that Section 24 IPC has defined the word "dishonesty" to mean a deliberate intent to cause wrongful gain or wrongful loss. It has been the specific case of the complainant that from the beginning of the transaction there was a definite intent on the part of the accused persons to cause wrongful loss to the complainant. This aspect of the matter, however, has not been taken note of by the learned Single Judge. The decision of this Court in Dr Sharma case thus does not lend any assistance to Mr Mishra in support of quashing of the criminal complaint. Some other decisions have also been cited but we do not feel inclined to refer to the same except one noted above since they do not advance the case of the respondents in any way whatsoever.

19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

11. In view of the aforesaid facts, no relief can be extended to the petitioners. Accordingly, this criminal miscellaneous petition stands dismissed.

12. Consequently, I.A. No. 4072 of 2018 and I.A. No. 4772 of 2018 stand dismissed.