

(2023) 01 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2803 Of 2022

Arjun Prasad Barnwal And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 04-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 292, 294, 313, 354(C), 354(D), 376, 376(2)(n),
417, 493, 504, 506
Code Of Criminal Procedure, 1973 — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2023) 01 JH CK 0010

Hon'ble Judges : Gautam Kumar Choudhary, J

Bench : Single Bench

Advocate : Mahesh Tewari, Ankur Anand, Vandana Bharti, M.K. Mehta

Final Decision : Allowed

Judgement

Gautam Kumar Choudhary, J

1. Instant petition has been filed for quashing of entire criminal proceeding arising out of Giridih Mahila P.S. Case No.15 of 2020 for the offence registered under Sections 292, 294, 376, 417, 493, 354(C), 354(D), 504, 506 and 313 of the I.P.C. and Sections 3 & 4 of the D.P. Act.

2. As per the case of the prosecution, the prosecutrix is a major girl and she developed friendly relationship with Amit Kumar Burnwal and he proposed to marry her. He kept on stalking her and also threatened to commit suicide and also sexually exploited her. It continued from 2018 till the lodging of the case in 2020. During this period, she became pregnant and she was also forced to abort the child.

3. It is submitted by the learned counsel on behalf of the petitioners that allegation is mainly directed against Amit Kumar Burnwal and these petitioners being father and brother of the principal accused, have been roped into the case

without any material.

4. Learned counsel on behalf of informant has opposed the petition. It is submitted that there is prima facie case made out against the petitioner.

5. The principles of law on the scope of adjudication at the stage of hearing a petition for quashing of criminal proceeding is settled by a catena decisions of Hon'ble the Supreme Court. At this stage, the probative value of the allegation is not to be considered, but the FIR has to be looked at as it stands and on its basis, it is to be seen whether the offence is made out or not. It has been held in *Veena Mittal Versus State of Uttar Pradesh & Others*; (2022) 1 RCR (Criminal) 818 that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the Cr.P.C., the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash. In *Preeti Gupta & Another Versus State of Jharkhand & Another*; (2010) 7 SCC 667 wherein it has been observed that the tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion.

6. In the present case, from a plain reading of the F.I.R., it is apparent that the allegation is directed against accused No.1-Amit Kumar Burnwal, who happens to be the person with whom the prosecutrix had a long-standing physical relationship. After investigation, chargesheet has been submitted and cognizance is taken under sections 376(2)n, 292, 294, 354(C), 354(d), 504 and 506 of the IPC. Allegation of these offences are directed against accused No.1 in the FIR. The allegation of dowry demand made against these petitioners have not been affirmed in investigation and the cognizance has not been taken under Dowry Prohibition Act. It will be an abuse of process of Court to permit criminal prosecution against the petitioners for these offences.

Under the circumstance, the order of taking of cognizance against the petitioners is quashed and the criminal proceeding arising out of Giridih Mahila P.S. Case No.15 of 2020, is set aside. It goes without saying that the criminal prosecution against accused No.1 Amit Kumar Burnwal will continue.

The criminal miscellaneous petition is accordingly allowed.