
(2009) 08 AHC CK 0326
In the Allahabad High Court
Case No : Criminal M.A. No. 18589 of 2009

Arun Kumar Mishra

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 482
Penal Code, 1860 (IPC) — Section 107, 304B, 306, 498A

Citation : (2010) 2 ACR 1300

Hon'ble Judges : Arvind K. Tripathi, J

Bench : Single Bench

Advocate : Sharad Srivastava and Anand Kumar Srivastava, for the Appellant;
A.G.A., for the Respondent

Judgement

Arvind K. Tripathi, J.—This criminal misc. application u/s 482, Code of Criminal Procedure has been filed with a prayer to quash the order dated 8.7.2009, passed by Additional Sessions Judge, Court No. 13, Varanasi in S.T. No. 469/08, State v. Arun Kumar Mishra, arising out of Case Crime No. 348/08 u/s 498A, I.P.C. P.S. Lanka, district Varanasi.

2. Heard learned Counsel for the applicant, learned Counsel for the complainant learned A.G.A. and perused the record.

3. Learned Counsel for the applicant submitted that the deceased wife of the applicant has relation with brother-in-law and on the pretext of going to her parental house she used to visit the house of her bahnoi (brother-in-law). Since the objections were raised and due to that reason there was dispute in between the parties. However, the settlement was made to that effect. Thereafter when the deceased, wife of the applicant put herself on fire the applicant tried to save her and even the applicant received burn injuries. No offence is made out against the applicant u/s 306, I.P.C. However, the discharge application filed u/s 227, Code of Criminal Procedure was rejected by the learned Additional Sessions Judge, Court No. 3 Varanasi by order dated 8.7.2009. Since the aforesaid order

is illegal and against the evidence on record hence the same is liable to be quashed and the applicant is liable to be discharged.

4. From a perusal of the record it is clear that there was not only allegation of demand of dowry and torture but also regarding illicit relation with bahnoi. Hence, she was not allowed to go even at her parental house. Whether the defence version of the applicant or the prosecution version is correct the same has to be examined during trial at appropriate stage. While considering the discharge application and framing of the charge, the matter will not be considered as a mini trial. Since prima facie commission of offence is disclosed, hence at this stage no interference is required with the impugned order rejecting the discharge application.

5. Learned Counsel for the applicants has relied the judgment in Bhagwan Das v. Kartar Singh 2007 (2) JIC 662 : 2007 (2) ACR 2044 (SC) and Krishnagiri Mangalgiri Goswami v. State of Gujarat 2009 (1) JIC 735 (SC).

6. The fact in the case of Bhagwan Das v. Kartar Singh is as follows:

The prosecution case is that on the night intervening 1st and 2nd March, 2000, the deceased (Shobha) had committed suicide at about 2 a.m. by hanging herself from the ceiling of a room in the matrimonial home. It is alleged that she married Mangal Singh (since deceased) on 23.1.1992 and a girl child was born to them in the year 1999. Soon thereafter, in an accident, the said Mangal Singh became paralysed. It appears that the deceased (Shobha) did not leave any suicide note. It is the case of the prosecution that after marriage, Shobha was being taunted for bringing less dowry and was being harassed on account therefore. A sum of Rs. 50,000 is alleged to have been given by her father a few days after her marriage to Mangal Singh for his business as he was allegedly unemployed. It is further the case of the prosecution that Mangal Singh squandered the said sum of Rs. 50,000 in gambling and drinking and thereafter he raised a further demand of Rs. 2 lakhs which could not be fulfilled. The prosecution also alleges that Shobha was ill-treated and harassed by the present Petitioners as she was not able to give birth to a child and this harassment continued till 1999 when she gave birth to a girl child as mentioned above. Till 1999, Shobha was being subjected to mental cruelty by being told that her husband would be married elsewhere. It is further alleged by the prosecution that since Mangal Singh, shortly after the birth of the girl child, was paralysed on account of an accident, the deceased (Shobha) was being taunted that she gave birth to a girl which brought bad luck to the Petitioners. It is these circumstances which according to the prosecution drove the said Shobha to commit suicide. On the basis of the these allegations, the learned Additional Sessions Judge came to the following conclusion ; I am of the prima facie opinion that cumulative effect of prolonged ill treatment and harassment of Shobha compelled her to commit suicide.

7. In the present case, there was allegation against the wife that she has relation

with her bahnoi (brother-in-law). However, the compromise shows that the applicant has relation with his bhabhi. In the aforesaid case of Bhagwan Das it was held by the Hon''ble Supreme Court:

In our opinion the view taken by the High Court is correct. It often happens that there are disputes and discords in the matrimonial home and a wife is often harassed by the husband or her in-laws. This, however, in our opinion, would not by itself and without something more attract Section 306, I.P.C. read with Section 107, I.P.C.

However, in our opinion mere harassment of wife by husband due to differences per se does not attract Section 306 read with Section 107, I.P.C. If the wife commits suicide. Hence, we agree with the view taken by the High Court. We however, make it clear that if the suicide was due to demand of dowry soon before her death then Section 304B, I.P.C. may be attracted, whether it is a case of homicide or suicide. Vide *Kans Raj v. State of Punjab and Anr.*, Smt. Shanti and Anr. v. State of Haryana AIR 1991 SC 1261 : 1991 ACR 285 (SC).

8. In the case of *Krishnagiri Mangalgiri Goswami v. State of Gujarat* (supra), in view of the fact it was held by Hon''ble Supreme Court that the mere fact that the husband treated the deceased wife with cruelty was not enough to show the abetment of suicide but, in the present case as per allegation there was cruelty when demand of dowry could not be fulfilled. Apart from that allegation was against deceased of having relation with brother-in-law and she was not allowed even to go to her parental house. In that case Hon''ble Supreme Court held that mere fact that husband treated with cruelty is not enough. There must be proof of direct or indirect acts of incitement to the commission of suicide. In view of the fact the aforesaid judgments are not applicable in the present case.

9. In view of the present case prima facie offence is disclosed. However, the defence and prosecution case has to be examined minutely after evidence produced during trial. While considering discharge application or framing of the charges the material placed with case diary has not to be considered like trial. This is not a stage to consider the material minutely even like mini trial. Hence, in view of the fact of the present case I am not inclined to interfere in the trial and to quash the impugned order or proceeding of the aforesaid S.T. No. 462/08 arising out of the Case Crime No. 348/08 P.S. Lanka, district Varanasi.

10. Accordingly, the present application is hereby rejected.