
(2011) 05 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 7748/09

Atul Shrivastava

APPELLANT

Vs

Smt. Aparna Shrivastava and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 391, 482, 91
Penal Code, 1860 (IPC) — Section 498A, 506B

Citation : (2011) 3 MPHT 362

Hon'ble Judges : Giriraj Das Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.D. Saxena, J.—This petition u/s 482 of the Code of Criminal Procedure 1973 is directed against an order dated 25th September, 09, passed in Criminal Revision No. 277/09 by the Fourth Additional Sessions Judge, Gwalior setting aside thereby the order dated 06th August 09, passed in Criminal Case No. 2480/08 by the Judicial Magistrate First Class, Gwalior, permitting the revisionist to file the documents alongwith the application u/s 91 of Code of Criminal Procedure ., dated 25th November 2008 filed in the trial at the stage of defence evidence. Hence, it is prayed that the impugned order passed by the revisional court be set aside restoring the order passed by the trial Magistrate.

2. The facts, in short, just for the decision of this petition are that on a private criminal complaint filed by the Respondent No. 1 stating that the accused for want of illegal demand of dowry, caused mental and physical harassment to the complainant, the Magistrate issued the directions for registration of the FIR for commission of offence under Sections 498-A and 506 -B of I.P.C. against accused-Petitioner, i. e. husband and his father-in law, sister-in-law, uncle-in-law, aunt-in-law. After completion of usual investigation, the charge-sheet was filed and trial is at the defence stage.

3. The prosecution filed the application u/s 311 of Code of Criminal Procedure

read with Section 91, dated 08th September, 08 and further application on 25th November 08. The trial Magistrate by the order dated 06th August, 09 disallowed the application u/s 91 of Cr.P. C. and did not take the documents on record. Being aggrieved by aforesaid the order, the Respondent No. 1 preferred the revision u/s 391 of Code of Criminal Procedure ., which was allowed by the impugned order and the order of the trial Magistrate was set aside.

4. The contention of the learned Counsel for Petitioner is that the revisional court by allowing the revision petition, directed the trial Magistrate to take the documents filed with the application u/s 91 of Code of Criminal Procedure at the stage of defence which amount to abuse of the process of law and is affecting the valuable rights of the accused for speedy trial. The revisional court did not consider the provisions of Section 91 of the Code in proper way. It is contended that the alleged documents were in possession of the complainant, but no cogent reasons were shown for not production of the documents at appropriate stage, i.e., prosecution evidence stage. It is contended that the application u/s 91 of Code of Criminal Procedure was filed by the complainant with an ulterior motive to damage the interests of the accused. Therefore, it is prayed that the order of the revisional court to direct the trial Magistrate to take the alleged photographs on record be set aside.

5. The learned Counsel appearing on behalf of Respondent No. 1. and learned Public Prosecutor appearing on behalf of the Respondent No. 2/State opposed the contention of the Petitioner and supported the impugned order of the learned revisional court. They contended that the alleged documents are the photographs of the marriage of the complainant and accused-Petitioner, which clearly show the exchange of gifts by the bridesmaid to the bridegroom. These photographs were made available to the Investigating Officer but he was declined to incorporate the documents with charge-sheet filed before the trial Magistrate. It is submitted that the defence has a full opportunity to rebut the evidence. This evidence is to be valued with other evidence at the time of judgment. Therefore, it was requested to maintain the order of the revisional court and dismiss the petition.

6. Heard the learned Counsel for the parties and perused the order of the revisional court and of trial Magistrate vis-a-vis the documents filed by the Petitioner along with petition.

7. In the case of Om Parkash Sharma Vs. Central Bureau of Investigation, Delhi, the Hon. Apex Court held:

While considering the application for summoning and production of documents, the question at the present stage of the proceedings before the Trial Court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in

injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. The Court concerned must be allowed a large latitude in the matter of exercise of discretion.

8. Further in the case of *Sethuraman v. Rajamanickam* AIR 2009 SCW 2066 Hon. the Apex court held that:

After all, if the documents in possession of the Appellant/complainant, which were his personal documents, sought for by the accused and the production of which was rejected by the Trial Court, and which were ordered to be produced by the High Court, at least a hearing should have been given to the Appellant/complainant. He could have shown, firstly, that no such documents existed or that there was no basis for the production of those documents, particularly, in view of the fact that he was not even crossexamined in respect of those documents. On this ground, the order of the High Court would have to be set aside.

9. At this juncture, it would be useful to reproduce Section 91 Code of Criminal Procedure , which reads as is under:

91. Summons to produce document or other thing-(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this code by or before such Court or such officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

10. If Section 91 Code of Criminal Procedure is to be attracted, the Court has to be satisfied that the document is necessary or desirable for the purpose of investigation, inquiry, trial or any other thing and secondly it is also required under the above section that the document must be in possession of the other party. Any document or other thing as indicated in the aforesaid section can be directed to be produced on finding that the said document is necessary or desirable for the purpose of the case. The discretion conferred on the court is an absolute discretion, the only condition for the exercise of the discretion being that in the opinion of the court the production of the document should be necessary or desirable for the purposes of the enquiry, trial or other proceeding before the court. In determining that question, he has to exercise his discretion judicially, in the sense that he must satisfy himself that the document has bearing upon and is relevant to the case. In the case before this Court, though it has been alleged in the said application by the revisionist that the document in

question is necessary or desirable for the purpose of trial, the learned trial Magistrate at the time of examination of the said application, did not find sufficient materials on which an order u/s 91 could be made. On revision, the learned revisional court has set aside the order passed by the trial Judge ignoring the relevant provisions of law. The learned revisional court has further lost sight off the fact the application has been moved after long span of four years, which has been mentioned in para 13 of the impugned order and that too at the stage of defence evidence. If order passed by the learned revisional court is allowed to stand, it would cause great prejudice to the accused-Petitioner. Therefore, the impugned order being not sustainable in law, is hereby dismissed restoring the order passed by the trial Magistrate.

11. In the result, the petition stands allowed.