

(2013) 02 JH CK 0083
In the Jharkhand High Court
Case No : Cr. Revision No. 776 of 2012

Awdhesh Kumar and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Citation : (2013) 2 AJR 21 : (2013) 1 JLJR 496

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Both these applications arise out of the same case and as such, they have been heard together and disposed of by this common order. Heard the learned counsel for the petitioners and learned counsel for the State, as also learned counsel for the complainant opposite party No. 2.

2. The petitioners in Cr. Revision No. 776 of 2012 are the accused persons in Complaint Case No. 451 of 2008 and they are aggrieved by the order dated 18.8.2012 passed by Sri Y.C. Verma, learned Judicial Magistrate, 1st class, Bermo at Tenughat, whereby, the application filed by the petitioners u/s 245 of the Cr.P.C. for discharge, has been rejected by the Court below, whereas, Cr.M.P. No. 500 of 2009 has been filed by the petitioners challenging the order dated 22.1.2009 passed by Sri D.K. Mishra, learned Judicial Magistrate, 1st class, Bermo at Tenughat, whereby upon enquiry, finding the prima facie offence u/s 498-A of the I.P.C., the process was directed to be issued against the petitioners.

3. The complainant-opposite party No. 2 filed the complaint case in the Court of the learned Additional Chief Judicial Magistrate, Bermo at Tenughat, stating that she was married to the petitioner Awdhesh Kumar on 27th June 2004 according to the Hindu rites, wherein, the cash and other articles were given to the in-laws. It is alleged that in the very first night, the husband started subjecting the complainant to cruelty and torture, alleging her to be ugly and it is also alleged

that the other petitioners, who are the own brothers-in-law and sister-in-law (Gotni) of the complainant, also started subjecting her to cruelty and torture for the demand of dowry. Even after the birth of a child, the accused persons continued to subject the complainant to cruelty and torture for the demand of rupees ten lakhs in dowry and ultimately, it is alleged that on 19.11.2007, all the accused persons assaulted the complainant and thereafter, they forcibly brought the complainant on a vehicle to her parents' place and pushed her out of the vehicle and they went away. The complainant was badly injured in the occurrence. It is also alleged that the accused persons kept the ornaments of the complainant and they did not return the same. With, these allegations, the complaint petition was filed against the accused persons. It may be stated that in the complaint petition, the place of occurrence has been described as the in-laws' place of the complainant in the district of Dhanbad, as also the parents' place of the complainant in the district of Bokaro, and accordingly, the complaint petition was filed in the Court of the ACJM, Bermo at Tenughat, within the district of Bokaro.

4. The statement of the complainant was recorded on solemn affirmation, in which, the complainant supported her case and four witnesses were examined by the complainant in the enquiry stage, on the basis of which, the Court below by order dated 22.1.2009 found the prima facie offence u/s 498A of the IPC against all the accused persons and process was ordered to be issued. The said order was challenged by the accused persons, except the husband of the complainant, in Cr.M.P. No. 500 of 2009. However, it appears that the proceeding in the Court below was continued and again, six witnesses were examined before charge, including the complainant, who supported the case. The petitioners, who are the husband, brothers-in-law and sister-in-law of the complainant, filed the application for discharge, which was rejected by the Court below by order dated 18.8.2012 and the same has been challenged by all the accused persons in Cr. Revision No. 776 of 2012.

5. Learned counsel for the petitioners has submitted that the impugned orders passed by the Court below are absolutely illegal, inasmuch as, even according to the complaint petition, all the alleged cruelty or torture had taken place within the district of Dhanbad and accordingly, the Court of Bermo at Tenughat within the district of Bokaro had no jurisdiction to proceed with the case. It has also been submitted that the dispute is between the husband and the wife, and the other petitioners who are the brothers-in-law and sister-in-law, have been falsely implicated in this case only in order to harass them being the relative of the husband and actually, the only omnibus allegation has been made against these petitioners.

6. Learned counsel has placed reliance upon the decision of the Supreme Court of India in Geeta Mehrotra and Another Vs. State of U.P. and Another, wherein, the brother-in-law and sister in law of the complainant were also made accused apart from the husband, father in law and mother in law, and the complainant

had already obtained an ex-parte decree of divorce, in the facts of that case it was found that they were unnecessarily made accused in order to harass them merely by making general allegations against them without mentioning even the single incident and accordingly, the Supreme Court quashed and set aside the criminal proceeding against the brother-in-law and sister-in-law. Similar view was taken by the Supreme Court in Preeti Gupta and Another Vs. State of Jharkhand and Another, . Placing reliance on these decisions, learned counsel submitted that in the present case also, the brothers-in-law and sister-in-law of the complainant have been unnecessarily made accused only on the basis of the general allegations against them and accordingly, the impugned order dated 22.1.2009 finding the prima facie offence against them, is absolutely illegal and it is a fit case, in which, the criminal proceeding against them should be quashed.

7. Learned counsel has also placed reliance upon the decisions of the Supreme Court of India in Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another, , as also in Bhura Ram and Others Vs. State of Rajasthan and Another, , in support of his contention that the Court of Bermo at Tenughat had no jurisdiction to try the case, in view of the fact that the allegations of cruelty and torture, if any, are alleged to have taken place within the district of Dhanbad and as such, the criminal proceeding against the petitioners in the district of Bokaro are fit to be quashed. It is also pointed out by the learned counsel for the petitioners that the complaint petition was filed by the complainant after the petitioner Awdhesh Kumar filed the suit for divorce against the complainant in the Family Court of Dhanbad.

8. Learned counsel for the State as also learned counsel for the complainant, on the other hand, have pointed out that in the present case, the father-in-law and mother-in-law are not the accused. Only the husband, his three brothers and one sister in law (Gotni) have been made accused, who are living together and there is specific allegation against all these accused persons in complaint petition that they subjected the complainant to cruelty and torture for the demand of rupees ten lakhs in dowry. It is also the case of the complainant that subsequently; the husband of the complainant has married to another lady, as would be apparent from the deposition of the complainant in her evidence before the charge. It is further pointed out from the complaint petition that there is specific allegation against all the accused persons to have assaulted the complainant and to have forcibly taken her on a vehicle to her parents' place and pushed her out of the vehicle, due to which, she sustained injuries and the accused persons kept the ornaments of the complainant with them. Learned counsel accordingly, submitted that the offence was committed by the accused persons even within the jurisdiction of the Court below and accordingly, it cannot be said that the court below had no jurisdiction to try the case. It has also been submitted that even otherwise, the offence u/s 498A of the I.P.C., is a continuing offence and even if the complainant is staying at her in-laws place, she is being continuously subjected to mental cruelty and torture by the accused persons. In support of his contention, learned counsel has placed reliance upon the decision of the

Supreme Court of India in *Sunita Kumari Kashyap Vs. State of Bihar and Another*, wherein, it has been held that the offence u/s 498A of the IPC is a continuing offence and the Court at wife's parents' place also has the jurisdiction to entertain the complaint case. Placing reliance on this decision, learned counsel for the complainant submitted that there is no illegality in the impugned orders passed by the Court below.

9. After having heard the learned counsels for both sides and upon going through the record, I find that there is allegation against all the petitioners of subjecting the complainant to cruelty and torture for the demand of dowry. It is not the case, in which, there is main allegation against the husband only and only general allegations have been made against the other accused persons. Even in the evidence adduced by the complainant before charge, it has been specifically stated by the complainant that she was assaulted by all the accused persons. She has also stated that she was brought to her parents' place by all the accused persons and she was pushed out of the vehicle.

10. In *Geeta Mehrotra's case (supra)*, relied upon by the learned counsel for the petitioners, the Supreme Court of India has held as follows:-

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused mare so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the Courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over implication by involving the entire family of the accused at the instance of the complainant who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering, while settling down in her new matrimonial surrounding.

(Emphasis supplied).

11. Thus, from the plain reading of this paragraph, it is apparent that the Supreme Court has not laid down the law that it would be clear abuse of the

judicial process in proceeding against the brother-in-laws and sister in law of the complainant in all cases. It is apparent from the plain reading of the law laid down by the Supreme Court that if there are prima facie reliable allegations against them and the FIR discloses the allegations which would persuade the Court to take cognizance of the offence, there can be no case for quashing the criminal proceeding and all that is required is that the Court is expected to adopt the cautious approach in such matters especially in the case of matrimonial disputes.

12. However, in the present case, I find that there is allegation against only six persons who are closely related with the complainant, and living in the same house to have subjected the complainant to cruelty and torture for the demand of dowry. It is specific case of the complainant that she was assaulted by all the accused persons and brought by all the accused persons to her parents' place and pushed out of the vehicle.

13. In view of the aforementioned facts, I am of the considered view that the present case is not the case, in which, it can be said at this stage that the petitioners who are the husband, brothers-in-law and sister in law of the complainant, have been falsely implicated in this case only on the basis of the general allegations against them. Similarly, I find that the part of the offence had also taken place within the district of Bokaro and the offence alleged against the petitioners is a continuing offence. Thus, Court of Bermo at Tenughat has the jurisdiction to try the case. I also find that the facts of this case are fully covered by the decision of the Apex Court in Sunita Kumari Kashyap's case (supra), relied upon by the learned counsel for the complainant. Accordingly, I do not find any illegality and/or irregularity either in the impugned order dated 22.1.2009 challenged in Cr.M.P. No. 500 of 2009, or in the impugned order dated 18.8.2012 challenged in Cr. Revision No. 776 of 2012. I do not find any merit in both these applications and both these applications are, accordingly, dismissed.