
(2011) 03 JH CK 0196

In the Jharkhand High Court

Case No : Criminal M.P. No. 1577 of 2010

Ayushman Pandey

APPELLANT

Vs

The State of Jharkhand and Shaista Huma

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 2, 20
Special Marriage Act, 1954 — Section 25

Citation : (2011) 03 JH CK 0196

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The Petitioner has invoked the inherent jurisdiction of this Court u/s 482 Code of Criminal Procedure for quashment of the order dated 6.10.2010 passed by the SDJM Ranchi in Complaint Case No. 772 of 2010 by which preliminary objection raised on the point of maintainability by the Petitioner accused.

2. The prosecution story in short as per the complaint petition filed by the complainant-opposite party No. 2 on 6.5.2010 in the court of CJM Ranchi u/s 12 of the Protection of Women from Domestic Violence Act, 2005 was that she was a Muslim woman by faith whereas the Petitioner Ayushman Pandey was a Brahmin(Hindu) and both solemnized love marriage on 8.12.2008 itself before the Marriage Officer under the Act XLIII of 1954 at Neturis Block, Purulia (West Bengal), to which a certificate of marriage was granted to both spouse It was alleged that the husband-Petitioner started torturing since the very day of marriage over telephone and in person in connivance with his relatives and coerced her as well as her father to deliver Rs. Twenty lakhs to enable him to set up his own consultancy service. The father of the complainant was holding a senior managerial post in the State Bank of India. She alleged that her father

was picked up from the bank in which he was working at Ramgarh and was put under confinement illegally at Jamshedpur by putting pressure to impress upon the complainant to agree for annulment of marriage for the reasons that the parents of Ayushman Pandey had selected another girl of their own caste which could fetch a sum of Rs. One crore as dowry. The Petitioner was compelled to leave Jamshedpur where she was undergoing intership at the Mahatma Gandhi Memorial Medical College, and was keen to get employment in the said hospital as a House Surgeon. Humiliation, insults and threats to cause hurt continued to the complainant by the accused Petitioner. It was further stated that such threats were made every day in person or telephone till 31st March, 2009 when he left for Singapore to work and to pursue higher studies at S.P. Jain Centre for management. The Petitioner failed to take care of the complainant, misutilized his position and had been constantly inflicting mental and physical abuses on the complainant and thereby he committed an offence as described u/s 3 of the Act, as such liable for punishment. She claimed relief under Sections 18 to 22 of the Act, particularly for monetary relief, residence and protection as also compensation. She further requested that interim ex-parte relief may be granted to her under the provision of Section 23 of the Act.

3. The complainant sought for her residence of at least two bedrooms flat near her parental house at P.P Compound with security guard for her protection and also sought for Rs. 23,000/- to meet out personal expenses with one time compensation to the extent of Rs. 8,60,000/- under the provision of Section 19 of the said Act She further demanded Rs. 50 lakhs as compensation u/s 22 of the said Act and additional payment of Rs. 82,000/- by the Respondent as monitory relief u/s 20 of the Act. Enquiry was initiated on the complaint of the complainant by the Protection Officer.

4. The learned Counsel appearing for the Petitioner submitted that the acknowledgement of filing of Title suit No. 35 of 2009 by the husband-Petitioner would clearly indicate that complaint filed by the complainant was a counter blast to the suit which was filed on 30.3. 2009 before the Civil Judge (Junior Division) Raghunathpur, Distt. Purulia (W.B) by which the validity of so-called marriage was challenged as she had fraudulently procured marriage certificate. The husband-Petitioner had prayed in the suit for annulment of the so-called marriage by passing a decree of nullity. As a matter of fact, signature of the Respondent-Petitioner was obtained by putting him under intoxication by mixing intoxicant in the cold drink and subsequently the Petitioner discovered that his signature was used by the complainant and her friends in procuring marriage certificate illegally from the marriage officer of the Purulia district and for that suit was filed u/s 25 of the Special Marriage Act 1954. However, the said suit was transferred to the court of Principal Judge Family Court Ranchi where it was renumbered as M.T.S. No. 156 of 2010. The Petitioner appeared in the complaint filed under Protection of Women from Domestic Violence Act, 2005 before the SDJM Ranchi as Respondent on 13.9.2010 and filed his preliminary objection on the point of maintainability of the complaint case on the ground that the

complaint, which was filed, did not project a prima facie case that she was an aggrieved person as defined in Section 2(a) of the said Act. A rejoinder to the preliminary objection was filed on behalf of the complainant. The learned SDJM rejected the preliminary objection of the Petitioner by observing that complaint of the complainant was maintainable.

5. Raising the point of law Mr. Anil Kumar, the learned Counsel submitted that the learned SDJM failed to appreciate that the complaint case would be maintainable only if it could reflect a prima facie case in favour of the complainant that she was an aggrieved person in domestic relationship between the complainant and the Respondent and fulfilled the requirement of 'shared household'. The petition was rejected merely on the ground of pendency of matrimonial title suit and existence of the marriage certificate which did not draw inference to presume that in the given allegation, an offence could be made out under the Protection of Women from Domestic Violence Act, 2005. As a matter of fact, the complainant could not be stated to be an aggrieved person as defined u/s 2(a) of the d Act as she never lived with the Petitioner-husband in domestic relationship as defined in Section 2(f) or in a shared household as defined in Section 2(s) of the Act, as such, complaint of the complainant was liable to be rejected on the point of maintainability. Mr. Anil Kumar further asserted that it would be evident from perusal of the complaint petition and domestic incident report that neither the marriage of the complainant with the Respondent was solemnized according to the customary rites nor the same was consummated at any point of time as the Respondent-husband had deserted the complainant soon after registration of the marriage on 8.12.2008 which was registered by playing fraud The certificate of the marriage was obtained from Purulia district where none of the parties ordinarily resided, an essential ingredient under the provision of Section 25 of the Special Marriage Act.

6. Mr. Delip Zerath, the learned Counsel appearing for the O.P. No. 2 strongly controverted that marriage between parties cannot be denied which finds support from the admission of the husband - Petitioner that he filed petition u/s 25 of the Special Marriage Act for annulment of the marriage but no judgment has been passed and that the matter is still subjudice. Mr. Zerath asserted that unless marriage between the parties is declared nullity it would be presumed that there was a valid marriage under the Special Marriage Act. The report of Protection Officer dated 28.5.2010 would indicate that there was love marriage between the parties and that no money was provided for her maintenance and that she was driven out from her matrimonial home as per column 15 and 17 of the report.

7. Having regard to the facts and circumstances of the case and arguments advanced on behalf of the parties I find that preliminary objection which was raised on behalf of the Petitioner-husband on the point of maintainability of the complaint petition filed by the complainant-opposite party No. 2 u/s 12 of the Protection of Women From Domestic Violence Act, 2005 was turned down by the SDJM Ranchi on the ground that the marriage between the parties was not

disputed though same has been challenged u/s 25 of the Special Marriage Act and that she was driven out from her matrimonial home and therefore, he found that complaint as brought about by the complainant u/s 12 of the said Act was maintainable and the learned Counsel appearing for the Petitioner failed to satisfy this Court so as to call for interference in the order impugned recorded by the SDJM on 6.10.2010 in Complaint Case No. 772 of 2010. There being no merit, this petition is dismissed.