

(2003) 10 AHC CK 0036
In the Allahabad High Court
Case No : Civil Revision No. 1335 of 2000

Baldeo Lal Gambhir and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 240
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 147, 149, 323, 498A

Citation : (2004) 1 DMC 380

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : K.K. Dwivedi and R.P. Dwivedi and Shivaji Misra, A.G.A, for the Appellant; A.K. Pandey and Amar Saran, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Instant revision has been preferred against order dated 22.4.2000 passed in Criminal Case No. 5554 of 1999 by which charges u/s 3/4, Dowry Prohibition Act, and Sections 147: 323/149 and 498A, I.P.C. were framed against Dheeraj, Baldev Lal, Smt. Raj Kumari, Neeraj and Naveen Kumar.

2. Heard learned Counsel for the revisionists Mr. K.K. Dwivedi, learned AGA and Sri Arvind Kumar Pandey, learned Counsel for the O.P. No. 2 and have gone through the record.

3. The fact of the case is that Sanjay Narang, son of Om Prakash Narang, resident of 35-A, Shakti Nagar, Linepar Chiriya Tola, police station Majhola, district Moradabad, lodged FIR against Dheeraj, Baldev Lal Gambhir, Smt. Raj Kumari, Neeraj, Naveen Kumar, and Smt. Rashmi on 15.8.1998 at 14.15 hours under Sections 498A: 506: 323, I.P.C. and Sections 3/4, Dowry Prohibition Act at police station Mahila Thana, district Moradabad, containing the fact the he married his sister Smt. Rekha Gambhir with Dheeraj on 30.5.1996, since then she started to live with Dheeraj, his father, mother, brother and sister. On

25.2.1998 these persons expelled her out by beating her because the demand for Rs. one lac and car was not satisfied. Since then she along with her minor daughter is living at the residence of the complainant. On 15.8.1998 at about 2.15 p.m. when only his sister was at the residence and other persons were out, the revisionists went there and caused injuries to her.

4. On the FIR, investigation was made. The Investigating Officer reported that if so many persons would come from such far away place of Haldwani to Moradabad, they would have caused some serious injuries rather than simple injuries. Besides it, this was not the proper time and place where injury was said to have been caused. However, the charge-sheet was submitted by the Investigating Officer. The case proceeded and charges were framed and aggrieved therefrom instant revision has been filed.

5. While framing charges it is prima facie case and probable evidence, which is considered on the basis of which charges are framed. Smt. Rekha Gambhir is living at her father's residence and it is her allegation that she was abused, insulted and neglected, which compelled her to live at her father's residence, besides it she was thrown out of her house by her husband and his family members.

6. At the stage of framing of charges statement cannot be disbelieved without making proper scrutiny of the evidence because even though there may be sole testimony of the victim Smt. Rekha Gambhir, but at the same time it may be considered that no married girl would prefer to live at her father's residence. Contentions of either side may be appreciated properly when evidence is adduced by both the parties. So far the occurrence of revisionists having gone from Haldwani to Moradabad and causing injuries to Smt. Rekha Gambhir, it is one of the facts, which is subject-matter of consideration as to whether it is natural that so many persons would have gone to cause injuries but caused only simple injury but at the same time the fact cannot be ignored that when the charge-sheet was submitted, Criminal Misc. Application No. 1987 of 1999, Baldeo Lal and Ors. v. State of U.P. and Anr., u/s 482, Cr.P.C. was filed before this Court and the case was decided by this Court on 21.9.1999 making observation that a large number of injuries were caused to Smt. Rekha Gambhir, who was medically examined on 15.8.1998 at 3.25 p.m. and according to injury report nine injuries were caused to Smt. Rekha, though these were simple in nature. On this ground and considering other circumstances the petition u/s 482, Cr.P.C. for quashing the FIR was dismissed by this Court. It would not be a proper stage to hold that those nine injuries have been forged or those injuries had not been caused by the revisionists. The real appreciation can be made when parties appear before the Court, they lead their evidence and their arguments are heard. In such circumstances if the charges have been framed by the learned Chief Judicial Magistrate, under Sections 3/4 of Prohibition of Dowry Act, and Sections 147: 323/149: 498A, I.P.C. it cannot be said to be illegal or to have been passed against the provisions of law. Section 240 of Cr.P.C. contemplates that:

"If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused had committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused."

7. Thus u/s 240, Cr.P.C. if there is a ground for presuming that the accused has committed offence, it will be sufficient for framing charges, but proof of such offences at the stage of framing of the charge is not necessary.

8. Considering the fact that Smt. Rekha Gambhir is residing along with her minor daughter at her father's residence, nine injuries are said to have been caused to her, FIR was lodged in the case and other circumstances, if the learned Magistrate found that there is sufficient material to presume that the accused would have committed the offence and on this basis charges have been framed, it is not in violation of Section 240 of Cr.P.C.

9. It would be significant to mention that while framing charges specific mention of the village, Mohalla, town, police station and district has not been made in the charges. It would be proper if the Chief Judicial Magistrate considers this point and amends the charges specifically mentioning the details of the place where the offences were committed.

10. With this observation it is found that no jurisdictional error, illegality or material irregularity has been committed by the Chief Judicial Magistrate, while framing charges against the revisionists on 22.4.2000.

11. Therefore, instant revision fails.

12. The revision is dismissed. The stay order stands vacated. Parties are directed to appear before the learned Chief Judicial Magistrate, Moradabad, on 18.11.2003 for further proceeding in the case.