
(2014) 08 UK CK 0007

In the Uttarakhand High Court

Case No : Criminal Misc. Application Nos. 740 and 741 of 2014

Balesh Jain and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3 4
Penal Code, 1860 (IPC) — Section 304B 306 323 498A 504

Citation : (2015) 2 DMC 872

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Dharmendra Barthwal and Rahul Tyagi, Advocate for the Appellant;
Vinod Kumar Jemini, Deputy Advocate General assisted by Kuldeep S. Rawal,
Brief Holder, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Umesh Chandra Dhyani, J.

1. Since the above mentioned applications under Section 482, Cr.P.C. arise out of the same first information report, therefore, they are being decided by this common judgment and order for the sake of brevity and convenience. A first information report was lodged by respondent No. 2 against Ekansh Jain and Balesh Jain (present applicants) on 3.9.2013, at PS Kotwali Sadar, Dehradun for the offences punishable under Sections 498A, 323, 504, IPC and Sections 3, 4 of the Dowry Prohibition Act. After the investigation, a charge-sheet was submitted against the applicants for the self-same offences. Cognizance was taken on the same and the applicants were summoned to face the trial for the offences under Sections 498A, 323, 504, IPC and Sections 3/4 of the Dowry Prohibition Act. Aggrieved against the same, two separate Applications under Sections 482, Cr.P.C. were filed by them.

2. According to the first information report, respondent No. 2 was married to

applicant Ekansh Jain on 21.1.2005 at Dehradun according to Hindu rites and rituals. Her father spent lot of money in her marriage. Valuable articles were given in the marriage. Applicant Ekansh Jain is under the influence of his mausa (uncle) Balesh Jain. Balesh Jain started harassing respondent No. 2 for not bringing sufficient dowry. Ekansh Jain behaved with respondent No. 2 normally till such time Balesh Jain made a telephone call to him. Ekansh Jain assaulted respondent No. 2 at the behest of Balesh Jain, who used to instigate Ekansh Jain for dowry. A daughter was begotten by respondent No. 2 on 12.1.2009 out of such wedlock. Both the applicants started making a demand for Rs. 50 lacs and also ridiculed respondent No. 2 for giving birth to a girl child. On 28.8.2012 also, Ekansh Jain misbehaved with her. She was assaulted on that day also, as a consequence thereof, she sustained grievous injuries. She sustained injuries in her ear. She was medically examined at Gurgaon on 1.9.2012. Respondent No. 2 called her parents, who took her along with her minor daughter to Dehradun, where she is under treatment.

3. On 7.9.2012, at 10.00 p.m., the applicants along with other two unidentified persons came to the parental home of respondent No. 2. They were looked after well. Balesh Jain demanded Rs. 50 lacs from the parents of respondent No. 2. Her parents tried to pacify them and stated that it was not possible for them to meet such huge demand of dowry. Balesh Jain misbehaved with the parents of respondent No. 2. Earlier, she was ousted from her matrimonial home by her husband on 11.4.2010. The matter was pacified. Ekansh Jain promised not to repeat such incident in future. She again joined her matrimonial home on 12.4.2010, but the behavior of her husband remained unchanged. She took shelter in a social organization, named "SAMADHAN" on 3.10.2010. She tried to contact her husband, but could not succeed. Again she joined her matrimonial home on 25.12.2010 with the intervention of their common relatives. Respondent No. 2 alleged that she was frightened and was compelled to live along with her minor daughter at Dehradun, and hence prayed, through the first information report, that appropriate legal action may be initiated against applicants.

4. Hon"ble Supreme Court in Amit Kapoor v. Ramesh Chander and Another, Amit Kapoor Vs. Ramesh Chander and Another, :: VII (2012) SLT 154: Amit Kapoor Vs. Ramesh Chander and Another, : Amit Kapoor Vs. Ramesh Chander and Another, , has laid down some important principles in respect of exercise of jurisdiction under Section 482, Cr.P.C. Some of those principles which have bearing on the merits of this case, are as follows:

(i) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

(ii) Where the factual foundation for an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

(iii) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

(iv) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate Courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

(v) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

(vi) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

(vii) If the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its original jurisdiction.

(viii) Another very significant caution that the Courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of Court leading to injustice.

(ix) It is neither necessary nor is the Court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

(x) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the Courts exist.

(xi) These are the principles which individually and preferably cumulatively (one or more) be taken into consideration.

5. Where the factual foundation for an offence has been laid, the Courts should be reluctant and should not hasten to quash the proceedings even on the

premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not, but if the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of an offence are not satisfied, then the Court may interfere.

6. Hon"ble Apex Court has also provided note of caution to High Courts in *Preeti Gupta and Another Vs. State of Jharkhand and Another*, , in the following words:

"To find out the truth is a Herculean task in a majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. Hon"ble Apex Court cautioned that the allegations of such complaints are required to be scrutinized with great care and circumspection."

7. There are specific allegations against the above noted applicants in the complaint. One of the applicants (Ekansh Jain) is husband and the another Balesh Jain is mausa (uncle) of the victim (respondent No. 2 herein). There are specific allegations of assault against her husband. There are also specific allegations of harassment on account of not bringing sufficient dowry against both. It is mentioned in the first information report that on 7.9.2012, they, along with others, came to the parental home of the victim, where the applicant Balesh Jain demanded Rs. 50 lacs from the parents of respondent No. 2.

8. It is the contention of learned Counsel for the applicants that the Court at Dehradun has no territorial jurisdiction to try the criminal case. According to him, the whole incident took place in Haryana and not in Uttarakhand. The said argument of learned Counsel for the applicants is misconceived, in as much as, it is specifically mentioned in the first information report that in the night of 7.9.2012, the applicants came to the parental home of respondent No. 2, threatened her parents and demanded dowry. When the victim was ousted from her matrimonial home, she had no option, but to take shelter at her parental house at Dehradun, which Court has territorial jurisdiction to decide the criminal case in view of the provisions contained in Chapter XIII of the Code of Criminal Procedure, 1973.

9. Learned Counsel for the applicants next contended that the attendance of one of the applicants is marked in Delhi. According to him, one of the applicants (Balesh Jain) was present at Delhi and his biometric thumb impressions were registered at Delhi on the date of alleged incident. It is settled Law that the factual controversy need not be gone into by the Court while exercising jurisdiction under Section 482, Cr.P.C. and hence this Court need not deal with

this aspect of the case.

10. It is also the submission of learned Counsel for the applicants that the cognizance order shows that there was total non-application of mind by learned Magistrate while passing the impugned order. A perusal of Annexure-14 (summoning order) will reveal that the accused persons were summoned to face the trial for the offences punishable under Sections 498A, 323, 504, IPC only. It is true that the applicants have not been summoned to face the trial for the offence punishable under Sections 3, 4 of the Dowry Prohibition Act, which Section is although mentioned at the top of the Order on the right hand side, but is not mentioned in the main body of the impugned order. This Court agrees that the order impugned is not happily worded, but that itself does not mean that the very essence of the cognizance/summoning order has evaporated. It may be noted here that the cognizance was taken under Section 3/4 of the Dowry Prohibition Act also by learned Magistrate on the charge-sheet itself, which order was later on reproduced on separate order-sheet also, in which Sections 3, 4 Dowry Prohibition Act was missing in the body of order and in this way, the contention of learned Counsel for the applicants that no cognizance under Sections 3, 4 of the Dowry Prohibition Act was taken by the Judicial Magistrate at Dehradun, falls to the ground, although it is true that due precaution should have been taken by learned Magistrate while signing the order.

11. It is also the contention of learned Counsel for the applicants that the charge-sheet could not have been sent by the investigating officer of the case. It is the submission of learned Counsel for the applicants that SHO did not do it, and, instead, the Investigating Officer did it. The said contention of learned Counsel for the applicants also falls to the ground in view of the fact that the Investigating Officer himself was the officer-in-charge of the concerned police station on the relevant date.

12. Learned Counsel for the applicants also placed a photo-stat copy of the judgment rendered by Hon"ble Apex Court in Criminal Appeal No. 1278 of 2014, captioned as State of Punjab v. Gurmeet Singh, on 2.7.2014. The relevant paragraphs of the said decision are reproduced herein below for reference:

"7. It is relevant here to state that the expression "relative of the husband" has been used in Section 498A of the I.P.C. While interpreting the said expression, this Court in the case of U. Suvetha Vs. State by Insp. of Police and Another, , held it to mean a person related by blood, marriage or adoption. Relevant portion of the judgment reads as follows--

"10. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption."

8. The expression relative of the husband further came up for consideration in the case of Vijeta Gajra Vs. State of NCT of Delhi, and while approving the decision of this Court in U. Suvetha (supra), it was held that the word relative would be limited only to the blood relations or the relations by marriage. It is appropriate to reproduce the following passage from the said judgment:

"12. Relying on the dictionary meaning of the word "relative" and further relying on Ramanatha Aiyar's Advance Law Lexicon, (Vol. 4, 3rd Edn.), the Court went on to hold that Section 498A, IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in Sri T. Ashok Pai Vs. Commissioner of Income Tax, Bangalore, . A reference was made to the decision in Shivcharan Lal Verma and Another Vs. State of Madhya Pradesh, . After quoting from various decisions of this Court, it was held that reference to the word "relative" in Section 498A, IPC would be limited only to the blood relations or the relations by marriage."

9. It is well known rule of construction that when the Legislature uses same words in different part of the statute, the presumption is that those words have been used in the same sense, unless displaced by the context. We do not find anything in context to deviate from the general rule of interpretation. Hence, we have no manner of doubt that the word "relative of the husband" in Section 304B of the IPC would mean such persons, who are related by blood, marriage or adoption. When we apply this principle the respondent herein is not related to the husband of the deceased either by blood or marriage or adoption. Hence, in our opinion, the High Court did not err in passing the impugned order. We hasten to add that a person, not a relative of the husband, may not be prosecuted for offence under Section 304B, IPC but this does not mean that such a person cannot be prosecuted for any other offence viz. Section 306, IPC, in case the allegations constitute offence other than Section 304B, IPC."

13. It is admitted by the parties that the applicant Balesh Jain performed kanyadan and therefore, his importance in the said marriage cannot be lost sight of. It cannot, therefore, be said, at this stage, that, prima facie, he had no role to play in the alleged crime committed against the respondent No. 2.

14. Since the foundation of criminal case is laid against the applicants, therefore, this Court is unable to allow the application under Section 482, Cr.P.C. This Court has its own limitation in doing the same.

15. Inherent jurisdiction under Section 482 of Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. The applicants, in the instant case, are unable to pass those tests.

16. This Court does not think it proper to direct that the proceedings against the applicants should be quashed. Applications under Section 482, Cr.P.C., therefore, fail and are dismissed.

17. Liberty is, however, granted to the applicants to raise all the factual pleas before the Trial Court, as were raised by them before this Court, to obtain their discharge or acquittal at an appropriate stage. This Court has been informed that the applicant Balesh Jain has already been enlarged on bail. This Court has an occasion to interact with the applicant Ekansh Jain in the open Court. The Court feels that if the bail application of husband Ekansh Jain is directed to be decided on the same day, the same will keep the option of reconciliation between the parties open. It is accordingly, directed, in the peculiar circumstances of this case, that when the applicant Ekansh Jain surrenders before the Trial Court, his bail application shall be decided on the same day.