

(2011) 07 JH CK 0084

In the Jharkhand High Court

Case No : Criminal M.P. No. 560 of 2010

Bijay Anand Gupta, Ananta Devi, Sagar Gupta @ Bullu @
Aditya Gupta and Aakash Deep @ Aakash Gupta

APPELLANT

Vs

The State of Jharkhand and Sangita Devi

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 498A
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2012) 1 DMC 410

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

**Advocate : Purendu Kumar Jha, for the Appellant; P.K. Chaudhary, for the O.P.
No. 2, for the Respondent**

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent power of this Court u/s 482 of the Code of Criminal Procedure for the quashment of the order dated 07.12.2009 passed by the C.J.M., Incharge, Godda in G.R. No. 1002 of 2009 arising out of Godda (Town) P.S. Case No. 295 of 2009 corresponding to T.R. No. 1469 of 2009 by which the cognizance of the offence was taken u/s 498A/34 of the Indian Penal Code as also u/s 3/4 of the Dowry Prohibition Act and also for the quashment of the entire F.I.R.

2. A written report was presented before Godda Police by the complainant-Opposite Party No. 2-Sangita Devi admitting that she had escaped with her paramour Bullu @ Aditya Gupta in the month of October, 2008 and having been aggrieved by that act, her father Nand Kishore Sah had instituted a police case against Bullu @ Aditya Gupta and the members of his family. The informant further admitted that she was earlier married to one Pankaj Mandal at village Sarwa and she was having a daughter from her earlier marriage with Pankaj

Mandal but on account of torture being perpetrated by Pankaj Mandal he had socially severed her relationship with him and began to live with her parents at Lohia Nagar Godda. During her stay in the parental home, it was alleged that the accused Bullu @ Aditya Gupta proposed to marry her on account of love that he developed with her and he further allured that she would be accepted with her daughter to which she had communicated his proposal to her parents indirectly to which they did not express their agreement and finding no way out she escaped with Bullu @ Aditya Gupta and solemnized her marriage in the "Bashukinath" Temple according to Hindu rites and rituals in the presence of the priest and that he accepted her as his married wife. For the last few days, she alleged that Bullu @ Aditya Gupta in league with his parents started demanding Rs. 50,000/- (Fifty thousand) in cash and a motorcycle in kind being the dowry as the marriage was solemnized without dowry and in this connection they started torture in various ways and finally she was driven out by the accused persons on 29.09.2009 with her daughter with the caution that she would not be accepted lest she would bring the dowry in cash and kind.

3. Upon service of notice, the Opposite Party No. 2 put appearance by executing Vakalatnama but no counter-affidavit has been filed.

4. Mr. Purnendu Kumar Jha, Learned Counsel appearing for the Petitioner at the outset submitted that the complainant very fairly admitted that she was earlier married to one Pankaj Mandal at village Sarwa and without obtaining a decree of divorce under the Hindu Marriage Act she escaped with Bullu @ Aditya Gupta and solemnized marriage in the Temple, which cannot be said to be the valid marriage. Second marriage in the life time of the first husband without obtaining a decree of divorce is a void marriage having got no sanction of law, therefore, neither Bullu @ Aditya Gupta would be deemed to be her husband nor his near relatives would be deemed as the in-laws of the complainant and therefore Section 498A I.P.C. is not attracted against these Petitioners, who were none other than near relations of Bullu @ Aditya Gupta.

5. Section 498A Code of Criminal Procedure is specific, which speaks;-

whoever, being the husband or the relative of the husband for a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

6. In the explanation the cruelty has been defined but since the prosecution failed to establish the relationship of husband and wife between the informant and Bullu @ Aditya Gupta. the near relations of Bullu @ Aditya Gupta cannot be held to be the relatives of the husband of the informant and so the entire criminal prosecution of the Petitioners cannot be sustained under law.

7. Learned Counsel appearing on behalf of the informant-Opposite Party No. 2 failed to satisfy this Court that there was valid marriage between the informant and Bullu @ Aditya Gupta and that the alleged marriage between them in a Temple was not a void marriage.

8. In the facts and circumstances, I find substance in the argument of the Counsel appearing for the Petitioners that the informant O.P. No. 2 failed to establish that she was legally wedded wife of Bullu @ Aditya Gupta so as to establish that the Petitioners being near relatives of Bullu @ Aditya Gupta were also liable to be criminally proceeded in the instant case.

9. For the reasons stated above, I find that the criminal proceeding of the Petitioners cannot be sustained under law and hence their entire criminal proceeding in G.R. No. 1002 of 2009, arising out of Godda (Town) P.S. Case No. 295 of 2009 corresponding to T.R. No. 1469 of 2009 including the order dated 09.10.2009 by which cognizance of the offence was taken against them and Ors. are quashed.

10. Accordingly, this petition is allowed.