

(2003) 06 OHC CK 0038

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 4405 of 1998

Chhalla Srinivas

APPELLANT

Vs

Smt. Challa Aruna

RESPONDENT

Date of Decision : 20-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 96 CLT 361 : (2003) 25 OCR 652 : (2003) 2 OLR 295

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D.P. Dhal, D.K. Das and P. Uttarkabat, for the Appellant; N.C. Pati, S. Mohanty, A. Das, A.K. Mohapatra, S. Misra and A.K. Acharya, for the Respondent

Judgement

L. Mohapatra, J.

1.This application u/s 482, Cr.P.C. has been filed for quashing the order of cognizance dated 30th March, 1993 passed by the learned S.D.J.M., Gunupur in I.C.C. No. 14 of 1993.

2. Form the record it appears that the aforesaid complaint case was filed by the opposite party alleging therein that she had married accused No. 1 on 23.10.1988 in accordance with Hindu rites, customs and traditions. Her further allegation is that at the time of marriage, her parents had given gold ornaments and other articles as described in the complaint. One and half years after the marriage it is alleged that the husband-accused No. 1 demanded dowry in terms of cash and gold and due to non-fulfilment of said dowry demand the complainant-opposite party No. 1 was subjected to torture. The allegations with regard to demand of dowry and torture took place in between 1990-93. The complaint reveals that the occurrence took place on 24.1.1993. On the basis of such complaint, the learned Magistrate in the impugned order took cognizance of the offence u/s 6-A of the Dowry Prohibition Act read with Section 109 of the Penal Code against two accused persons namely, Challa Susila and Pregada Krishna Veni and also took cognizance of offence u/s 6-A of the Dowry

Prohibition Act against the present petitioner.

3. Shri Dhal, the learned counsel appearing for the petitioner submitted that on very similar allegations an FIR was lodged in Visakhapatnam and after investigation final form was submitted by the Investigating Officer stating that the allegations were false. Thereafter the opposite party filed a complaint in the court of the III Metropolitan Magistrate, Visakhapatnam on the very same allegations where not only the present petitioner but also the other accused persons were tried. The learned Metropolitan Magistrate acquitted the petitioner and other accused persons of the charge by judgment dated 9.7.1998. Shri Dhal submitted that having failed in her attempt in getting an order of conviction against the petitioner u/s 498-A of the Penal Code, on false allegations a fresh complaint has again been filed in Orissa in the court of the learned S.D.J.M., Gunupur and, therefore, the order taking cognizance on the basis of the self same allegations should be quashed.

The learned counsel appearing for the opposite party on the other hand, submitted that the complaint filed before the III Metropolitan Magistrate, Visakhapatnam was in respect of the offence u/s 498-A of the Penal Code whereas the present complaint is u/s 6-A of the Dowry Prohibition Act read with Section 109 of the Penal Code and, therefore, acquittal of the petitioner in the aforesaid complaint case is of no consequence and on the said basis, the present complaint cannot be quashed.

4. From Annexure-3, it appears that the opposite party No. 1 had lodged a report in the III Town L. & O P.S., Visakhapatnam City alleging therein demand of dowry and torture for non-fulfilment of demand of dowry for the period prior to 24.10.92. After investigation, final report was submitted on 24.10.92 stating that the allegations made in the complaint were false. From Annexure-4, it appears that after such a report was submitted by the Investigating Officer, a complaint was filed in the court of the III Metropolitan Magistrate, Visakhapatnam making very same allegations about demand of dowry and torture. In the complaint filed before the Metropolitan Magistrate, the allegations of demand of dowry and torture relate to the period prior to 8.2.93. On consideration of evidence adduced before the court, the learned Metropolitan Magistrate acquitted the petitioner and other accused persons of the charge u/s 498-A of the Penal Code. So far as the present complaint is concerned, it relates to the period on and prior to 24.1.93 and the said period is covered under the complaint filed before the learned III Metropolitan Magistrate, Visakhapatnam. On perusal of the allegations made in both the complaint cases, I do not find any difference except that the complaint filed before the learned III Metropolitan Magistrate, Visakhapatnam was registered for commission of offence u/s 498-A of the Penal Code and the present complaint has been filed for commission of offence u/s 6-A of the Dowry Prohibition Act read with Section 109 of the Penal Code. Merely because cognizance has been taken by two Magistrates under two different provisions of law, the court cannot lose sight of the fact that the allegations contained in the

previous complaint, are very much similar to the complaint in the present complaint. Since the petitioner and other accused persons have already been tried and acquitted of the charge on those allegations in the court of the learned III Metropolitan Magistrate, they cannot be tried for the self same allegations at a subsequent stage by way of another complaint. Since the allegations of demand of dowry and torture in both the complaint cases are covered within the same period, I am of the view that continuance of the present complaint will amount to abuse of process of law.

5. I accordingly allow the application and quash I.C.C. No. 14 of 1993 pending in the court of the learned S.D.J.M, Gunupur so far as the present petitioner is concerned.