

(2012) 02 JH CK 0139
In the Jharkhand High Court
Case No : Criminal M.P. No. 1613 of 2010

Chhaya Rani Bose and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 306, 323, 406, 498A

Citation : (2012) 2 JLJR 61

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Das, for the Appellant; Atanu Banerjee . No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This application has been filed for quashing of the entire criminal proceeding of Complaint Case No. 93 of 2010 including the order dated 8.3.2010 passed by the Judicial Magistrate, 1st Class, Hazaribagh whereby and whereunder cognizance of the offences under Sections 498A, 406 and 323 of the Indian Penal Code and also under Sections 3/4 of the Dowry Prohibition Act has been taken against the petitioners. The case of the complainant as it appears from the complaint petition is that the complainant got married with the son of the petitioner no. 1 on 12.3.2005. In the marriage, several articles were given but the accused persons were not satisfied with it and hence, after the marriage demanded more money in cash. Later on, they put forth demand of Rs. 2 lacs from the complainant's father as they wanted to purchase a house at Purulia. When such demand was not fulfilled, the complainant was abused and assaulted by her husband (since died). Unfortunately, husband of the complainant died on 7.5.2005, who was working at West Bokaro Colliery, for whose death, the complainant was being blamed and abused. After the death of her husband, she was being subjected to physical and mental torture and ultimately on 12.6.2005,

she was driven out of the house. Thereupon, she started living with her parents. Meanwhile, when her father demanded back the gift given to the complainant's marriage, the accused persons refused to return the same. On such complaint, cognizance was taken of the offences as aforesaid which is under challenge.

2. Mr. A.K. Das, learned counsel appearing for the petitioners submitted that earlier for the same cause of action, C.P. Case No. 711 of 2005 had been filed at Ranchi in which cognizance was taken on 18.4.2006 for an offence u/s 498A of the Indian Penal Code. Since that order was without jurisdiction it was challenged before this Court and this Court quashed the order taking cognizance. However, liberty was granted to the complainant to file complaint petition at Hazaribagh. Accordingly, same was filed with a malicious intention to cause undue harassment to the petitioners and for wreaking vengeance.

3. It was further submitted that after the complainant got married with the son of the petitioner no. 1, she started creating problem, as a result of which, there had been quarrel in between the deceased and the opposite party no. 2 (complainant). Being fed up with the behaviour of the opposite party no. 2, who was also having illicit relation with someone, husband of the complainant committed suicide on 7.5.2005. Thereafter father of opposite party no. 2 alongwith some other persons came to the resident of petitioner no. 1 and threatened her to return the ornaments which the petitioner no. 1 under fear, handed over all the ornaments. In spite of that, parents and other relative of opposite party no. 2 started giving threatening to the petitioner no. 1 and others for impleading them in false case and under this situation, a proceeding was initiated u/s 107 of the Code of Criminal Procedure, in which proceeding opposite party no. 2 and other relatives were directed to execute a bond of Rs. 5,000/- with one surety each for keeping peace for one year. That order was challenged before the appellate court but the appeal got dismissed. It was also pointed out that apart from that a complaint case was lodged in the Court of Chief Judicial Magistrate, Hazaribagh against the opposite party no. 2 and others which was sent for institution and investigation of the same and accordingly, it was registered as Mandu P.S. Case No. 269 of 2005 under Sections 306 and 120B of the Indian Penal Code on 9.7.2005. On coming to know about the institution of the case and as the opposite party no. 2 and others had been bound down in a proceeding u/s 107 of the Code of Criminal Procedure, the instant prosecution has been lodged against the petitioner which can be said to have been lodged with ulterior purpose for wreaking vengeance and if a proceeding has been lodged with malice, it is fit to be quashed in view of the decision rendered in a case of Baijnath Jha Vs. Sita Ram and Another, .

4. As against this, Mr. Atanu Banerjee, learned counsel appearing for the opposite party no. 2 submitted that the case which was lodged under Sections 306 and 120B of the Indian Penal Code against the opposite party no. 2 and others had been registered on 9.7.2005 whereas Complaint Case No. 711 of 2005 had been filed before the Court of learned Chief Judicial Magistrate, Ranchi

on 7.7.2005 and therefore, it can never be said that the complaint was lodged with malice in order to wreak vengeance.

5. Further it was submitted that though 107 proceeding was initiated against the opposite party no. 2 and other family members but no plea has been taken in this application as to when notice was served upon the opposite party no. 2. In any view of the matter, filing of an application for initiation of a proceeding u/s 107 of the Code of Criminal Procedure before lodgment of the complaint, complaint cannot be quashed on this ground. Thus, it was submitted that instant application is fit to be dismissed.

6. Having heard learned counsel appearing for the parties, it be recorded that it has been well settled that where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge a complaint or first information report can be quashed in view of the law laid down by the Hon''ble Supreme Court in a case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

7. Applying the said principle, the Hon''ble Supreme Court in a case of Baijnath Jha vs. Sita Ram and Others (supra) referred to above, quashed the criminal proceeding as the respondent no. 1 who had earlier been made an accused in a case of theft of electricity had lodged a complaint against a member of the raiding party putting allegation that they had demanded illegal gratification. In that background, the Hon''ble Court having found that the proceeding had been instituted with mala fide intention quashed the case but here in the instant case, it is never the case of the petitioner that the instant complaint was lodged after the case had been lodged against the opposite party no. 2 and others for an offence under Sections 306 and 120B of the Indian Penal Code.

8. It is true that a proceeding u/s 107 of the Code of Criminal Procedure had been initiated before the instant complaint was lodge but in that event, it can never be said that the complaint was lodged maliciously with ulterior motive for wreaking vengeance. "Malice" in the legal sense imports (1) absence of all element of justification excuse or recognized mitigation, and (2) the presence of either an actual intent to cause particular harm which is produced or harm of the same general nature. In other words, an act done is maliciously when it is done intentionally or that is done with some wrongful motive.

9. In the instant case, whatever allegation has been levelled by the complainant against the petitioners, it cannot be said at this stage that it lacks justification. Further if the opposite party no. 2 has been bound down in a proceeding u/s 107 of the Code of Criminal Procedure, it can never be said always that any action is taken by one, if it is available, that it would always be with wrongful motive.

10. Thus, under the situation, it can never be said that a criminal proceeding brought against the petitioner was manifestly attended with mala fide and was with an ulterior motive for wreaking vengeance.

11. Thus, there appears no merit in this application and hence, it is dismissed. Before being parting with this order it be recorded that any observation made for the purpose of disposal of this case be not prejudicial to the case of the parties.