
(2018) 01 RAJ CK 0044
In the Rajasthan High Court
Case No : 5440 of 2017

Daljeet Singh Saluja

APPELLANT

Vs

State of Rajasthan & Anr.

RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 91](#) - Saving of inherent powers of High Court - Summons to produce document or other thing
[Indian Penal Code, 1860](#),

Citation : (2018) 01 RAJ CK 0044

Hon'ble Judges : Deepak Maheshwari

Bench : Single Bench

Advocate : Sudhir Jain, V.S. Godara, Ishwar Jain

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the accused-petitioner as also learned counsel for the complainant-respondent No.2 and learned Public Prosecutor for the State.

2. This misc. petition has been preferred with a prayer to quash and set-aside the order dated 06.02.2017 passed by learned Additional Chief

Judicial Magistrate No.18, Jaipur Metropolitan, Jaipur, whereby he proceeded to frame charge for the offence under Sections 498A and 406 IPC

against the accused-petitioner. On preferring a criminal revision against the said order, it also came to be rejected vide order dated 14.07.2017

passed by the learned Additional Sessions Judge Women Atrocities Cases No.1, Jaipur Metropolitan, Jaipur. Prayer has been made to quash and

set-aside the said order dated 14.07.2017 also.

3. Facts in brief, relevant for consideration of this misc. petition are that FIR No.55/2014 came to be registered on the basis of complaint filed by

Smt. Dharamveer Kaur against her husband Daljeet Singh and other family members of husband, wherein it was stated inter-alia that after getting

divorce from her first husband in the year 2009, complainant remarried to Daljeet Singh on 03.08.2013. Amount of Rs.10 lakhs, silver & gold

ornaments and other items as per list enclosed were given in the dowry by the parents of the complainant. But just after some time of marriage,

accused-persons started treating the complainant with cruelty to pursue the demand of dowry. They harassed her, did not give her proper food,

did not get her treated on falling ill and started teasing and taunting her for less quantity of dowry. Demand for Rs.10 lakhs in cash and a car was

raised by them to let her stay peacefully her in-laws' house. It has further been stated that all the accused-persons raised their demand of dowry

after coming to the house of father of complainant situated at Jaipur. When she was driven out of the house after being beaten, she reached her

parents house at Jaipur. Accused even reached there for demand of dowry. All the dowry articles given to her at the time of marriage including

ornaments, are in possession of the accused-persons.

4. After investigation, charge-sheet for the offence under Sections 498A and 406 IPC was filed. After hearing the charge arguments, learned trial

court proceeded to frame charge for the offences under Sections 498A and 406 IPC against accused Daljeet Singh. When Daljeet Singh preferred

a criminal revision against the said order dated 06.02.2017, it was also rejected by the revisional court vide order dated 14.07.2017.

5. Learned counsel appearing for the accused-petitioner contends that the orders dated 06.02.2017 and 14.07.2017 passed by the learned courts

below are illegal and deserve to be quashed and set-aside.

6. Preliminary plea raised in this regard is that the trial court was not having territorial jurisdiction and thus, the order passed by it is illegal. Counsel

contends that all the alleged incidents of physical and mental cruelty are said to have taken place at Jodhpur and the complaint has been wrongly

filed showing the jurisdiction at Jaipur. To support his contention, he has placed reliance on the following judgments :-

(I)- Harmanpreet Singh Ahluwalia & Ors. Vs. State of Punjab & Ors., reported in

2009(7) SCC 712.

(II)- Bhura Ram & Ors. Vs. State of Rajasthan & Anr., reported in 2008(11) SCC 103.

(III)- Manish Ratan & Ors. Vs. State of M.P. & Anr., reported in 2007(1) SCC 262.

(IV)- Pankaj Saxena & Ors. Vs. State of Rajasthan, reported in 2008(1) Cri.L.R. 64.

7. Per contra, learned counsel appearing for the complainant as also learned Public Prosecutor contends that the incidents of cruelty and demand

of dowry took place not only at her in-laws' house at Jodhpur but the accused-persons came to Jaipur also where the parental house of the

complainant is situated and raised the demand of dowry. This fact has been specifically mentioned in para 5,6 & 8 of the complainant filed by

Dharamveer Kaur. On perusal of complaint, it is found that the allegation of having come to the parental house of complainant for raising demand

of dowry has been specifically mentioned in the complaint in aforesaid paras. Thus, the plea of the counsel for respondent is found correct.

8. In Harmanpreet Singh Ahluwalia's case (supra) relied upon by learned counsel for the petitioner, Hon''ble Supreme Court has specifically

mentioned that parties were admittedly residing at Ontario in Canada and the offence, if any, was committed there, but the FIR was lodged at

Jalandhar only after the divorce petition has been filed. The allegations made in the FIR regarding demand of Rs.5 lakhs pertains to Canada only,

that too has been filed after a period of five years from the date of marriage. In such facts and circumstances, Hon''ble Supreme Court came to the

conclusion that the territorial jurisdiction of the Court at Jalandhar was lacking. The allegations made in the FIR were not found reliable by the

Court. Taking over all view of the matter, the criminal appeal preferred by husband-appellant was allowed.

9. In Bhura Ram's case (supra), the Hon''ble Supreme Court held that the case could not be tried by the court where no part of offence was

committed. It was held that act of alleged cruelty was committed while the bride was living at Punjab. It was, therefore, found that Rajasthan

Courts have no jurisdiction over the matter.

10. In Manish Ratan's case (supra), the Hon''ble Supreme Court held that the cruelty to bride was committed at matrimonial home at Jabalpur and

Datia Court has no jurisdiction, thus, the case was transferred to Jabalpur Court. It was also held that the offence is not continuing one.

11. In Pankaj Saxena's case (supra), it was held by the Coordinate bench of this Court that the complaint does not disclose that the offence was

committed wholly or in part with the local jurisdiction of learned Magistrate at Kota. It was, therefore, held that cause of action did not arise in

Kota and the complaint was returned to the complainant to file it in appropriate Court at Aklera.

12. In view of above, it is clear that the judgments relied upon by learned counsel for the petitioner have no relevance in the facts and

circumstances of the case in hand. In the present matter specific allegations have been made in the complaint that on various occasions, in-laws of

the complainant came to her parental house at Jaipur and demanded money. In view of such specific allegation, it cannot be held that the trial court

was lacking in territorial jurisdiction and on this count alone the order framing charge against the accused-petitioner is illegal and liable to be

quashed and set-aside. The plea taken by learned counsel in this regard is not found acceptable.

13. Much emphasis has been placed by learned counsel for the petitioner on the plea that the allegation of giving Rs.10 lakhs in cash to the

accused is not sustainable in absence of proof as to fromwhere this huge amount of money flowed to the parents of complainant. Learned counsel

has placed reliance on the judgment rendered by Delhi High Court in Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi) & Ors., reported

in 2009(1) Crimes 123. This was the case where husband was discharged for the offence under Sections 498A IPC and Section 3 of the Dowry

Prohibition Act. The revision petition filed by the complainant was also dismissed. Delhi High Court also rejected the petition under Section 482

Cr.P.C. filed on behalf of petitionerwife Smt. Neera Singh. Looking to the nature of allegations made on behalf of the wife and finding them wholly

unreliable being vague, whereby almost every member of the family was involved, the Court directed that the alleged cash transaction should be

brought to the notice of the income-tax department so as to verify source of the amount allegedly given in cash as dowry. The observation made by

Delhi High Court, for benefit, can be reproduced below :-

6. I consider that the kinds of vague allegations as made in the complaint by the petitioner against every of the family of husband cannot be accepted by any court at their face value and the allegations have to be scrutinized carefully by the Court before framing charge.

.....

However, in her complaint, she made vague and omnibus allegations against every other family members. The statement made by her and other witnesses have been scrutinized by me, except vague allegations and allegations of taunting, there are no allegations of perpetuating cruelty on her by any of the four respondents in order to compel her to bring more dowry or any particular items.

14. In my view, the facts of groundless and untrustworthy vague allegations persuaded the Court to issue such directions while upholding the discharge order of the accused-husband. In the case in hand, the allegations made are not so omnibus, vague and unreliable, which may warrant to follow the course adopted by the Delhi High Court. This may further be observed here that the accused will get adequate opportunity when the trial proceeds, to put to question the allegations of giving Rs.10 lakhs in cash and dowry, by way of availing his right to cross-examination the prosecution witnesses and also by setting up his defence case. However, at the juncture of framing of charge, this Court does not feel inclined to accept the plea that the source of income of the parents of complainant be examined at this very stage and then only to arrived at the conclusion whether the charge is required to be framed or not. Thus, this Court does not feel persuaded to accept the plea raised by learned counsel for the petitioner.

15. Learned counsel for the petitioner has also placed reliance on Bhaskar Lal Sharma Vs. Monica, reported in 2009(10) SCC 604. He contends in this regard that no charge for the offence under Section 406 IPC can be framed on the basis that any gift made to the bridegroom or his parents can constitute an offence under Section 406 IPC for its misappropriation or converting it to their own use. On going through the said judgment, it appears that the complaint itself did not show any entrustment having been made to the husband and father-in-law. The allegations were made only against mother-in-law that she had taken all the gifts and cash given by the

guests. In this view of the matter, the Court came to the conclusion that case under Section 406 IPC was made out only against mother-in-law. It appears that learned counsel for the petitioner has missed to notice this aspect. In the case in hand, the complaint does not reveal such facts. The allegations made therein essentially includes the accused-husband, against whom charge has been framed for the offence under Section 406 IPC. In my view, no assistance is rendered to the accusedpetitioner by the case cited above.

16. Learned counsel for the petitioner has also relied on Jaidev Singh Vs. State of Rajasthan, reported in 2006 WLC Raj. UC 227. The Co-ordinate Bench of this Court has observed that the Court is required to examine the totality of the evidence before it, should examine the nature of allegation made in the complaint and the evidence, both oral and documentary, in support thereof. Charge should not be framed in a mechanical manner without due application of mind. It has further been observed that the conscious and judicious approach should be adopted while framing the charges. I express my complete agreement to the principles stated above, but looking to the oral and documentary evidence annexed with the charge-sheet in the case in hand, I do not feel inclined to take a different view than that of the courts below.

17. The case of Dharmi Chand Vs. State of Rajasthan, reported in 2002(2) WLN 728, relied upon by learned counsel for the petitioner relates to the exercise of powers of trial court under Section 91 Cr.P.C. at the time of framing of charge. This is not the situation in the case in hand. No such prayer was made by the accused-petitioner before the trial court, so this case appears to be of no assistance to the accused.

18. It will be apt to reproduce the principles enunciated by the Hon"ble Supreme Court in Union of India Vs. Prafulla Kumar Samal & Anr., reported in 1979(3) SCC 4, relied upon by learned counsel for the petitioner :-

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will

be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal

application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving

rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge

cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of

the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean

that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

19. Applying the aforesaid principles to the facts of this case in hand, I find that it is a matter wherein the trial court has rightly proceeded to frame

the charge for the offences under Sections 498A and 406 IPC. Taking the evidence annexed with the chargesheet into consideration, I find that the

material available on record gives rise to grave suspicion against the accused, for which the charge has been correctly framed against him.

20. To support his contention, learned counsel for the complainant - respondent No.2 has placed reliance on State of Orissa Vs. Debendra Nath

Padhi, reported in (2005)1 SCC 568, in Para 8 of the said judgment, the Hon"ble Supreme Court has held as under:-

8. What is to the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in

the the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of

case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is

triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and

the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the

Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and

the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code

grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

21. Learned counsel for the complainant-respondent No.2 has also placed reliance on Omprakash Vs. State of Rajasthan, reported in 2004(1)

WLC (Raj.) 188. It has been held by the Co-ordinate Bench of this Court that at the stage of framing of charge, trial court is not required to

meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would

ultimately result in conviction. The Court is prima facie required to consider whether there is sufficient material against the accused to presume the

commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge. The guilt or innocence of the

accused has to be determined at the time of conclusion of trial after evidence is adduced and not at the stage of framing of the charge.

22. The principles laid down in aforesaid judgments leads to the conclusion that relevant material has been taken into consideration by the trial

court while framing charge against the accused-petitioner and mind was judiciously applied to that material by that Court and therefore, the order

passed for framing charge against the accused-petitioner cannot be faulted with. The order dated 14.07.2017 passed by the learned revisional

court also appears to be justified and legally tenable in view of the facts of the case.

23. In the result, there is no substance in the criminal misc. petition and the same deserves to be and is accordingly dismissed.