
(2011) 09 MP CK 0068
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 1701 of 2011

Dashrath P. Bundela and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 498

Citation : (2011) ILR (MP) 2923 : (2012) 1 MPHT 196

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—Petitioners, being near relatives of husband of respondent No.2 (Smt. Gayatri Bundela), invoking extra ordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashing their prosecution u/s 498-A/34 of Indian Penal Code and Section 3/4 of the Dowry Prohibition Act in connection with Crime No. 112/ 2006 registered at police station Bina, Sagar pending as Criminal Case No. 1424/2006 before Judicial Magistrate First Class Bina, Sagar, have filed this petition.

2. Facts giving rise to this petition are that respondent No.2 Smt. Gayatri Bundela was married with Sharda Prasad Bundela on 25/6/1999. Petitioners No. 1 and 2 are the father and mother of Sharda Prasad respectively. Petitioners No. 3 and 5 are the younger brothers and petitioner No. 2 is sister, of Sharda Prasad. Complainant/respondent No.2 lodged an FIR on 11.3.2006 at police station Bina against the petitioners alongwith her husband Sharda Prasad with allegation that her father gave sufficient dowry at the time of her marriage but she was continuously being harassed by petitioners for getting the less dowry from her father.

3. It is further alleged that complainant Gayatri Bundela was beaten by

petitioners alongwith her husband. It is also alleged that all of them demanded Rs. 1,00,000/- (Rupees one lac) and they threatened her to be deserted from her matrimonial house if demand is not fulfilled, therefore, she is living separately at Bina in her parental house. On the basis of aforesaid report, a criminal case u/s 498-A/34 of IPC with Section 3/4 of the Dowry Prohibition Act was registered.

4. After investigation, petitioners were prosecuted alongwith husband of respondent no.2 before the Judicial Magistrate First Class, Bina.

5. Learned counsel for the petitioners submitted that respondent No.2, Gayatri Bundela, is having three children. Since in the year 2001, her husband Sharda Prasad filed a petition for divorce against her when-process issued and date was fixed for her appearance on 10.3.2006, then respondent no.2, in order to save herself malafidely, as a counter blast lodged a false report against these petitioners. He further submitted that petitioner no. I Dashrath P. Bundela, retired person lodged a report on 11.9.2003 at Jabalpur police station and expressed apprehension that respondent may falsely implicate him. A copy of the same is Annexure-A/5. He further submitted that as per FIR, respondent No.2 Gayatri Bundela was living at her parental house since last one year and there is no specific year, month or any date has been stated by her regarding demand of dowry or cruelty committed by the petitioners. He further submitted that petitioner No.4 Smt. Rajni @ Rukkobai is a married woman and living separately from the other petitioners after her marriage. She rarely visited to the matrimonial house of Gayatri Bundela. Since the allegation against these petitioners are omnibus allegation, without mentioning any year, month, date or time therefore, their implication is only mean to harass them and permitting such prosecution to continue would be abuse of process of law, hence he prays for quashment of prosecution as far as it relates to these petitioners. He placed reliance on (2010) 9 SCC 667, Preeti Gupta and another Vs. State of Jharkhan and another and Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar and Another,

6. Learned counsel appearing on behalf of the respondent No. 2 submitted that there is no strong prima facie case against these petitioners reveals from the evidence collected during investigation of Crime No. 112/2006, therefore he prays for dismissal of the Petition.

7. I have perused the FIR of Crime No. 112/06 and evidence of Gayatri Bai, complainant, Sunder Bai and Laluram, mother and father of complainant and Laxmi Narayan, brother of complaint alongwith the documents filed with this petition.

8. It is undisputed on record that respondent no. 2 Gayatri is living separately since one year as mentioned by herself in the FIR. It is also undisputed that she is having three children. On perusal of Annexure-A/1, it reveals that her husband Sharda Prasad filed a divorce petition against her in which she required to appear before Family Court on 10/3/2006. Thereafter FIR was lodged on 11 /3/2006

with allegation that she was being harassed by these petitioners, since after the marriage, i.e. since 1999. It is on record that she gave birth of three children and she did not complained about the harassment or demand of dowry by these petitioners to anybody till the date of lodging the report i.e. 11.3.2006, therefore, this prosecution of petitioners would be seen in backdrop of the matrimonial case filed against the respondent no. 2 Gayatri Bundela by her husband.

9. One more fact is important to assess the possibility of false implication that Dashrath Prasad Bundela, retired Major, had already filed a report on 11/9/2003 and apprehending his false implication

10. On perusal of statement of mother, father and brother of respondent No.2 as mentioned hereinabove, I found that there is an omnibus statement regarding demand of dowry and harassment. No specific year, month, date or time is mentioned. Petitioner No. 4 Smt. Rajni @ Rukkobai is a married sister of husband of respondent no.2. Obviously she would live with her husband and occasionally she visited to the matrimonial house of respondent No.2.

11. In the case of Manoj Mahavir Prasad Khaitan (supra), the Apex Court has observed that:

We reiterate that when the criminal court looks into the complaint, it has to do so with an open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 of Cr.P.C. is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interests of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interest of justice. In our opinion, this was a case where the High Court ought to have used its powers u/s 482 Cr.P.C.

12. In the case of Preeti Gupta (supra), the Apex Court has observed that allegations of harassment of husband's close relatives who had live separately and rarely visited the place of matrimonial house of complainant are required to be scrutinized with great care and circumspection. Their Lordships" also remind the social responsibility and obligation of the learned member of Bar to ensure that the social fibre of family life is not ruined or demolished because majority of the complaints are filed either on the advice or with concurrence.

13. It is a matter of our common experience that when a matrimonial dispute arises between the parties of marriage they lead to multiple cases, therefore, the Apex Court expected from the learned member of Bar that they should also ensure that one complaint should not lead to multiple cases.

14. In the light of aforesaid principle of law, I have carefully considered the

allegations made in FIR and statement recorded u/s 161 of Cr.P.C. in relation to demand of money and alleged harassment to respondent no. 2. There is no specific allegation that when demand was made, when she was beaten, by whom, no specific year, month, date or time was mentioned. Further the report was lodged on 11/3/2006, just after the filing of the divorce petition against the respondent no.2 and date of appearance on the aforesaid case i.e. 10/3/2006.

15. Considering the aforesaid facts and circumstances of the case, I am of the view that there is no prima facie case made out against these petitioners, near relatives of husband of respondent No.2 and permitting to continue such criminal proceeding against them would be abuse of process of law. Hence, prosecution against these petitioners is liable to be quashed.

16. Thus, the petition is allowed and the prosecution launched against these five petitioners on the basis of Crime No. 112/2006 registered at police station Bina, Sagar for offence punishable u/s 498-A/34 of IPC and Section 3/4 of the Dowry Prohibition Act, is hereby quashed.