
(2016) 04 MP CK 0042
In the Madhya Pradesh High Court
Case No : Misc. Cri.C. No. 2302/13

Deepti Gupta and Others

APPELLANT

Vs

Shweta Parmar

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, Section 482
Penal Code, 1860 (IPC) — Section 30, Section 383, Section 384

Citation : (2016) 04 MP CK 0042

Hon'ble Judges : Sheel Nagu, J.

Bench : Single Bench

Advocate : Rajmani Bansal, Advocate, for the Appellant; Ankur Mody, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sheel Nagu, J.—1. Inherent powers of this court under Section 482 of Cr.P.C. are invoked for assailing the order dated 8/2/2013 passed by the Judicial Magistrate First Class, Gwalior in complaint case No. 1254/13 for taking cognizance of the complaint alleging offence punishable under Section 384 of I.P.C., and thereby issuing summons to the petitioners. Pertinently, petitioner No. 1 is Smt. Dipti Gupta, who is said to be friend of Dr. Subhash Parmar, husband of respondent.

2. Learned counsel for the rival parties are heard.

3. Factual matrix giving rise to the present dispute is that on 21/6/2010 the respondent and Dr. Subhash Parmar entered into wedlock whereafter both started residing in matrimonial home at Bhopal but later from August, 2010 to May, 2010 they shifted to Gwalior. The respondent alleged that she was subjected to cruelty for dowry demand. It was further alleged that in connivance with one Dr. Dipti Gupta (petitioner No. 1), who is alleged to be friend of husband Dr. Subhash Parmar, the respondent/wife was surreptitiously given drugs so that she may abort the unborn child, who was diagnosed by sonography to be of female sex. It was alleged that in this nefarious object, her husband Dr.

Subhash Parmar and his friend Dr. Dipti Gupta succeeded as the unborn child was aborted. It is further alleged that in November, 2011, the respondent again became pregnant. The husband is alleged to have increased his dowry demand and acts of cruelty which compelled the respondent to leave her matrimonial home and start residing with her parents. It is further alleged that dowry demand of 25,00,000/- was made by the husband and his parents which could not be met except exchange of an amount of Rs. 3,00,000/-. Meanwhile, the respondent/wife gave birth to a girl child, namely, Pihu. It is lastly alleged that sometime in November 2012, the husband threatened his wife/respondent that he has given the girl child to Dr. Dipti Gupta and the child will be returned to respondent/wife only if she gives an undertaking in writing that she would consent for a divorce in the divorce petition filed by the husband in the court. It is also alleged that on 13/1/2013, the respondent/wife alongwith her father and another person, namely, Vivek Mittal visited the residence of Dr. Dipti Gupta. It is alleged that said Dr. Dipti Gupta reiterated the threat of the husband of respondent that unless she (respondent/wife) consents to the request of divorce made by husband in the court, the daughter Pihu shall not be returned to the respondent.

4. In this factual background, an attempt was made to lodge the report but the same did not succeed whereafter the wife filed complaint under Section 200 of Cr.P.C. vide Annexure-P/2, dated 17/1/2013. Statements of the respondent/wife were recorded on 21/1/2013 alongwith her father on 22/1/2013 alleging aforesaid incidents. Consequently, by the impugned order dated 8/2/2013, the trial Judge took cognizance of the offence punishable under Section 384 of I.P.C., and issued summons which has brought the petitioners to this court.

5. To prove the offence under Section 384 of I.P.C., the prosecution prima facie has to establish the following ingredients as provided under Section 383 of I.P.C.:-

383. Extortion.--Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

6. The essential ingredients for constituting the offence of Extortion are:

- (i) intention to put a person under fear of injury,
- (ii) thereby induces dishonestly to
 - (a) deliver any property, or
 - (b) valuable security, or
 - (c) anything signed or sealed which may be converted into a valuable security,
- (iii) to any person.

7. Thus, what is necessary for constituting an offence of extortion is that the prosecution must prove that on account of being put into fear of injury the victim delivers any particular property or valuable security to the man putting him into fear. If there was no delivery of any property or valuable security, then the important ingredient of an offence of extortion stands excluded.

8. The existence of "valuable security" is also an essential ingredient of the offence of extortion. Valuable security has been defined in Section 30 of I.P.C., as follows:-

"30. "Valuable security".--The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right."

9. From bare reading of the said definition of valuable security, it is clear that valuable security comes into existence when a document creates extends, transfers, restricts, extinguishes or releases a legal right or where any person acknowledges that he/she lies under certain legal liability or that he does not have legal right.

10. Thus, valuable security can come into existence only when it has all the basic requisites recognized by law for a document to graduate into a valuable security. One of the essential features is that document should be signed by the maker since an unsigned document does not mature into a valuable security despite containing script pertaining to creation, extension, transfer, restriction, extinction or release of any legal right or acknowledgment of legal liability or absence of any right. The decision in the case of *Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and another*, (2007) 14 SCC 768 is worthy of reference in this context. Paras 5 and 6 of the said decision being relevant are reproduced below:-

"5. Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Indian Penal Code in the following terms:

"383. Extortion:- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion"."

6. A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence:

1. The accused must put any person in fear of injury to that person or any other person.
2. The putting of a person in such fear must be intentional.

3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.

4. Such inducement must be done dishonestly."

11. Testing the factual matrix attending the present case on the anvil of the legal provisions and decision (supra), it is seen that the petitioners threatened the respondent/wife to give an express undertaking to consent for divorce with her husband Dr. Subhash Parmar in the divorce petition filed by the husband, which is pending before the court. Reading of the prosecution story contained in pleadings in the complaint and the supportive statements recorded, do not disclose that any such undertaking was ever written much less signed by the respondent/wife. There is not even an iota of material/evidence to show that any such undertaking was given by which any liability was incurred or any right was given up by the respondent/wife due to the threat extended to her by the petitioners. Thus, "valuable security" as defined in section 30 of I.P.C. did not come into existence at all. The absence of valuable security coming into existence renders the offence of extortion untenable. Mere threat or fear of injury which has not led to creation of a valuable security cannot constitute offence of extortion as defined in section 30 of I.P.C.

12. Consequently, in the absence of any material to demonstrate the existence of any valuable security coming into being in the entire prosecution story, there arises no question of extortion being made out even on prima facie basis.

13. This court is thus of the considered view that cognizance taken by the court below of the offence punishable under section 384 of I.P.C. against the petitioners is untenable in the eye of law.

14. Consequently, the present petition is allowed. The impugned order dated 8/2/2013 passed by the Judicial Magistrate First Class, Gwalior in complaint case No. 1254/13 is quashed to the extent of taking cognizance of the offence under Section 384 of I.P.C., against the petitioners. Remaining part of the impugned order shall remain intact.

15. No cost.