
(2013) 10 MP CK 0123
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 1053 of 2011

Dr. Arif Qureshi and Others	Vs	APPELLANT
State of Madhya Pradesh and Another		RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0123

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Imtiaz Husain, for the Appellant; S.D. Khan, G.A. for State/
Respondent No. 1 and Shri K.N. Fakhruddin, Counsel, for the Respondent

Judgement

N.K. Gupta, J.—The applicants have preferred the present petition u/s 482 of the Cr.P.C. to quash the proceedings of a criminal case registered at crime No. 1/2013 before Police Station Mahila Thana, Sagar for offence punishable under sections 498A, 376/511, 294 of IPC and section 3/4 of Dowry Prohibition Act. The facts of the case, in short, are that, marriage of the respondent No. 2 and the applicant No. 1 took place on 24.7.2008 at Bhopal and the applicants No. 2 and 3 are the parents of the applicant No. 1, whereas the applicant No. 4 is sister of the applicant No. 1. Applicant No. 5 was compounder in the hospital of the applicant No. 1. The respondent No. 2 was sent to her parents' house in the month of July, 2010, when she was pregnant for 4 months. Thereafter, she came back to the applicants' house on 13.5.2012 and younger son of the applicant No. 1 was also brought to the house of the applicants. On 7.10.2012, the respondent No. 2 was again sent to her parents' house at Bhopal. Thereafter on 4.1.2013, she had lodged an FIR at Police Station Mahila Thana, Bhopal, which was transferred to Police Station Mahila Thana, Sagar and registered on 12.1.2013.

2. I have heard the learned counsel for the parties.

3. The learned counsel for the applicants has submitted that the applicant No. 1 as well as the respondent No. 2 are doctors. The behavior of the respondent No.

2 was troublesome to the family of the applicants and therefore, she left the house of the applicants in July, 2010 on her own. Thereafter, second son was born to the respondent No. 2 but, she did not prefer to visit the applicants' house. On 28.2.2012, the applicant No. 1 gave Talaq to the respondent No. 2 by the document, Annexure P/2 and amount of Mehar was also deposited in the account of the respondent No. 2. The applicant No. 1 has sent various intimations and reports to the police from time to time. On 10.6.2010, he gave a report to SHO, Police Station Mahila Thana, Sagar that there was a possibility of lodging a fake FIR from the side of the respondent No. 2. Again on 6.10.2012, a complaint was sent to IG, Sagar. On 31.12.2012, intimation was given to SHO, Police Station Rahatgarh, District Sagar for getting security. It is further submitted by the learned counsel for the applicants that father of the respondent No. 2 is a resourceful person. He is editor in some political newspaper and he got the matter registered at Bhopal and thereafter, it was transferred to Sagar. It is also submitted that the respondent No. 2 had written a letter, Annexure P/5, in which everything is clear and it would be apparent that no harassment was done by the applicants. A false FIR was lodged against the applicants. The learned counsel for the applicants gave an example that the applicant No. 5 was not at all involved in any crime. However, he was also added as an accused. The learned counsel for the applicants has submitted that no offence u/s 376 of IPC is made out against the applicant No. 1 because he was not ready to have any relation with the respondent No. 2. There is no allegation about the rape in the FIR itself. The learned counsel for the applicants has placed his reliance upon the judgment passed by Hon"ble the Apex Court in case of "Bhupinder Singh Vs. Union Territory of Chandigarh", [(2008) Cri. L.J. 3546]. Similarly, he has submitted that no offence u/s 498A of IPC is made out against the applicants. If exaggerated version of small incidents is alleged against the family members of the husband then, no such offence is made out. The learned counsel for the applicants has placed his reliance upon the judgment passed by Hon"ble the Apex Court in case of Preeti Gupta and Another Vs. State of Jharkhand and Another, . The learned counsel for the applicants has also submitted that no specific date of any particular incident is given in the FIR. Some omnibus allegations are made against the applicants. Under such circumstances, no offence is constituted against the applicants and the powers given to this Court u/s 482 of the Cr.P.C. are inherent powers and therefore, by exercising such powers, FIR may be quashed. The learned counsel for the applicants has relied upon the judgments passed by Hon"ble the Apex Court in case of Geeta Mehrotra and Another Vs. State of U.P. and Another, and one order passed by the single Bench of this Court in case of Dashrath P. Bundela and Others Vs. State of M.P. and Another, and therefore, it is prayed that the FIR may be quashed.

4. The learned counsel for the respondent No. 2 has submitted that Annexure P/5 was not written by the respondent No. 2. It is not an undisputed document and therefore, it cannot be considered to assess the situation. When the applicant No. 1 gave Talaq to the respondent No. 2 on 28.2.2012 then, why he

permitted the respondent No. 2 to reside with him in between the period from 13.5.2012 to 6.10.2012. According to the document submitted by the applicants, it cannot be said that the FIR is totally false. Under such circumstances, if appreciation of evidence is to be done then, it is to be done by the trial Court and the crime registered against the applicants may not be quashed.

5. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is apparent that marriage of the respondent No. 2 and the applicant No. 1 took place on 24.7.2008 and the respondent No. 2 was sent to her parents' house finally on 7.10.2012. Thereafter, the FIR was lodged by the respondent No. 2 on 4.1.2013. As claimed by the learned counsel for the applicants that FIR was highly delayed and it may be taken as an afterthought document, cannot be accepted. If the letter, Annexure P/6 is perused then, it would be apparent that on 8.10.2012, the applicants were ready to visit for Haj and therefore, it was made clear by the applicants that the applicant No. 1 would not remarry the respondent No. 2 and she should be sent back to her parents' house and ultimately, the respondent No. 2 alongwith her two sons was sent to Bhopal on 7.10.2012.

6. There are two sets of allegations made by the respondent No. 2. Firstly, the period from the date of marriage to July, 2010, when the respondent No. 2 was sent to Bhopal. If the circumstances are considered then, it would be apparent that after leaving the house of the applicants in July, 2010, the respondent No. 2 and her father did not try to make any resolution with the applicants or they did not try to lodge any FIR against the applicants. Also, the respondent No. 2 went to Sagar on 13.5.2012 on her own, leaving her second son at her parents' house and thereafter, she resided up to 7.10.2012. If she was so tortured then, it was not possible for her to go to the house of the applicants on her own, without getting any security or resolution. Her visit by her own indicates that she did not have any fear from the side of the applicants and she was sure that she would be accepted by the applicants. Thereafter, the applicants accepted her and they also brought the second son to Sagar. Under such circumstances, the allegations prior to 13.5.2012 appears to be incorrect prima facie because if the respondent No. 2 was harassed then, she would have taken the steps against the crime, whereas her conduct appears to be different, which indicates that there was no harassment received by the respondent No. 2, prior to her visit dated 13.5.2012.

7. The scope of a petition u/s 482 of the Cr.P.C. is wider than, the scope of a criminal revision. In a criminal revision, if it is laid against framing of charges then, it is for the revisionary Court to consider the prosecution's documents only and to examine as to whether any illegality or perversity has been done by the trial Court or not. On the other hand, in the petition u/s 482 of the Cr.P.C., this Court can consider undisputed documents of the defence and consolidated view may be taken after considering the undisputed defence of the accused and prosecution evidence. The learned counsel for the applicants relied upon the document, Annexure P/5, a letter written by the respondent No. 2. That

document is written in Urdu and the learned counsel for the respondent No. 2 denies that it was written by the respondent No. 2. There is no claim that the respondent No. 2 appended her signature on that document. Its Hindi translation is submitted but, no certificate has been given that the translation was done by a competent person and it was done correctly. Translation is submitted as a typed document, without any authenticity. Similarly, Annexure P/5 is a photo-copy and the learned counsel for the applicants could not show the source as to how they received that document and how he claims that it is in the handwriting of the respondent No. 2. Under such circumstances, the document Annexure P/5 is not an undisputed document and therefore, it cannot be considered in the present petition to draw any conclusion.

8. The applicants have relied upon the document Annexure P/2, a document of Talaq but, it is accepted in various complaints that notice of talaq could not be served upon the respondent No. 2 and therefore, a "Fatwa" was obtained from the concerned Mufti. However, it is a doubtful position that talaqnama prepared by the applicant No. 1 was ever served to the respondent No. 2 and therefore, at present, service of notice of document, Annexure P/2 is not proved by the applicants. It cannot be said conclusively that talaq took place between the applicant No. 1 and the respondent No. 2. Service receipt of the document, Annexure P/2 is not submitted and therefore, the document, Annexure P/2 cannot be considered as an undisputed document. If the remaining documents are considered as such, which are police reports sent by the applicant No. 1 to various authorities of police from time to time then, it appears that Annexure P/6 was written to IG, Sagar, so that before leaving of the applicants for Haj, the respondent No. 2 may be sent to Bhopal but, by writing such an FIR, it cannot be said that the respondent No. 2 had quarrelsome behaviour with the applicants. It is possible that since the applicants were going for Haj and the applicant No. 1 wanted that the respondent No. 2 should not reside in the house of the applicants at Sagar then, such a letter could be written by the applicant No. 1. Though the letter was sent by all the applicants but, looking to its language, it appears that it was drafted only for the applicant No. 1.

9. If the applicant No. 1 gave talaq to the respondent No. 2 on 28.2.2012 and he had no intention to remarry the respondent No. 2 then, what was the necessity for the applicant No. 1 to permit the respondent No. 2 to reside in his house since 13.5.2012 upto 7.10.2012. As discussed above, that service of notice of talaq is yet to be proved by the applicants and at present, it cannot be said that any talaq took place between the applicant No. 1 and the respondent No. 2. By his conduct, the applicant No. 1 has shown that no talaq took place between the applicant No. 1 and the respondent No. 2 and therefore, he permitted her to reside in his house from 13.5.2012 to 6.10.2012.

10. It appears that no notice of talaq was received by the respondent No. 2 and she could get the knowledge of such notice when she came to Sagar on 13.5.2012 and the applicant No. 1 had convinced her by fixing a meeting with

Mufti that a divorce took place between the parties. After getting the knowledge of alleged talaq and when she was thrown from the house on 7.10.2012, the respondent No. 2 could understand about the behaviour of the applicants and therefore, she had no option, except to lodge an FIR about the harassment done by the applicants. She was ousted from the house on 7.10.2012 and she had lodged an FIR within 3 months from her last harassment. No wife would be ready to break her marital relations in such a manner. When she comes to the conclusion that her relations are already broken and now she cannot maintain such relations then, as a last resort, she files an FIR and therefore, if the respondent No. 2 had filed an FIR on 4.1.2013 then, it is not defeated due to delay in lodging the FIR.

11. For quashing of the entire crime, the learned counsel for the applicants has placed his reliance upon the order passed by the single Bench of this court in case of Dashrath P. Bundela (supra). However, in that case, the FIR was lodged as a counter blast of divorce proceeding, whereas in the present case, the applicant No. 1 permitted the respondent No. 2 to reside in his house after alleged talaq and thereafter, thrown her to her father's house on 7.10.2012 because the applicants were going for Haj. Under such circumstances, due to different factual position, the order passed by the single Bench of this Court in case of Dashrath P. Bundela (supra) cannot be applied in the present case.

12. In the period from 13.5.2012 to 6.10.2012, if any harassment was done by the applicants then, existence of such harassment cannot be assessed by the defence documents. At present, the testimony of the respondent No. 2 and her witnesses cannot be brushed aside and therefore, prima facie it cannot be said that in that period, no offence u/s 498A of IPC is made out. It is possible that the applicants have ousted the respondent No. 2 on 7.10.2012 because they were going for Haj and such an act also amounts to harassment to the respondent No. 2. Hence, prima facie, it cannot be said that no offence punishable u/s 498A of IPC is made out against the applicants No. 1 to 3. The judgments passed by Hon'ble the Apex Court in cases of Geeta Mehrotra (supra) and Preeti Gupta (supra) cannot be applied in the present case due to factual differences. Law laid in case of Geeta Mehrotra (supra) is clear that inherent powers of this Court can be exercised, if prima facie no offence is made out against the accused persons, whereas in the present case, it cannot be said that no prima facie offence is made out against the applicants No. 1 to 3.

13. So far as the case of the applicants No. 4 and 5 is concerned, it is nowhere alleged in the FIR that after 13.5.2012, the applicant No. 5 had done any crime with the respondent No. 2. So far as the second marriage is concerned, there was no proposal directly from the applicant No. 5 to the respondent No. 2. According to the allegations, such proposal was given by the applicant No. 1 to the respondent No. 2 and therefore, it would be apparent that the respondent No. 2 never met the applicant No. 5 in the period started from 13.5.2012 upto 6.10.2012. Under such circumstances, no offence is made out against the

applicant No. 5 and the law laid in case of Preeti Gupta (supra) may be applied for consideration of the offence constituted against the applicant No. 5 that he was implicated in the matter because he was working as a compounder with the applicant No. 1 and he was also Muslim. Under such circumstances, the petition u/s 482 of the Cr.P.C. filed by the applicant No. 5 can be accepted.

14. Similarly, the respondent No. 2 has alleged much about the applicants No. 1 to 4 for the period which ended in July, 2010 but, as discussed above, such allegations are not correct. The conduct of the respondent No. 2 indicates that she had no harassment till 13.5.2012 and she came to the house of the applicants on her own. In the FIR, Ex. P/1, there is no specific allegation of harassment against the applicant No. 4 that she harassed the respondent No. 2 in any manner. Both the families are rich families and there was no harassment done by any of the applicants for demand of dowry. Similarly, there was no role of the applicant No. 4 to oust the respondent No. 2 on 7.10.2012. Under such circumstances, the law laid by Hon'ble the Apex Court in case of Preeti Gupta (supra) can be applied to the applicant No. 4 also. Now a days, it is the tendency of the wife to implicate all the family members of her husband in the crime unnecessarily. There is no specific allegation against the applicant No. 4 in the case and therefore, it is a fit case in which the crime registered against the applicant No. 4 may also be quashed.

15. The learned counsel for the applicants has submitted that no attempt of rape was done by the applicant No. 1 but, looking to the allegations made in the FIR, at present, it cannot be said that version told by the applicants is acceptable and the testimony of the respondent No. 2 may be brushed aside. Under such circumstances, it may be left for the trial Court to examine as to whether the charge u/s 376/511 of IPC, either directly or with help of section 34 of IPC, is made out against the applicants No. 1 to 3 or not. If the entire crime is not to be quashed then, it would be improper to vouch any view at this stage as to whether a particular offence is made out or not. After considering the documents of the defence, if the entire registration of crime is quashed then, it is alright otherwise, if crime is not quashed then, there is no need to emphasis by this Court that as to whether a particular crime is made out or not. Prima facie it cannot be said that no offence is made out against the applicants No. 1 to 3 and therefore, their petition u/s 482 of the Cr.P.C. cannot be accepted.

16. On the basis of the aforesaid discussion, the petition u/s 482 of the Cr.P.C. filed by the applicants No. 1 to 3 is hereby dismissed, whereas the petition for the applicants No. 4 and 5 is hereby accepted. Crime No. 1/2013 registered at Police Station Mahila Thana, Sagar against the applicants No. 4 and 5 is hereby quashed. No charge-sheet shall be filed against the applicants No. 4 and 5 and if it is already filed then, the trial Court shall drop their names in the list of accused persons. A copy of the order be sent to the Chief Judicial Magistrate, Sagar for delivering it to the trial Court.