
(2007) 08 AHC CK 0051
In the Allahabad High Court

Dr. Pawan Kumar Pathak, Dr. Shreedhar Pathak and Smt.
Sheela Pathak

APPELLANT

Vs

State of U.P. and Smt. Padmawati Devi

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2007) 08 AHC CK 0051

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application has been filed by Dr. Pawan Kumar Pathak Dr. Shreedhar Pathak and Smt. Sheela Pathak with a prayer to quash the proceedings of Criminal Case No. 11643 of 2006 State v. Dr. Pawan Kumar Pathak and Ors. arising out of charge sheet submitted in Case Crime No. 264 of 2006 under Sections 498A, 304B I.P.C. and 3/4 Dowry Prohibition Act P.S. Bhelupur district Varanasi pending in the court of learned Chief Judicial-Magistrate, Varanasi.

2. The facts of the case in brief are that in the present case, F.I.R. has been lodged by O.P. No. 2 Smt. Padmawati Devi, in Case Crime No. 264 of 2006 under Sections 304B, I.P.C. and Section 3/4 of Dowry Prohibition Act at P.S. Bhelupur district Varanasi on 7.6.2006 at about 3.30 p.m. in respect of the incident which had occurred on 22.4.2005 at unknown time at the house of the applicants. It is alleged that the deceased Dr. Asha Pathak wife of the applicant No. 1 Dr. Pawan Kumar Pathak was subjected to cruelty to fulfill the demand of dowry, the applicants were harassing the deceased for taking the land of the mother of the deceased, the mother of the deceased is a widow, poison was administered due to which she died on 22.4.2005 or 23.4.2005. The marriage of the deceased was solemnized with applicant No. 1 Dr. Pawan Kumar Pathak on 21.11.2000.

Thereafter the post mortem examination was prepared on 24.4.2005 the cause of death of coma as a result of the brain hemorrhage, in which the present F.I.R. was registered in pursuance of the order passed u/s 156(3) Cr. P.C. First the matter was investigated, thereafter the I.O. came to the conclusion that the applicants have committed the alleged offence and submitted the charge sheet dated 19.11.2006 in the court of learned C.J.M. Varanasi, the charge sheet was submitted for the offence punishable u/s 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act The learned magistrate Varanasi has taken cognizance on 20.12.2006. Thereafter the I.O. applied for doing further investigation u/s 173(8) Cr.P.C, the same was allowed by the learned C.J.M. Varanasi on 8.1.2007, the report of further investigation has also been submitted drawing the conclusion that the allegations made against the applicants could not be substantiated by the material collected by the I.O. but on the basis of the charge sheet dated 19.11.2006 the learned C.J.M. has taken cognizance and summoned the applicants to face the trial. Therefore it was requested to the court concerned that at the stage of trial all the witnesses examined during further investigation and the letter collected by the I.O. may also be examined as the witness of the prosecution and letter may also be proved. Being aggrieved from the criminal prosecution, the applicants have preferred this applications.

3. Heard Sri V.P. Srivastava, Senior Advocate, assisted by Sri Amit Kumar Srivastava, learned Counsel for the applicants, learned A.G.A. for the State of U.P. and Srj Manish Tiwari, learned Counsel for O.P. No. 2 Smt. Padmwati Devi.

4. It is contend by the learned Counsel for the applicants that the allegations made against the applicant in respect of the demand of dowry and subjecting the deceased to cruelty or harassment for the purpose of fulfilling the demand of dowry are absolutely false, baseless because there was no demand of dowry and the deceased was never subjected to cruelty or harassment to fulfill the demand of dowry. The death of the deceased is natural; she died due of her illness. The death is not unnatural even according to the post mortem examination report no ante mortem injury was found on the person of the deceased and the cause of death was due to coma as a result of brain hemorrhage. The viscera was also not preserved to ascertain any other cause of death as of poison. The post mortem examination report also shows that the death of the deceased was natural because the deceased was suffering from High Blood Pressure. All of sudden she became unconscious on 23.4.2005. She was shifted to Sri Ram Krishna Mission Hospital, Varanasi where attempts were made by the doctors to save her life but unfortunately she died, its information was given to the first informant. Thereafter, the inquest report was prepared and post mortem was conducted. According to the facts and circumstances of the case no offence under Sections 490A, 304B I.P.C. and 3/4 Dowry Prohibition Act is constituted. The applicants are innocent, they are husband, father in law and mother in law of the deceased respectively. They are commanding good reputation in the society but due to the ulterior motive or some other malicious reasons F.I.R. has been lodged against the applicants and illegal charge sheet has been submitted by the I.O. in hurry

without collecting proper evidence. Thereafter, the superior officer of the police passed order for doing further investigation for which permission has been obtained from the C.J.M. and proper further investigation has been done, report of further investigation has also been submitted in which the I.O. has drawn the conclusion that no evidence could be collected to substantiate the allegations made against the applicant. According to further investigation, the applicants have been falsely implicated in the present case because the death was natural, condition of the deceased became serious all of a sudden on 23.4.2005, she was taken to Sri Ram Krishna Mission Hospital, Varanasi, efforts were made by the doctors to save her life but she could not survive. The I.O. came to the conclusion that the cause of death was clearly mentioned by the doctor in the Post Mortem Examination Report that is why viscera was not preserved to ascertain the alleged cause of death due to poisoning the basis of the charge sheet dated 19.11.2006. The learned C.J.M. has taken cognizance that is why a request was made to examine the witness who have been interrogated in further investigation at the stage of trial and to consider the latter collected by the I.O. during further investigation. In such circumstances, the prosecution of the application is illegal because no offence is made out against them. Therefore, the proceeding Criminal case No. 11643 of 2006 u/s 498A, 304B I.P.C. and section Dowry Prohibition Act pending in the court of learned C.J.M. Varanasi may be quashed.

5. In reply to the above contentions it is submitted by the learned A.G.A. and the learned Counsel for the complainant that the deceased Dr. Asha Pathak has been murdered by the applicants by administering poison because the applicants were demanding the landed property of the mother of the deceased, who is a widow having no other heirs except the deceased Dr. Asha Pathak, the applicants were subjecting the deceased to cruelty and putting her on harassment for transferring the land of the mother of the deceased to the applicants to fulfill the demand of dowry the deceased was put on harassment on 22.4.2005 its information was given by the deceased to Sri Surendra Nath Pandey on his mobile in a weeping condition by uttering that in case her mother was not transferring the land to her husband and father in law, she will be killed by them. She was assured by Sri Surendra Nath Pandey that in respect of this issue the conservation shall be done on 23.11.2005 at the house of the applicants out on 23.4.2006 information was given to O.P. No. 2 that the applicants have administered poison to the deceased for the purpose of committing her murder. Thereafter she has been admitted in Ram Krishna Mission Hospital, on that information O.P. No. 2 and Surendra Nath Pandey came to the hospital where they found that the colour of the dead body was converted into black/blue. Thereafter, the O.P. No. 2 went to the police station Bhelpur and gave an application, the same was entered into the G.D., on her information, the inquest report was prepared. Thereafter, the post mortem was conducted. The post mortem examination report was not properly prepared due to the high influence of the applicant because applicants Nos. 1 and 2 are also doctors. They are very

powerful influential person even the viscera was not preserved to ascertain in the poison. The applicants have tried to influence the course of investigation also and successfully manage the report of further investigation, allegation has been made by O.P. No. 2 and witness Surendra Nath Pandey that under the influence of the applicants post mortem examination has not been fairly done and its report has not been properly prepared. It was prepared to save the skin of the applicants, in such situation no reliance can be placed at the post mortem examination report, but even according to the post mortem examination report in columns of brain the "words" point one hemorrhage is mentioned, which is contradicting of the cause of death as mentioned by the doctor as a result of brain hemorrhage, which shows that the death of the deceased was unnatural. The applicants have failed to establish that the cause of death was natural even during further investigation, it could not be explained that by which disease the deceased died or the deceased was suffering by which disease. The explanation given by the applicants stating that all of a sudden the deceased became unconscious, is not reliable at all. The applicants have tried to conceal the real cause of death only on the basis of the post mortem examination report the proceedings cannot be quashed.

6. It is further contended that the deceased has died within seven years of her marriage. There was demand of dowry and to fulfill the same she was subjected to cruelty, even one day prior to the death of the deceased she was subjected to cruelty or harassment,, its information was given on mobile by the deceased to Sri Surendra Nath Pandey who was relative of the deceased who was living in the same house of the mother of the deceased in a weeping condition that case the land is not transferred by her mother, to the applicants she shall be murdered, which shows that soon before her death the deceased was subjected to cruelty to fulfill the demand of dowry, on the basis of allegation made against the applicant prima facie offence under Sections 498A, 304B I.P.C. and Section 3/4 of Dowry Prohibition Act is made out. There is no illegality in filing the charge sheet and there is no illegality in taking cognizance by the learned C.J.M. concerned on the basis of the charge sheet submitted by the I.O. on the basis of the report of further investigation, proceedings cannot be quashed, it may be used for the purpose of corroboration or contradiction at the stage of trial.

7. There is no illegality in the prosecution of the applicants. The present application is devoid of merits. Therefore, it may be dismissed.

8. Considering the facts and circumstances of the case, submissions made by the learned Counsel for the applicants, learned A.G.A. and the learned Counsel for O.P. No. 2 and from the perusal of the record, it appears that on the basis of material collected by the I.O. a prima facie offence under Sections 498A, 304B I.P.C. and Section 3/4 of Dowry Prohibition Act against the applicants, is made out, on which the learned magistrate has taken cognizance. There is no illegality or irregularity in the submission of the charge sheet or the taking cognizance and summoning the applicants to face the trial for the offence punishable under

Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act and so far as the further report of the I.O. is concerned, it can be used only for the purpose of corroboration and contradiction at the stage of the trial, it shall not effect the order passed by the learned C.J.M. Varanasi. At this stage is it not proper to express view in respect of the Post Mortem Examination Report etc. because it can prejudice the subsequent proceedings. In the present case the Post Mortem Examination report is highly disputed, it cannot be adjudicated by this Court at this stage it shall be adjudicated at the stage of trial. It appears that the charge sheet submitted by the I.O. is not suffering from any illegality and the learned C.J.M. has not committed any error in taking cognizance and summoning the applicants on the basis of the charge sheet dated 19.11.2006 and there is no illegality in the prosecution of the applicants. Therefore, the prayer for quashing the criminal proceedings of Criminal Case No. 11643 of 2006 under Sections 498A, 304B I.P.C. and Section 3/4 Dowry Prohibition Act pending in the court of C.J.M. Varanasi is refused.

9. Accordingly this application is dismissed.