courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(2011) 08 RAJ CK 0146

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 893 of 2006

Ghisa Lal — APPELLANT

Vs

The Civil Judge (J.D.) and Judicial Magistrate (First Class) and Another — RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 125, 156(3), 200, 202, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 109, 120B, 406, 494, 498A

Citation : (2012) 3 RLW 2669

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Sudesh Bansal, for the Appellant;

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—The aforesaid misc. petition has been Tiled challenging the order dated 3.3.2006, passed by the learned Civil Judge (J.D.) & Judicial Magistrate (First Class), Kekri, District Ajmer, whereby the learned Magistrate has rejected the F.R. No. 1/2005 and has taken cognizance of offences under Sections 498A, 406, 120B & 494 IPC against the petitioner. The brief facts of the case are that the petitioner, Ghisa Lal was married to the respondent No. 2, Rameshwari in childhood. It appears that the marriage was never consummated and the petitioner-husband and the respondent-wife never lived together. However, the petitioner-husband in order to nullify the marriage, filed an application under the Hindu Marriage Act, which was decreed by the District Judge, Ajmer on 22.12.1984. After obtaining the decree of divorce, the petitioner married another lady. It has been informed to this Court that the decree of divorce was never challenged. Thereafter, the respondent No. 2 filed an application u/s 125 Cr.P.C. for seeking maintenance on 16.2.2001. The application was allowed by the Family Court on 23.10.2002 and a sum of Rs. 700/- per month was directed to be paid to the respondent No. 2 as

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-...

maintenance. It appears that the petitioner-husband came to know from some sources that the respondent No. 2 wife was living in adultery. On which, he started taking some steps to collect the evidence in this regard. When the respondent No. 2 came to know about this attempt of the petitioner, then she filed a complaint in the court of Judicial Magistrate (First Class) Kekri, Ajmer on 24.5.2004 which was forwarded to the Police for investigation u/s 156(3) Cr.P.C. In the complaint, it has been alleged that the complainant was married to the petitioner 25 years prior to the filing of the FIR. She has alleged that after the ceremony of ''muklawa'' she stated living with the petitioner in the village Khwas. It has been alleged that as she was illiterate and her in-law''s used to inflict cruelty upon her. It has also been alleged that the petitioner-husband used to taunt her that she was of a dark complexion and since he was an employee in the Bank, he would leave her and marry a beautiful woman. Ultimately, she has alleged that she was beaten and her ornaments were taken away and she was turned out of the house. It is further alleged that the petitioner-husband contracted marriage with another woman without divorcing her and no maintenance was being paid by the petitioner to her. She has further alleged that when the petitioner''s father expired in the year 2003, the complainant and her family members went to the house of the petitioner for paying condolence. But they were turned out of the house.

2. During the course of investigation of the said report, the Police investigated the matter thoroughly and all the evidence, regarding the marriage between the parties never having been consummated, regarding a customary divorce having been arrived at by making a payment of Rs. 50,000/- 15 to 16 years prior to the filing of the FIR and ultimately the decree of the divorce having been granted by the competent court was collected and the Police gave a Final report in the matter. The notices of the final report were issued to the complainant-respondent No. 2 and the complainant-respondent No. 2 submitted a protest petition and got examined herself and her witnesses in support of the protest. The learned Magistrate by the impugned order dated 3.3.2006 proceeded to take cognizance for the offences under Sections 498A, 406 and 494 IPC against the petitioner. Being aggrieved by the order impugned dated 3.3.2006, the petitioner has approached this Court seeking quashing of the impugned order and all subsequent proceedings thereto sought to be taken against him.

3. This Court by order dated 4.3.2008 issued notices to the respondent No. 2. The notices were duly served and the power was filed on her behalf. But it is noticed from the order-sheet dated 25.7.2011 that nobody appeared on behalf of the respondent No. 2. The matter was taken up on 10.8.2011 and on that date also nobody appeared on behalf of the respondent No. 2 on which the petitioner was heard finally.

4. The learned counsel for the petitioner has submitted that the impugned criminal proceedings are totally motivated and malafide. The Police collected complete and unimpeachable evidence regarding the termination of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…

matrimony between the petitioner and the respondent No. 2 by the competent court way back in the year 1984 and thus, the FIR registered after 20 years of the said decree of divorce could not be said to be anything, but an abuse of the process of the court. He has further submitted that the evidence has been brought on the record, which shows that the petitioner and the respondent No. 2 were married in childhood and thereafter they never lived together. Therefore, there could not have been any occasion for the petitioner to have harassed the respondent No. 2 on the ground of bringing less dowry. It has also been submitted that the respondent No. 2 started living in adultery on which the petitioner started making an inquiry and being unsettled by the aforesaid inquiry, the respondent No. 2 filed the FIR against the petitioner. It has also been submitted that the Police gave a final report in the matter but the learned Magistrate without considering the consequences of the decree of divorce between the parties has mechanically taken cognizance against the petitioner. The non-application of mind is disclosed from the fact that though the petitioner had married after obtaining a decree of divorce, yet the cognizance has been taken against him for the offence u/s 494 IPC. The learned counsel has relied upon the decision of the Hon''ble Apex Court rendered in the case of Sunder Babu & Ors. vs. State of Tamil Nadu (2009 RCC (SC) 2009).

5. I have heard the learned counsel for the petitioner and have considered the record annexed to the petition as well as the impugned order.

6. The undisputed facts which are disclosed from the aforementioned discussion are that the parties were married in their childhood. Though there is a dispute regarding the consummation of the marriage, but the conclusion of the investigation was that the parties hardly lived together. There is unimpeachable evidence by way of the decree of divorce whereby the matrimony between the parties was terminated way back in the year 1984. Thus, the irrefutable conclusion which can be drawn from the above set of circumstances is that the petitioner and the respondent No. 2 hardly had the occasion to live together. The complainant-respondent No. 2, in her statement recorded under Sections 200 and 202 Cr.P.C., has given out her age in the year 2006 as 35 years. Thus, in the year 1984 when the decree of the divorce was granted, she would have been only 12 years of age. Thus, the contention of the petitioner that the spouses parted their ways in the childhood itself seems to be logical. When the husband and wife never lived together, then there is no question of the petitioner harassing or humiliating the complainant-respondent No. 2 on the ground of bringing less dowry.

7. The Hon''ble Apex Court in the decision of Sunder Babu, referred to supra, was dealing with almost a similar situation in which, the FIR was filed just before the decree of divorce. Though, in the aforesaid case, the decree of divorce was granted after the FIR, but in the present case the situation is otherwise. Herein the decree of divorce was granted in favour of the petitioner almost 20 years prior to the filing of the FIR and the Police has taken the decree on record. The

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…

decree of divorce was never challenged and as such once the matrimony between the husband and wife was terminated 24 years prior to the decree of divorce, then permitting a prosecution of the husband for the offences under Sections 498A, 406 and 494 IPC is absolutely an abuse of the process of the Court.

8. The Hon''ble Supreme Court in its landmark decision rendered in the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, has held as under:

29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:

498-A. Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purposes of this section, ''cruelty'' means:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

30. It is a matter of common experience that most of these complaints u/s 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complainants. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint u/s 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complainant should land to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…

consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband''s close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband''s relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon''ble Minister for Law and Justice to take appropriate steps in the larger interest of the society.

9. Again in the case of Priya Vrat Singh vs. Shyam Singh Sahai (2009 SCS 709), the Hon''ble Apex Court had an occasion to deal with almost a similar situation. The facts of the case are narrated hereinunder:

Daughter of the respondent namely Madhulika Singh was married to appellant No. 1 Priya Vrat Singh. According to the appellants, Madhulika stated behaving rudely with her husband and his family members as Priya Vrat was unemployed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…

Tension between two reached to such an extent that Madhulika tried to commit suicide on 7.3.1992. She thereafter started giving repeated threats to commit suicide and appellant was seriously harassed. From 16.7.1992 onwards appellant No. 1 and Madhulika started living separately in the same house. However, shortly thereafter Madhulika left her matrimonial house and started living in the parental house. In the meantime, appellant No. 1 filed a suit in Original Suit No. 188 of 1992 in the Civil Court at Barabanki for dissolution of marriage between him and Madhulika on the ground of cruelty and harassment meted out to him by Madhulika. The said suit was decreed on 1.1.1993 ex parte in favour of appellant No. 1. Time for filing appeal against the ex parte decree dated 1.1.1993 u/s 28(4) of the Hindu Marriage Act, 1956 (in short the ''Marriage Act'') expired on 31.1.1993. On 21.2.1993 after dissolution of marriage, appellant No. 1 re-married one Neha alias Sunita at Jalgaon in Maharashtra on 2.3.1993. On 6.12.1994 respondent filed a private complaint before the Chief Judicial Magistrate, Varanasi wherein all the appellants were arrayed as accused persons. It was alleged that on 21.2.1993 appellant No. 1 had re-married in Sankat Mochan Mandir, Varanasi. Allegations of dowry harassment were also made. It was submitted that the marriage attracted punishment under Sections 494, 120-B and 109, IPC and Sections 3 and 4 of the Dowry Act. On 1.6.1995 learned Special CJM, Varanasi issued summons.

10. Thus, it is revealed that the facts of case of Priya Vrat Singh, referred to supra, are exactly identical with the present case. In the aforesaid case, the Hon''ble Apex Court quashed the proceedings holding the same to be an abuse of process of the court. This Court cannot conclude anything less, but that the complaint is absolutely vaxicious and malafide. The complaint is actuated with malice and has been filed in order to defend the ends of justice. The Hon''ble Apex Court in the case of Priya Vrat Singh while dealing with the powers of the High Courts u/s 482 Cr.P.C. has held as under:

6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of Justice on the principle "quando lex aliquid alicui concedit, concedere videture et id sine quo res ipsa esse non potest" (when

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…

the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, moreso when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material of course,

no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage, (See: Janata Dal Vs. H.S. Chowdhary and Others, ; Dr. Raghubir Sharan Vs. The State of Bihar, and Minu Kumari and Another Vs. The State of Bihar and Others, .

8. The present case appears to be one where the category 7 of the illustrations given in State of Haryana and others Vs. Ch. Bhajan Lal and others, is clearly applicable.

11. Tested on the touchstone of the aforesaid decisions of the Hon''ble Apex Court, this Court is of the opinion that the complaint and the prosecution of the petitioner does not stand to scrutiny at all and the same having been actuated with the malice and also having been filed after undue deserve to be quashed.

12. As such, the misc. petition is, hereby, allowed and the order dated 3.3.2006 passed by the Civil Judge (Jr. Div.) and Judicial Magistrate (First Class), Kekri, District Ajmer, taking cognizance against the petitioner for the aforesaid offences and all the proceedings subsequent thereto sought to be taken against the petitioner are, hereby, quashed. The stay petition also stands disposed of.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ghisa-lal-appellant-hash-the-civil-…