

(2003) 07 AHC CK 0130

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 652 of 2000

Gomti Prasad Dubey and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 07 AHC CK 0130

Hon'ble Judges : R.C.Pandey, J

Final Decision : Allowed

Judgement

R.C. Pandey, J.—This petition under Section 482 Cr. P.C. has been filed for quashing complaint Case No. 1191 of 1999, under Sections 406, 504 and 506 IPC of Police Station Kotwali, District Barabanki, Pushpa Devi v. Ajeet Dubey and others, pending in the Court of J.M.I., Barabanki.

Heard learned Counsel for the parties.

2. Brief facts giving rise to this petition are that opposite party No. 3 Smt. Pushpa is the wife of petitioner No. 4 and other petitioners are fatherinlaw, Jeth and Jethani of opposite party No. 3. Opposite party No. 3 lodged an FIR against petitioners 1 and 4 on 581998 at Police Station Kotwali, District Barabanki, which was registered as case Crime No. 845 of 1998, under Sections 498A, 323 and 506 IPC and 3/4 Dowry Prohibition Act (Annexure 5 to the petition). On this FIR, petitioners 1 and 4 were arrested and sent to Jail and thereafter, were released on bail by learned Chief Judicial Magistrate, Barabanki. During the pendency of said trial, opposite party No. 3 filed complaint case No. 1191 of 1999 against the petitioners in the Court of Judicial Magistrate I, Barabanki and in the said case, nonbailable warrant of arrest was issued against the petitioners (Annexures 1 and 2 to the petition). This subsequent complaint case was filed on 1771999. From FIR (Annexure No. 5) and complaint case (Annexure No. 1), it is clear that the allegations in both the cases are almost the same. The petitioners have been forced to face two trials for the same offences. In the FIR petitioners 1 and 4

only were an accused whereas in the subsequent complaint case, the petitioners 2 and 3 were also falsely implicated to harass the entire family members. Petitioner No. 4 had filed a suit under Section 12 of the Hindu Marriage Act in the Family Court, Lucknow for dissolving the marriage and opposite party No. 3 filed Writ Petition No. 656 of 2000 (MB) which too was finally disposed of by this Court by an order dated 1422000 (Annexure No. 6). In this writ petition, opposite party No. 3 has clearly stated before this Court that she had no objection in the dissolution of her marriage. Consequently, learned Judge, Family Court finally disposed of the suit for dissolution of marriage by order dated 732000 and the marriage of opposite party No. 3 with petitioner No. 4 was dissolved. No appeal was preferred against this order of dissolution of marriage and thus, this order has become final.

3. The submission of learned Counsel for the petitioners is that simply to harass the entire family members, this subsequent complaint case has been filed on the same allegation and this is a clear misuse of the process of the Court. It was also submitted that there was no demand at all for additional dowry from opposite party No. 3 or from her father. No demand for return of articles as alleged was ever made. It was further submitted that if any property is alleged to have been given as dowry, opposite party No. 3 could have claimed it in the suit pending before the learned Judge, Family Court or could have filed separate suit for refund of alleged Stridhan and the articles given in the dowry. The subsequent complaint case was filed during the pendency of civil suit under Section 12 of Hindu Marriage Act and complaint case was filed after a gap of about a year and entire proceedings were liable to be quashed including the complaint.

4. On the other hand, the submission of learned Counsel for opposite party No. 3 is that the first FIR was in respect of separate incident and the incident mentioned in the complaint case, which was subsequently filed, was also different.

5. After considering the submission made by the learned Counsel for the parties, I am of the view that the submission made by the learned Counsel for the opposite party No. 3 has no force. I have carefully scrutinize the first FIR lodged on 581998, which shows that whatever incident took place that took place on 381998 and in this FIR the only allegation is that opposite party No. 3 was being tortured for additional dowry by the petitioners 1 and 4 and further she was assaulted by the petitioners 1 and 4 only. There was nothing in the said FIR to indicate that her alleged. Stridhan and the property given in the dowry has been retained and not returned to her. Further from a perusal of the complaint case which was filed on 1771999 after gap of more than one year shows that on 381998, petitioner No. 4 alone brought opposite party No. 3 to her father's house and demanded additional dowry which was not accepted by the father of opposite party No. 3 and when father of opposite party No. 3 left for his office, petitioner No. 4 assaulted her. This averments clearly goes to show that whatever incident took place that took place on 381998.

6. In the complaint case a new incident of 6121998 has been introduced. No FIR regarding this incident was lodged soon after the alleged incident. Even complaint case was filed after a gap of more than six months. All these circumstances clearly go to indicate that entire complaint case was false and was filed with the sole purpose of harassing the petitioners.

7. As already mentioned, the divorce petition was pending in the Court of Judge, Family Court. Opposite Party No. 3 failed to appear before the Family Court for the reason best known to her. No demand for return of alleged stridhan was made by the opposite party No. 3 in the said proceedings. The marriage has already been dissolved and the said order of dissolving marriage has become final between the parties. All these circumstances, as urged by the learned Counsel for the petitioners, go to show that this complaint case has been filed only to harass the petitioners and this is clearly an abuse of the process of Court. If all the petitioners were torturing opposite party No. 3, then they would have also been made an accused in the first FIR lodged under Sections 498A, 323, 506 and 3/4 Dowry Prohibition Act. Petitioners 2 and 3 were also made an accused in the complaint case. Article 20 (2) of the Constitution of India clearly shows that no person shall be prosecuted and punished for the same offence more than once. If there is any stridhan in the hands of the petitioners as alleged then opposite party No. 3 could have claimed it in the divorce petition which was pending before the Judge, Family Court or to have been filed a suit in the competent Court for return of alleged stridhan and articles alleged to have been given in the dowry.

8. Considering all the facts and circumstances, as observed above, the complaint case was baseless and this subsequent complaint case was an abuse of the process of Court and the entire proceedings of the complaint case were liable to be quashed as urged by the learned Counsel for the petitioners.

9. Accordingly, the petition is allowed. The complaint case No. 1191 of 1999 under Sections 406, 504, 506 IPC of Police Station Kotwali, District Barabanki pending in the Court of Judicial MagistrateI, Barabanki and the entire proceedings of the said complaint case are quashed.