
(2015) 02 RAJ CK 0102
In the Rajasthan High Court
Case No : Cr. Misc. Petition No. 2893/2013

Hari Ram Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 498A, 498-A

Citation : (2015) CriLJ 2000 : (2015) 4 RLW 2950 : (2015) 2 WLN 251

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : Deepak Menaria, for the Appellant; O.P. Rathi, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—This criminal misc. petition under section 482 CrPC has been filed on behalf of the petitioners with a prayer for quashing the FIR No. 123/2011 dated 12.11.2011 of Women Police Station, Udaipur. The FIR has been registered at the instance of respondent No. 2, who happened to be daughter-in-law of the petitioner Nos. 1 and 2 and sister-in-law of petitioner No. 4. The petitioner No. 3 is the husband of petitioner No. 4.

2. In the FIR, the respondent No. 2 has stated that her marriage was solemnized with Sunil Kumar (hereinafter referred to as "accused No. 1") son of petitioner Nos. 1 and 2 on 07.05.2004 in Udaipur. It is further stated in the FIR that at the time of marriage of the respondent No. 2 with accused No. 1, other accused-persons had informed that he is a Mechanical Engineer working in Delhi and earning a very handsome salary and on believing that statement of the accused-persons, the father of respondent No. 2 gifted gold ornaments weighing 30 tolas worth Rs. 8,00,000/- and other dowry items of Rs. 5,00,000/- including cash amounting to Rs. 4,00,000/-. It is further alleged that in the marriage, the father of the respondent No. 2 also spent Rs. 5,00,000/- in hosting the in-laws of the

respondent No. 2 and their other relatives.

3. In para No. 3 of the complaint, it is alleged that after her marriage, when the respondent No. 2 started living with the accused-persons at their house in Delhi, all the accused-persons used to taunt her for not bringing sufficient dowry. They used to take work from the respondent No. 2 as bonded labour and never allowed her to mingle with neighbours and also did not allow to talk on telephone with her parents.

4. In para No. 4 of the complaint, it is stated that in February, 2005, accused No. 1 went to America leaving the respondent No. 2 at her in-laws house and after three and a half months, she had joined him in America. It is alleged that in America, the accused No. 1 used to quarrel and assault her. The allegations regarding illicit relations of accused No. 1 have also been levelled.

5. In para No. 5 of the complaint, it is alleged that in the year 2006 when respondent No. 2 was pregnant, torture upon her was increased and accused No. 1 created pressure upon her for abortion. In para No. 6, it is contended that when the mother of the respondent No. 2 had visited her in America on her delivery, the accused No. 1 confessed his mistake and gave assurance to her mother that he would not ill-treat her.

6. In para No. 7, it is alleged that after returning of her mother from America, the accused No. 1 again started harassing and torturing her and due to this, the respondent No. 2 had to file a petition in a local court of Maryland, America on 08.06.2010 seeking protection of herself and her son. The local Court of America passed an order on 21.06.2010 and directed the accused No. 1 not to harass her physically or mentally for a period of one year. It is alleged that the accused No. 1 and other accused persons created pressure upon her and her family members to withdraw the case. In para No. 8, it is alleged that flouting the order of local Court of America, the accused No. 1 again started harassing the respondent No. 2 and ultimately on 17.01.2011, sent her from America to India.

7. In para No. 9 of the complaint, it is alleged that on 19.01.2011, when she reached Delhi Airport, she made a telephone call to her in-laws, however, all the petitioners had stated that if she wants to remain their daughter-in-law, she has to bring Rs. 1 crore as a dowry, otherwise, they would remarry the accused No. 1 with someone else. It is further alleged that when the respondent No. 2 gave reference of her son Arnav, they refused to keep him with them and, therefore, respondent No. 2 had to move to Udaipur.

8. In para No. 10 of the complaint, it is stated that after reaching Udaipur, she tried to maintain relation with her in-laws and also asked the accused No. 1 for his consent to get the passport of their son renewed but the accused No. 1 has refused to give his consent. In para No. 11, it is alleged that the accused-persons are regularly giving her threatening from Delhi and America on telephone and are also demanding dowry to the tune of Rs. 1 crore. In para 12, it is alleged that in January, 2011, all the accused-persons had misappropriated her

ornaments and all dowry items and despite request to give back the same, they refused to do so and, therefore, all the accused-persons have committed offences punishable under sections 498A and 406 IPC.

9. The police, after investigation into the allegations levelled in the FIR, has filed a final report on 13.03.2012 while concluding that none of the instances, mentioned in the impugned FIR has taken place at Udaipur and, therefore, the police of Udaipur has no jurisdiction to investigate into the allegations levelled in the FIR. Later on, Additional Chief Judicial Magistrate No. 2, Udaipur on 09.10.2013 had passed an order in FR No. 7/2012 and observed that the allegations levelled in the FIR give a recurring cause of action to the complainant and, therefore, the FIR filed by the petitioner is maintainable at Udaipur also. Pursuant to the directions given by the trial court, the police has continued with the investigation in the impugned FIR and being aggrieved with the same, the petitioners have filed this criminal misc. petition with a prayer for quashing the impugned FIR.

10. Learned counsel for the petitioners has argued that from bare reading of the contents of the FIR, prima facie no offence is made out against the petitioners. It is contended that it is an admitted position that the respondent No. 2 was living with her husband-accused No. 1 in America since 2005 and returned back to India on 19.01.2011 and straightway proceeded to Udaipur and from this, it is clear that she never stayed with the petitioners at any point of time after 2005, therefore, offence under section 498A IPC is not made out against the petitioners. It is contended that the allegations levelled in the FIR against the petitioners are vague as no specific role has been assigned to any of the accused in the complaint. It is contended that there is no mention in the FIR that custody of Stridhan of the respondent No. 2 was ever entrusted to the petitioners and, therefore, there is no question of misappropriation of the same, hence, no offence under section 406 IPC is made out against the petitioners. Learned counsel for the petitioners has submitted that respondent No. 2 may have some dispute with her husband but the petitioners in no manner are involved in commission of any crime. It is contended that simply because the fact that the petitioners are relatives of the accused No. 1, they have been falsely implicated in the impugned FIR.

11. The learned counsel for the petitioners has placed reliance on a decision of Hon"ble Supreme Court rendered in Preeti Gupta and Another Vs. State of Jharkhand and Another, and submitted that Hon"ble Supreme Court has also taken note of the fact that the tendency of implicating immediate relations in a matrimonial matter is increasing and deprecated the said tendency.

12. On the strength of the above arguments, learned counsel for the petitioners has prayed that the impugned FIR against the petitioners may kindly be quashed.

13. Per contra, learned Public Prosecutor as well as learned counsel for the respondent No. 2 have opposed the prayer of counsel for the petitioners and

argued that from bare reading of the contents of the FIR prima facie case is made out against all the accused-persons and, therefore, no interference is called for.

14. Learned counsel for the respondent No. 2 has also argued that it is not expected from the complainant to narrate all the incident of torture and demand of dowry running from the period of six years in the FIR and it is sufficient for the complainant to state that all the accused-persons have demanded dowry from time to time. It is also contended that in para No. 3 and thereafter in para Nos. 9, 10, 11 of the complaint, it is specifically alleged that all the accused-persons have demanded dowry from the respondent No. 2 and her father and misappropriated her Stridhan.

15. Learned counsel for the respondent No. 2 has also argued that the Hon''ble Supreme Court in series of decisions has held that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It is contended that the Hon''ble Supreme Court has held that the test for the purpose of quashing FIR is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case or not and in this case, from bare reading of the FIR, prima facie case is made out against the petitioners and, therefore, no interference is called for while exercising powers under section 482 CrPC.

16. Learned counsel for the respondent No. 2 has placed reliance on decisions of Hon''ble Supreme Courts rendered in Banhisikha Roy (now Sengupta) Vs. Somnath Roy and Others, ; Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, ; Rishipal Singh Vs. State of U.P., and; N. Soundaram Vs. P.K. Pounraj,

17. Heard learned counsel for the rival parties and perused the impugned FIR.

18. There is no dispute about the principle of law laid down by the Hon''ble Supreme Court in catena of decisions regarding the powers of High Court in quashing the FIR while exercising jurisdiction under section 482 CrPC. It is held that object of section 482 CrPC is to prevent abuse of process of court and to secure ends of justice. The Hon''ble Supreme Court has also held that the High Court needs to be circumspect and exercise power under section 482 CrPC in exceptional circumstances depending upon facts of each case. It is further held that if allegations leading to criminal prosecution prima facie do not disclose, then power under section 482 CrPC can be exercised.

19. The main principles regarding exercise of jurisdiction under Section 482 CrPC to quash complaints and criminal proceedings have been stated and reiterated by Hon''ble Supreme Court in several decisions. To mention a few-- Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, ; State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, ; Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd.,

Calcutta, ; State of Bihar Vs. Rajendra Agrawalla, , Rajesh Bajaj Vs. State NCT of Delhi and Others, ; M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, , M. Krishnan Vs. Vijay Singh and Another, and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, . The principles relevant are as under:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

20. Now the question comes whether any prima facie case for commission of any cognizable offence is made out against the petitioners or not.

21. From bare reading of the FIR, it is clear that after her marriage in May, 2004, the respondent No. 2 lived in Delhi with her in-laws up to June, 2005. Thereafter,

she joined her husband in America and remained there up to January, 2011. There is no allegation to the effect that the petitioners have ever visited America during the period when the respondent No. 2 was residing in America with her husband. Respondent No. 2 had returned to India on 19.01.2011 and straightway went to Udaipur at her father's house, though, it is alleged that when she contacted her in-laws on telephone on 19.01.2011, all the accused-persons had asked her to bring Rs. 1 crore as dowry. It has nowhere been contended in the FIR that which of the accused had asked her on telephone to give the dowry. It is not possible that all the accused-persons together asked the respondent No. 2 on telephone to give the dowry.

22. In para No. 12 of the FIR, the respondent No. 2 has alleged that in the first month of year 2011, all the accused persons with common intention have kept her ornaments, dowry items and demanded dowry and when she refused for the same, she was thrown out of house after giving a beating. It is noticed that in para No. 9 of the FIR, it is alleged that after reaching Delhi Airport from America, respondent No. 2 made a phone call to her in-laws but they demanded dowry and refused to keep her with them, then she went to Udaipur. This Court is of the opinion that when the respondent No. 2 had not visited the petitioners' house after returning from America on 19.01.2011, how the allegations levelled in para No. 12 of the FIR regarding demand of dowry, assault and misappropriation of ornaments and dowry articles can be believed or taken as true.

23. In the whole complaint, the respondent No. 2 has simply alleged that all the accused-persons have demanded the dowry from her and her father on telephone, however, no specific role of any of the accused persons has been mentioned. As such, from the bare reading of the FIR, no offence punishable under sections 498A and 406 IPC is made out against the petitioners.

24. However, from bare reading of the complaint, it is clear that specific allegations of cruelty and harassment are levelled against the accused No. 1 and for that respondent No. 2 had to approach a local court in America seeking protection from her husband regarding her ill-treatment. This fact itself shows that prima facie case may be made out against the accused No. 1, however, this Court is of the opinion that other accused-persons have been implicated by the respondent No. 2 only for the reason that they are immediate relatives of accused No. 1.

25. Hon"ble Supreme Court in Preeti Gupta and Anr. vs. State of Jharkhand and Anr. (supra) has observed as under:

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

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 under section 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 complaints. 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 under section 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 complaint should not lead to multiple cases.

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

(Emphasis supplied)

26. In *Rishipal Singh vs. State of Uttar Pradesh* (supra), the Hon"ble Supreme Court has observed as under:

"we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold." 27. In view of the above discussions, this Court is convinced that in the case in hand, there is over implication of the petitioners in the complaint. The petitioners cannot be said to be involved in commission of any crime as per the contents of the FIR. Hence, it is a fit case wherein this Court can exercise inherent powers to quash the impugned FIR qua the petitioners.

28. Resultantly, this criminal misc. petition is allowed. The impugned FIR No. 123 dated 12.11.2011 lodged at Women Police Station, Udaipur qua the petitioners (1) Hari Ram Sharma, (2) Smt. Maya Devi, (3) Anil Kumar and (4) Smt. Meenu and all other ancillary proceedings are hereby quashed. The police may continue the investigation against remaining accused.

29. Stay petition stands disposed of.