

(2020) 11 JH CK 0158

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2007 Of 2020

Jai Hind Oraon

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 498A
Code Of Criminal Procedure, 1973 — Section 125, 202

Citation : (2020) 11 JH CK 0158

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Rahul Kr. Das, Someshwar Roy

Final Decision : Dismissed

Judgement

The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 11.00 A.M. They have no complaint in respect to the audio and video clarity and quality.

This case was listed/ supposed to be listed before the Lawazima Board for passing an order in respect of the defects, pointed out by the office.

Considering the pandemic situation where the Court has minimized the footfall of the lawyers and their Clerks in the Court, this court felt proper to get

all the cases listed before this Court so that the defects can be looked into at this stage only. Thus, this case is listed today before this Court directly.

Learned counsel for the petitioner prays to ignore the defects and take up the matter on merits.

Defects stand ignored for the present.

Heard learned counsel for the petitioner at length. In this application, the petitioner prays for quashing the order dated 16.07.2019, by which

cognizance of the offence punishable under Section 498 A of the Indian Penal Code, has been taken and, thereafter, petitioner, who happens to be the husband, has been summoned to appear.

Learned counsel appearing for the petitioner submits that the order is cryptic, vague and nothing specific has been mentioned as to what are the

materials against this petitioner. He submits that the wife/complainant had earlier approached the Mahila Police Station for redressal of her grievance

where the Mahila Police Station tried to settle their dispute wherein the wife clearly stated that she is not willing to reside with her husband, i.e. the

petitioner and she stated that she is not being maintained by him also. He submits that at Mahila Police Station the matter was dropped as the

complaint was not registered and the same was dropped with a suggestion to approach the appropriate Court. Counsel for the petitioner further

submits that from the recording made by the Mahila Police Station it would be crystal clear that the only grievance of the wife/complainant is in

respect of the maintenance and that being so, the wife should approach the appropriate court by filing an application under Section 125 Cr. P.C. He

further submits that instead of filing an application under Section 125 Cr.P.C., she has filed this case under Section 498 A of the Indian Penal Code.

He further submits that the main grievance of the wife/complainant is non-payment of any maintenance amount, but now the petitioner is already

paying the maintenance amount to her. He further submits that from perusal of the entire complaint, there is no specific allegation against this

petitioner, rather the allegation is general and omnibus against all but the court below has only taken cognizance and has issued summon to this

petitioner just because this petitioner is the husband, leaving out the other in-laws. He further submits that no specific date, time and manner of torture

have been mentioned in the complaint. He further submits that there is serious discrepancy in the statements of the witnesses, which were recorded

under Section 202 Cr.P.C. with the complaint petition. He further submits that the marriage had taken place between the parties after birth of the first

child as there was love affair between them. He submits that after the marriage, the parties went and started living in Hasimara in West Bengal and if

there is any torture at West Bengal, she should have filed a complaint or application at West Bengal but she did not do so, which clearly suggest

nothing has happened with the informant. He states that only for the purpose of jurisdiction, it has been alleged in the complaint that torture had taken place at Simdega. He, by referring to the statements of the inquiry witnesses, further submits that one of the inquiry witnesses has stated that till six years the wife was kept in proper manner but in the complaint it has been mentioned that after one month of the marriage, torture started. This is sufficient to show that a false case has been lodged. As per the complaint one of the children is residing with the wife and another is with the husband, which suggests falsity of the case. The inquiry witnesses have also not stated anything as to when and how the torture has taken place. He lastly submits that the petitioner is working in BSF and is posted in the Border and has not even returned in the State of Jharkhand and stayed with the wife so as to attract a penal provision and to give rise to the jurisdiction within the State of Jharkhand.

In this application, the petitioner has prayed for quashing the order taking cognizance and the order issuing summon. Cognizance has been taken under Section 498 A of the Indian Penal Code. It is an admitted case that the petitioner is the husband. To look into the allegation, I have gone through the complaint petition. Paragraphs 4, 5 & 6 of the complaint petition are worth to mention, which is quoted herein below:-

4. That since the day of marriage, the husband and in-laws have started taunting over the complainant for the gift items, clothes bought by the complainant from her guardians and just after lapse of one month of marriage the husband and other in-laws, i.e. accused No. 2 and 3 have started demanding more Rs. 1 lac cash, Motor Cycle and some wooden furniture from the complainant as dowry.

5. That on denial of the said demands of the accused persons, the complainant has been badly beaten by them and they started torturing the complainant both physically and mentally like taunting at every point, not providing food, locking in separate room etc.

6. That finally on April 2018 after beating her badly, the all accused persons have dragged the complainant out of their house thereafter this complainant has come to her parent's house.

From para-4 I find that there is specific allegation against all the accused persons of demanding dowry and torture. Cash amount of Rs. one lac was

demanded and a Motorcycle was also demanded alongwith wooden furniture. Further, in Para-5 it is specifically mentioned that due to non- fulfillment of the demand of dowry, the complainant was badly beaten and tortured both physically and mentally. She was not even provided food and she was locked in a separate room. In Para-6 it is stated that in April 2018, she was beaten and was driven out of her matrimonial house. It is also stated therein that the accused persons used to visit the paternal home of the complainant at Ratu, Jharkhand and used to demand dowry. Not only in the complaint petition but in the Solemn Affirmation also the complainant has stated that she was tortured by her in-laws and dowry was demanded. She has supported the statement in the complaint petition that cash of Rs. 1 lakh, motorcycle and wooden furniture were demanded as dowry. She has stated that she was tortured and she was not even given food. The inquiry witnesses also stated that torture was meted upon the complainant.

Aforesaid facts clearly make out a case to take cognizance under Section 498 A of the Indian Penal Code. So far as the noting of Mahila Police Station is concerned, I am of the opinion that the same has got no relevance in the criminal case. First of all, the Mahila Police Station has no jurisdiction to direct the parties to approach the particular court when the wife had approached Mahila Police Station with specific allegation of torture. It was the duty of Mahila Police Station to register the case. By not doing so they have exceeded their jurisdiction. Findings of Mahila Police Station should not and cannot be looked into by any criminal court.

So far as the claim of the petitioner that the allegation against all the accused persons is same, but the cognizance has only been taken against him is concerned, which according to the petitioner, shows falsity of the case, is not accepted by this Court. What are the allegations against all the accused persons, this Court is not making any comment in respect of the other accused persons because the complainant has not come against the order taking cognizance and she has not raised any grievance as to why summon has not been issued against other accused persons. Since, it is the petitioner, who has approached this Court challenging the order taking cognizance, this Court is limiting its finding on the merits of the case of the petitioner.

As stated earlier, I find that there is sufficient material and element of torture and demand of dowry, which constitutes an offence under Section 498

A of the Indian Penal Code. So far as the claim of the petitioner that no specific dated, time and manner has been given is concerned, I hold that it is

not necessary to give date and time of each and every occurrence, which has taken place. Gist of occurrence which has taken place is enough for

taking cognizance if at all cognizable offence is made out.

So far as the argument with regard to jurisdiction is concerned, I find that there is specific allegation that the amount was demanded and torture has

taken place within the territorial jurisdiction of the State of Jharkhand. Thus, the court below has rightly taken cognizance of the offence as aforesaid.

Considering the aforesaid fact, I find no merit in this application. Accordingly, this criminal miscellaneous petition stands dismissed.