
(2013) 01 JH CK 0041

In the Jharkhand High Court

Case No : Criminal M.P. No. 1381 of 2012

Janakdeo Prasad, Malti Devi and Dolly

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498(A), 498A

Citation : (2013) 1 JLJR 500

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Mukesh Kumar Sinha, for the Appellant; Rashmi Kumar for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the opposite party no. 2. This application has been filed for quashing of the entire criminal proceeding of Complaint case no. 1948 of 2010 including the order dated 16.5.2011 passed by the then Sub-divisional Judicial Magistrate, Ranchi whereby and whereunder learned Magistrate took cognizance of the offences punishable u/s 498A/ 323 of the Indian Penal Code and also u/s 3/ 4 of the Dowry Prohibition Act.

2. Before advertng to the submissions advanced on behalf of the parties, case of the complainant needs to be taken notice of.

3. It is the case of the complainant that the complainant having married with the accused Mukul Prasad when came to her in-law's place, accused persons started taunting and humiliating her for bringing insufficient dowry. They also put forth demand of car.

4. Further it has been alleged that the accused no. 2 (petitioner no. 1) on one pretext or other created such circumstance/situation that the complainant had to

leave her matrimonial home only after four days of the marriage. She returned to her parents home at Ranchi. Thereafter an attempt was made by the parents of the complainant so that accused persons may take the complainant to her in-law's place but they never cared to take the complainant to her in-law's place, rather they insisted upon to get the demand fulfilled.

5. On such complaint, cognizance of the offences as stated above has been taken against the petitioners, who happen to be the father-in-law (petitioner no. 1), mother-in-law (petitioner no. 2) and married sister-in-law (petitioner no. 3) and also against other accused persons. That order is under challenge.

6. Mr. Mukesh Kumar Sinha, learned counsel appearing for the petitioners submits that it is the case of the complainant itself that the complainant left her in-law's place after four days of the marriage and that though there has been allegation of demand of dowry but there has been absolutely no allegation of subjection to cruelty and hence, no offence can be said to have been made out u/s 498A of the Indian Penal Code against the petitioners.

7. In this respect, it was further submitted that there has been no specific allegation even of putting forth of demand against these petitioners, rather the allegations what have been put in the complaint those are omnibus and as such, it would be abuse of the process of law if the petitioners are allowed to be prosecuted.

8. Further it was submitted that so far as the petitioner no. 3 is concerned, she happens to be a married sister-in-law of the complainant and generally she resides at Gaziabad (U.P.) with her husband and therefore, it is not expected from her that she would harass the complainant when she rarely visits the place of her father and as such, her case needs to be quashed, in view of the decision rendered in a case of Preeti Gupta and Another Vs. State of Jharkhand and Another, wherein the Hon'ble Supreme Court has been pleased to observe that anxious consideration be given by the court in case of relatives of the husband who never visits or rarely visits the place of complainant/informant who lodges the case u/s 498A of the Indian Penal Code. That apart, the person who is being not alleged specifically to have put forth the demand and subjected the informant/complainant to cruelty is never warranted to be put on trial.

9. In this regard decision rendered in a case of Geeta Mehrotra and Another Vs. State of U.P. and Another, was referred to.

10. Thus, it was submitted that the court committed illegality in taking cognizance of the offences against the petitioners.

11. As against this learned counsel appearing for the opposite party no. 2 submitted that there has been allegation in the complaint that when the complainant after marrying Mukul Prasad came to her in-law's place, the accused persons including the petitioners created such circumstances/situation that the complainant had to leave her matrimonial home only after four days of

the marriage as a result of which she came back to her parents home at Ranchi and that all the accused persons including the petitioner no. 3. married sister-in-law had put forth demand of car and in such situation, order taking cognizance never warrants to be quashed.

12. Having heard learned counsel appearing for the parties, it does appear that the order taking cognizance had been challenged even by the husband, Mukul Prasad, vide Cr.M.P. No. 572 of 2012 wherein the same plea had been taken on behalf of him that though there has been allegation of demand of dowry but no allegations are there showing subjection to cruelty to the complainant and thereby he cannot be said to have committed offence u/s 498(A) of the Indian Penal Code. That plea was not accepted by this Court rather this Court did hold that though specific allegation of subjection to cruelty is not there but sufficient indications are there in the complaint that the complainant was subjected to torture, as a result of which, she had to leave her in-law's place within four days of the marriage. Similar is the case with respect to petitioners no. 1 and 2.

13. So far the petitioner no. 3 is concerned, her case seems to be different as admittedly she happens to be the married sister-in-law of the complainant and in that situation, she will have least concerned with the affairs of wife and husband and moreover, there has been no specific allegation with respect to subjection to cruelty to the complainant by this petitioner and hence, her prosecution would be wholly unwarranted.

In this respect, case of Geeta Mehrotra and another vs. State of U.P. and another (supra) may be referred to wherein their Lordship has observed as follows:

However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teaching problem

or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

In such situation, any prosecution of petitioner no. 3 would amount to abuse of the process of law.

14. Under the circumstances, the order taking cognizance is quashed so far petitioner no. 3 is concerned.

15. However, I do not find any illegality with the order taking cognizance so far petitioners no. 1 and 2 are concerned.

16. Accordingly, this application is allowed but in part. Before parting with this order, it be recorded that any observation made for the purpose of disposal of this case may not be prejudicial to the case of the parties.