
(2011) 07 RAJ CK 0075

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1587 of 2010

Jasa Ram and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 161, 216, 300, 482
Penal Code, 1860 (IPC) — Section 323, 34, 405, 406, 498

Citation : (2012) 1 RLW 689

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Jasa Ram, Petitioner No. 1 Present in Person, for the Appellant;
Mahipal Bishnoi, Public Prosecutor and N.K. Bohra, for the Respondent

Judgement

Sandeep Mehta, J.—The present petition has been filed by Jasa Ram, his parents Kanhaiya Lal and Smt. Amrav and his sister Kumari Gayatri seeking quashing of criminal proceedings arising out of FIR No. 57/2007 of the Police Station Manila Thana, Jodhpur and the criminal proceedings arising therefrom for the offences under Sections 498A, 406, 323 read with Section 34 I.P.C. Succinctly stated, facts necessary for the disposal of the petition are that the petitioner - Jasa Ram was married to respondent No. 2 - Smt. Sarita on 4.5.2003. A child was born out of the wedlock in September, 2004. Smt. Sarita lodged a report at the Police Station, Mahila Thana, Jodhpur on 16.4.2007 making allegations therein that she was harassed on account of brining less dowry by all the petitioners and that the dowry articles belonging to Smt. Sarita were not returned back. It was also alleged that she was beaten up by the accused persons. Subsequent to he investigation in the said FIR, the police has filed a charge-sheet in the Court of A.C.J.M. No. 2, Jodhpur and charges have been framed against the petitioners for offences under Sections 498, 406, 323 read with Section 34 of I.P.C. Subsequent to the framing of the charges, statement of the first prosecution witness has already been recorded.

2. Seeking quashing of all the above proceedings, the petitioner No. 1-Jasa Ram has appeared on behalf of all the petitioners and has prayed that the proceedings against the petitioners under the provisions of Sections 498A, 406, 323 IPC are per se illegal and amount to abuse of process of Court and cannot be sustained. He has prayed that the proceedings are liable to be quashed by virtue of the provisions of Section 482 Cr.P.C. on the grounds mentioned in the judgment of the Hon''ble Apex Court in State of Haryana and Ors. vs. Bhajan Lal and Ors., reported in 1992 Supp. (1) Supreme Court Cases 335. The petitioner has submitted that prosecution of the petitioners is vitiated because the allegations made in the FIR do not disclose any offence even if they are accepted in their entirety. It has further been argued that uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose any offence against the accused persons. The petitioner has placed reliance on the directions No. 1, 3, 5 and 7 of the guidelines issued by the Hon''ble Apex Court in Bhajan Lal's case (supra), in which reads under:

(1) Where the allegations made in the first information report or 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 a case against the accused.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach at a just conclusion that there is sufficient ground for proceeding against the accused.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

3. It has also been submitted that the prosecution of the petitioners for the offence u/s 323 I.P.C. is hit by the bar of Section 300 Cr.P.C. because for the very same allegations, the petitioners have already been tried and have been acquitted. For the purpose of this argument, reliance has been placed on the judgment of the Hon''ble Apex Court in CBI Anti-Corruption Branch, Mumbai Vs. Narayan Diwakar, (1994) 4 SCC 656 .

4. The petitioner has further argued that prima facie, no commission of the offence u/s 498A IPC is disclosed against the petitioners even from the admitted allegations leveled in the FIR and the material collected in support thereof during the course of the investigation.

5. As regards charge of Section 406 I.P.C., it has been submitted that neither in the FIR, there is any allegation that the complainant had entrusted any of her

dowry articles to the accused or that the accused had misappropriated the same and converted the same to their own use fraudulently so to invoke the provision of Section 406 IPC. The petitioner has pointed out the seizure memo of the dowry articles of the complainant were voluntarily produced by Jaso Ram (the petitioner) before the police officer. In support of his argument, the petitioner has relied upon the judgment of Hon'ble Apex Court in Preeti Gupta and Another Vs. State of Jharkhand and Another, ; Ran Singh and Another Vs. State of Haryana and Another, and Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, .

6. Per contra, learned counsel appearing on behalf of the respondent-complainant and learned Public Prosecutor have supported the order of framing of charge and have submitted that since, the evidence of the prosecution has already been started, now the proceedings against the accused-petitioners cannot be quashed as the stage of the case has been changed. Learned counsel for the complainant and learned Public Prosecutor have also submitted that the reading of the FIR and the material collected in the investigation, prima facie, discloses the commission of the offence and as such, the grounds of challenge raised in the present petition are not sustainable and the petitioner is liable to be dismissed. However, asked about the satisfaction of the ingredients of Section 406 IPC, learned counsel for the complainant and learned Public Prosecutor were not able to point out any material from the charge-sheet to show as to who of the accused was entrusted with the stridhan of the complainant and as to from whom she demanded the same and that despite a demand being made, which of the accused refused to return the same.

7. I have considered the arguments advanced on behalf of the parties and have perused the FIR impugned, the material collected by the Investigating Agency in support of the charge-sheet and the charges framed against the petitioners. The FIR as regards the allegations of criminal breach of trust reads as under:

8. In the statement of the complainant recorded u/s 161 Cr.P.C., the complainant has given the following statement as regards her dowry articles:

9. As regards the ingredients of Section 498A IPC, there are allegations in the FIR as well as in the investigational statements that the accused used to harass the complainant on the ground of demand of a house and a car and that she was also beaten up on numerous occasions for one reason or the other. As regards the allegation of Section 323 IPC, it is revealed from the FIR that the complainant was beaten up by the accused persons on numerous occasions and similar allegations have been made in the statement of the complainant given during the course of the investigation.

10. It is relevant to mention here that one day prior to the filing of the present FIR, the brother of the complainant had filed a report against the petitioner Jaso Ram and he had been arrested on 15.4.2007 u/s 107 Cr.P.C. in connection with the said complaint and he was released on bail in the aforesaid proceeding on

16.4.2007. The present FIR for offences under Sections 498A, 406 and 323/34 IPC was filed on 16.4.2007 when Jasa Ram was already in custody in the complaint u/s 107 Cr.P.C. Therefore, there is no question of Jasa Ram retaining the dowry articles of the complainant, thereby committing the offence of breach of trust. As has already been noted above, there are no allegations either in the FIR or in the statements of the complainant recorded u/s 161 Cr.P.C. that dowry articles of the complainant were ever entrusted to any of the accused or that any of the accused converted the same to his/her own use fraudulently. The dowry articles were simply lying in the house when the complainant left the house of the accused on 15.4.2007 and Jasa Ram voluntarily deposited the same to the police on 26.4.2007. Thus, it can easily be concluded that from the admitted allegations of the prosecution in the FIR as well as in the investigational statement that prima facie, no ingredients of the offence u/s 406 IPC are disclosed.

11. In Onkar Nath Mishra's case (supra), the Hon''ble Apex Court in paras 16 and 18 of the judgment has held as under:

16. According to Section 405 IPC, the offence of criminal breach of trust is committed when a person who is entrusted in any manner with the property or with any dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or willfully suffers any other person so to do. Thus, in the commission of the offence of criminal breach of trust, two distinct parts are involved.

18. In the present case, from a plain reading of the complaint filed by the complainant on 8.11.1994, extracted above, it is clear that the facts mentioned in the complaint, taken on their face value, do not make out a prima facie case against the appellants for having dishonestly misappropriated the stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable u/s 406 IPC. It is manifestly clear from the afore extracted complaint as also the relevant portion of the charge-sheet that there is neither any allegation of entrustment of any kind of property by the complainant to the appellants nor its misappropriation by them.

12. Thus, from the aforesaid discussion, I am satisfied that the ingredients of Section 406 IPC are totally lacking in this case and therefore, the trial Judge committed grave error in framing the charge against the petitioners for the offence u/s 406 I.P.C.

13. As regards the objection of the learned counsel for the complainant that now, the trial of the case has been commenced and therefore, interference cannot be made in the order framing charge, suffice it to say that by virtue of the provisions of Section 216 Cr.P.C., a charge against the accused can be amended at any stage and that apart, the petitioner had already preferred this criminal

misc. petition before the evidence was started. Thus, simply because after filing of the petition, the examination-in-chief of the complainant has been recorded, that by itself cannot be a ground to throw out the valid challenge to the prosecution made by the petitioners.

14. As regards the contention of the petitioner challenging the offences under Sections 498A and 323 IPC is concerned, I have carefully perused the FIR and the material collected during the course of the investigation. Prima facie, there are allegations in the FIR as well as in the investigational statements that accused persons had harassed the complainant on account of brining less dowry and had also beaten up her on number of occasions. Therefore, prima facie, the ingredients of Section 498A IPC are existing on the record of the case and it cannot be said that the charge u/s 498A IPC against the petitioners suffers from any illegality or is groundless.

15. So far as the contention of the petitioner as regards the prosecution of the petitioner for offence u/s 323 IPC being hit by the provision of Section 300 Cr.P.C. is concerned, the argument is that the brother of the complainant had lodged another report against the petitioners for an incident alleged to have taken place on 15.4.2007 and in that prosecution, the accused have been acquitted. Suffice it to say that the aforesaid report filed by the brother of the complainant was for the incident of 15.4.2007 simplicitor whereas in this case, the charge which has been framed is as regards earlier incidents of beating given to the complainant. Therefore, it cannot be said that the petitioners are being tried and prosecuted for the same offence twice and as such, the benefit of provision of Section 300 Cr.P.C. cannot be extended to the petitioners.

16. The upshot of the aforesaid discussions is that the petition succeeds in part. The charge framed against the petitioners and the proceedings sought to be undertaken against them for the offences u/s 498A and 323 IPC cannot be said to be illegal or an abuse of process of the Court. However, the charge framed against the petitioners and the proceedings sought to be taken thereunder for the offence u/s 406 IPC are prima facie not made out from the admitted case of the prosecution and as such the same is quashed. Accordingly, while allowing this criminal misc. petition in part, the charge u/s 406 IPC framed against the petitioners is quashed. However, learned trial Judge is directed to proceed with the trial of the case against the petitioners for the remaining offences.