

(2012) 10 JH CK 0059

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 2158 of 2001

Jugal Kishore Agrawala, Smt. Renu Devi, Braj Mohan
Saraiwala @ Braj Prasad Saraiwala and Smt. Sita Devi

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 323, 498(A)

Citation : (2013) 1 DMC 472

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant; Anita Sinha, Assistant Public Prosecutor for the State and Mr. A.K. Sahani for the Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad

1. 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. 672 of 1999 including the order dated 20.1.2000 whereby and whereunder cognizance of the offence punishable u/s 498(A) of the Indian Penal Code has been taken against the petitioners.

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

3. The complainant married to Sushil Kumar Agarwal, who happened to be the brother of petitioners No. 2 and 4 whereas petitioner No. 1 is the husband of petitioners No. 2 and petitioner No. 3 is the husband of petitioner No. 4. After marriage, they stayed at Kargali Bazar, Phusro from where her husband went to

Jaipur for pursuing his studies. When the complainant expressed her desire to join him at Jaipur, other accused persons insisted on to left behind the Jewelleries which she were having. When she came to Jaipur, the other accused persons asked her to entrust left out Jewelleries to them which she did.

4. Meanwhile, on 14.7.1998 when the complainant's husband passed his final examination of Chartered Accountancy, these four petitioners went over there and stayed with them for few days. During their stay, they put forth demand of Rs. 50,000/- so that new Chambers for complainant's husband be opened for starting practice of Chartered Accountancy. As she was being loved by her husband she never cared to make complaint of such demand to her parents. Thereafter these petitioners brought the complainant to Phusro for her delivery as she was carrying pregnancy where it has been alleged that the accused persons abused her and even deprived her of food.

5. Further case is that her husband when came to know that the accused persons are asking for dowry from the parents of the complainant, he became upset and committed suicide.

6. On such complaint, Complaint Case No. 672 of 1999 was registered under Sections 498(A) and 323 of the Indian Penal Code and also under Sections 3, 4 and 6 of the Dowry Prohibition Act. However, cognizance of the offence was taken u/s 498(A) of the Indian Penal Code, vide order dated 20.1.2000 which is under challenge.

7. Mr. Gadodia, learned counsel appearing for the petitioners submits that the petitioner No. 1 had married petitioner No. 2, 15 years before the lodgment of the case whereas petitioner No. 3 had married petitioner No. 4, 20 ago and they were living at their respective places and as such, there was no occasion for them to put forth demand of dowry, still they have been made accused on the allegation that at one occasion when these persons had come to reside with the complainant and her husband at Jaipur, they had demanded Rs. 50,000/- and a car and that at other occasion, when these petitioners had brought the complainant to Phusro, the petitioners had abused the complainant which allegation in the facts that these petitioners had nothing to do with the relationship of the husband of the complainant appears to be quite improbable and lacks truthfulness. Therefore, the order dated 20.1.2000 taking cognizance is fit to be quashed in view of the decision rendered in a case of Preeti Gupta and Another Vs. State of Jharkhand and Another, wherein their Lordships taking into account the fact that even the relatives of the husband who generally used to have no concerned with the relationship of husband and wife are being made accused rampantly in a case of 498(A), have held that the court is expected to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases.

8. As against this, Mr. Sahani learned counsel appearing for the opposite party No. 2 submits that it is true that the petitioners are brothers-in-law and sisters-

in-law but they have specifically been alleged to have put forth demand of Rs. 50,000/- and a car and at one occasion, they have been alleged to have abused the complainant and therefore, where there has been allegation constituting offence u/s 498(A) of the Indian Penal Code, order taking cognizance never warrants to be quashed.

9. Admittedly, the petitioners were not residing with the complainant and her husband, rather they had occasion to go to Jaipur where the complainant and her husband was residing that too on the occasion when the complainant's husband had passed final examination of Chartered Accountancy. There it is said that these petitioners put forth demand of Rs. 50,000/- so that new Chamber be opened for the complainant's husband for undertaking practice of Chartered Accountancy. Further they have been alleged to have brought the complainant to Phusro for her delivery where the petitioners abused her. Thus, only at two occasions, these petitioners either have been alleged to have been put forth demand or have been alleged to have abused the complainant.

10. In such situation, the petitioners residents of other places when seldom visits the place of complainant and her husband, they will be least concerned with the affairs of the wife and husband and hence, it is not expected from them that either they will put forth demand of dowry or subject the complainant to abuse. Moreover, even if it is accepted that such demand had been made but that demand according to the case of complainant was made only once. Thus, on account of non-fulfillment of demand the petitioners have never been alleged to have subjected the complainant to torture rather allegation is of abusing that too only once. In such situation, petitioners can hardly be said to have subjected the complainant to torture. Consequently, one would come to conclusion that necessary ingredients are lack for constituting offence u/s 498(A) of the Indian Penal Code so far petitioners are concerned.

11. At this stage, I may refer to a decision rendered in a case of Preeti Gupta and another vs. State of Jharkhand and another (supra) wherein the Hon''ble Supreme Court keeping in view the real fact that relatives of the husband without there being culpability on their part are being made accused rampantly particularly in a case lodged u/s 498(A) of the Indian Penal Code has been pleased to observe as follows:

The allegations of harassment of close relations who had been living in different cities and never visited or rarely visited the place where the complainant wife resided would have an entirely different complexion.

12. Under the circumstances, whatever allegation has been leveled against the petitioners it hardly constitute offence u/s 498(A) of the Indian penal Code.

13. Accordingly, the entire criminal proceeding of Complaint Case No. 672 of 1999 including the order dated 20.1.2000 is hereby quashed so far as petitioners are concerned. In the result, this application stands allowed.