
(2011) 03 JH CK 0053

In the Jharkhand High Court

Case No : Criminal M.P. No. No. 625 of 2009

Kailash Mandal and Sita Devi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Penal Code, 1860 (IPC) — Section 304(B), 498A

Citation : (2011) 2 DMC 510 : (2011) 2 JCR 391 : (2011) 8 RCR(Criminal) 2099

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order dated 7.2.2009 passed by the Additional Sessions Judge, F.T.C. Rajmahal, Sahibgang by which the petition filed on behalf of the Petitioners u/s 319 of the Code of Criminal Procedure was allowed in S.C. No. 91 of 2007 arising out of Rajmahal P.S. Case No. 199 of 2006 corresponding to G.R. Mo. 426 of 2006 and the summons was directed to be issued against the Petitioners to be (sic) for the charge u/s 304(B) of the Indian Penal Code.

2. The Petitioner No. 1 Kailash Mandal is the father-in-law whereas the Petitioner No. 2 Sita Devi is the mother-in-law of the deceased.

3. The prosecution story in short was that the mother of the deceased presented a written report before the police that her daughter Suman Devi (since deceased) was married to the accused Sanjay Mandal some two years ago in which adequate dowry was given to the accused persons but accused-husband Sanjaya Mandal and his father Kailash Mandal used to torture her daughter and demanded balance amount to the tune of Rs. 50,000/- About five months ago prior to the aliegel death, Sanjay Mandal had taken away his wife Suman Devi to his home reiterating demand of dowry and started perpetrating torture to which

father of the deceased tried to resolve the matter but the accused and his father were adamant and did not allow his daughter to go with him. The informant received information on telephone that her (sic) was done to death by setting her on fire by Sanjay Mandal and his father and on such information she went there and found the information true.

4. As the allegation was made only against the son-in-law Sanjay Mandal and his father Kailash Mandal. Rajmahal P.S. case No. 199 of 2006 was instituted u/s 304(B) of the Indian Penal Code against only two persons. It was stated that charge sheet was submitted u/s 304(B) only against husband Sanjay Mandal and not against the Petitioners who were admittedly the father-in-law and mother-in-law of the deceased as no material could be found in course of investigation against them.

5. I find from the order impugned dated 7.2.2009 that after framing of charge u/s 304(B)/498A of the Indian Penal Code against the accused-husband on 23.6.2007 as many as 14 witnesses were produced and examined on behalf of the prosecution. Out of whom P.W.6 Kiran Devi i.e. the informant as well as mother of the deceased testified that all the three accused always used to quarrel with her daughter and had been making demanded of Rs. 50,000/- in cash as dowry and it continued till her death. Though his daughter was pregnant but she was not allowed by them to go to her parental horn. Munna Mandal i.e. brother of the deceased (P.W.7) deposed that accused Sanjay Mandal and his mother used to torture his sister for dowry and that his sister was assaulted by the accused persons and was also burnt to death by them. The learned Additional Sessions Judge observed that in the FIR the name of the father and the principal accused Sanjay Mandal was incorporated and both had been demanding Rs. 50,000/- as dowry and in this connection they used to torture her and also burnt her to death. The learned Sessions Judge further observed that these facts clearly suggested the involvement of both the father and mother of the principal accused in commission of the offence as such they deserve to be tried together with Sanjay Mandal in the instant case and accordingly, petition filed u/s 319 of Code of Criminal Procedure on behalf of the prosecution was allowed and summons were directed to be issued against these Petitioners.

6. From perusal of the FIR I find that the allegation was made against the son-in-law and his father Kailash Mandal and no specific overt act was attributed at all against the mother-in-law of the deceased. In the evidence of the informant and her son I find that the allegation against the mother-in-law and father-in-law is general and no specific overt act has been attributed except by saying that the father was also siding with his son Sanjay Mandal in demanding Rs. 50,000/- The other witnesses perhaps have not supported the contention of these two witnesses out of 14 witness already examined. Therefore, I do not find any prima facie case against the Petitioners to be arrayed as the accused for the charge u/s 304(B) of the Indian Penal Code so as to summons the Petitioners u/s 319 of the Code of Criminal Procedure, accordingly, order impugned dated 7.2.2009 cannot

be sustained under the law and same is set aside. This petition is allowed.