
(2011) 04 RAJ CK 0050

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2352 of 2010

Kamla and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2011) 04 RAJ CK 0050

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Aggrieved by the alleged unfair investigation being conducted by the police in the FIR, FIR No. 147/2010, registered at Mahila Thana (North), Jaipur for offences under Sections 498A and 406 IPC, the Petitioners have approached this Court. They have prayed that since the police has conducted an unfair investigation, therefore, the investigation should be transferred to CID (CB), Jaipur.

2. Briefly the facts of the case are that on 02.12.2009, Smt. Jyoti Sharma, Respondent No. 2, was married to Kuldeep Sharma, Petitioner No. 5, according to Hindu customs and Rites. According to Smt. Jyoti Sharma, at the time of her marriage, her parents had given sufficient dowry as per their capabilities. However, when Smt. Jyoti Sharma reached her matrimonial home, both her husband and her in-laws", including both of her sister-in- laws, namely Komal and Alka, Petitioner Nos. 3 and 4 respectively, started physically and mentally torturing her for dowry demands. Unable to bear their cruel behavior, eventually on 13.09.2010, Smt. Jyoti Sharma filed a complaint before the Additional Civil Judge (JD) and Judicial Magistrate No. 13, Jaipur City, Jaipur. The learned Magistrate sent the said complaint for further investigation, u/s 156(3) Cr.P.C., to

the Police Station Mahila Thana (North), Jaipur. On the basis of the said complaint, the police chalked out a formal FIR, FIR No. 147/2010, for the aforementioned offences. As mentioned above, the Petitioners are aggrieved by the unfair investigation being done by the police. Hence, this petition before this Court.

3. Mr. Suresh Sahni, the learned Counsel for the Petitioners, has vehemently raised the following contentions before this Court: firstly, the FIR is a counter-blast to a civil suit filed by Mr. Gopal Lal Sharma, Petitioner No. 2, the father-in-law of the complainant, wherein he had clearly pleaded that he is willing to return the "stridhan", therefore, direction should be issued to the complainant to collect the "stridhan". Moreover, the FIR is a counter-blast to the divorce petition filed by Kuldeep Sharma against Smt. Jyoti Sharma. Secondly, the filing of the civil suit by the father-in-law clearly establishes his fairness in wanting to return the "stridhan" to Smt. Jyoti Sharma. Thirdly, all the family members have been roped in, including two sister-in-laws. This clearly shows that the FIR has been lodged to wreak personal vendetta. Fourthly, relying on the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, the learned Counsel has contended that even the Hon'ble Supreme Court is of the opinion that the cases under Sections 498A and 406 IPC are more or less frivolous cases. Therefore, even this Court should be alive to the possibility that the case is a frivolous one. Lastly, since the Petitioners have lodged complaints against the police, both before the Principal Secretary to the Government as well as to the Director General of Police, vide representations dated 28.10.2010 and dated 01.11.2010 respectively, the police has decided to carry out an unfair investigation. Therefore, the investigation should be transferred to an independent investigating agency like the CID(CB).

4. On the other hand, Mr. Rajesh Kapoor, the learned Counsel for Respondent No. 2, has strenuously argued that merely because complaints were made against the conduct of the police officers, it is not a valid reason for transferring the investigation to the CID(CB). Secondly, the Petitioners have not been able to prove that an unfair investigation is being conducted by the police. Thirdly, a bare perusal of the FIR clearly reveals that sufficient allegations have been made against Kuldeep Sharma and his family members, including the two sister-in-laws. Fourthly, the defiance that FIR is merely a counter-blast cannot be accepted at the initial stage. Lastly, the investigation is the prerogative of the police. Thus, this Court should not interfere with the investigation process under its inherent jurisdiction u/s 482 Code of Criminal Procedure

5. Mr. Laxman Meena, the leaned Public Prosecutor, has submitted that the charge-sheet is ready to be submitted before the learned trial court. Moreover, he has echoed the arguments raised by Mr. Kapoor.

6. Heard the learned Counsel for the parties and perused the FIR.

7. The only issue before this Court is whether the investigating agency has

conducted an unfair investigation or not. For, the Petitioners do not seek the quashing and setting aside of the FIR, but seek merely the transfer of the investigation to an independent investigating agency.

8. Merely because the Petitioners have filed complaints against the investigating officers, is not a valid ground for transferring the investigation. A bare perusal of their representations (Annexures 2 and 3) clearly reveals that no concrete and cogent reasons have been given to establish the fact that the police is indulging in an unfair investigation. Therefore, the Petitioners have failed to prove the fact that the police is carrying out an unfair investigation.

9. There is, in fact, a presumption in law that an investigation is carried out in accordance with the procedure established by law. This presumption has not been rebutted by the Petitioners by producing any cogent evidence.

10. Although the observations made by the Hon''ble Supreme Court in the case of Preeti Gupta (Supra) may be true, but the fact remains that it does not lay down a universal principle. In the case of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, the Hon''ble Supreme Court has observed as under:

It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decided. . . . A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment... It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein.... it is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution.

In the case of State of Orissa and Others Vs. Md. Illiyas, the Apex Court held as under:

Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. ... A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. .. A case is a precedent and binding for what is explicitly decides and not more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament.

Similar view has also been held recently in the case of Jitendra Kumar Singh and

Another Vs. State of U.P. and Others,

11. Therefore, every case has to be decided on its own peculiar facts and circumstances. A bare perusal of the FIR clearly reveals that Smt. Jyoti Sharma has given concrete details about the incidents which had occurred with her. These incidents prima facie indicate that she was subjected to mental and physical cruelty. Since she has made specific allegations against the two sister-in-laws, it is not a case where innocent family members have been roped in. Sufficient allegations do exist to make out a prima facie case for offences u/s 498A and 406 IPC against the two sister-in-laws.

12. Therefore, this Court does not find any reason for transferring the investigation from the police to the CID (CB). Hence, this petition is devoid of any merit. It is, hereby, dismissed.

13. But by way of abundant caution, it is, hereby, clarified that any observation made by this Court should neither influence the investigating agency, nor affect the mind of the trial court. Both the police and the learned trial court are expected to apply their mind objectively and judiciously without being colored by the observations made by this Court.