
(2007) 05 JH CK 0009
In the Jharkhand High Court
Case No : Criminal Rev. No. 581 of 2004

Kartik Kumar Singh and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 313, 414, 498A

Citation : (2007) 4 EastCric 13 : AIR 2007 Jhar 442 : (2007) CriLJ 4674 (2007) 2 BLJR 2925 : (2007) 2 DMC 774

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Deepak Kumar and A.K. Mishra, for the Appellant; A.K. Das and K.P. Mukherjee, Opposite Party No. 2 and , Assistant Public Prosecutor, for the Respondent

Judgement

D.G.R. Patnaik, J.—Petitioners have challenged the order dated 30th June, 2004, passed by the learned Additional Sessions Judge, Ghatshila in Sessions Trial No. 260 of 2003, whereby the prayer of the petitioners for their discharge in the case u/s 227 of the Cr. P.C was dismissed.

2. The main ground of the petitioner in support of his prayer is that the learned court below has passed the impugned order in a mechanical manner without application of judicial mind and failing to consider that even according to the entire allegations in the F.I.R., no offence u/s 313 and 414 of the Indian Penal Code is made out at all and further, that the court below has failed to consider the fact that it had no territorial jurisdiction to entertain the complaint and proceed with the trial against the petitioners, since even according to the allegations in the F.I.R., the entire acts of offence as alleged against the petitioners, were confined to places other than the parental house of the complainant at Ghatshila and not on any place within the territorial jurisdiction of the court below.

3. Heard the learned Counsel for the petitioners and the learned Counsel for the Opposite Party No. 2 as also the learned Counsel for the State.

4. For better appreciation of the grounds advanced, reference in brief to the facts giving rise to the instant application may be made. The case against the present petitioners was instituted on the basis of an F.I.R. lodged by the Opposite Party No. 2 at the Ghatshila Police Station within the district of East Singhbhum, alleging, therein that her marriage with the petitioner No. 1, namely, Kartik Kumar Singh of District Purnea (Bihar) was solemnized according to the Hindu rites and rituals on 28.06.1998 at the house of her father at Ghatshila and at the time of marriage, Gold ornaments worth Rs. 75,000/-, besides. Furniture and other articles Worth Rs. 35,000/- and cash of Rs. 2 lakhs was gifted to her by her parents. After the marriage, she went to her matrimonial house at Purnea (Bihar). She has alleged that soon after her arrival at her matrimonial house, she used to be subjected by the husband and the members of his family to taunts and ill-treatment, claiming that her father had cleverly deceived them by retracting from his promise of giving a Tata Sumo vehicle. The acts of cruelty in the form of neglect, taunts and mental torture were allegedly inflicted upon the informant by her husband and her in-laws", specifically named in the F.I.R.. A month later when her father came for taking her to her matrimonial house for "Vidaai", the accused persons made a demand for the Tata Sumo vehicle. The informant came to her father's house but the accused persons continued making demands by way of telephonic calls. She was left at the house of her parents for about two years. Later the petitioner No. 1 on request of the Opposite Party No. 2 came to her father's house and took her alongwith him on 4.7.1999. Thereafter the husband proceeded to different places in course of his employment though occasionally he used to visit his house and in course of such visits he used to indulge in assaulting and ill-treating her. She has alleged that when the members of her matrimonial house learnt that she had conceived and was carrying pregnancy of two months, her in-laws forcibly administered her some medicine causing termination of her pregnancy, which had occurred in the month of February, 2000. Thereafter, she went to Darjeeling, where her husband was posted in the month of May, 2000 and lived with him till November, 2000 but during this period also she was not given proper treatment by him. When her husband was transferred to Pune, he brought and left her at his house at Purnea (Bihar) and ultimately on 09.12.2000, he and the members of his family assaulted her and forcibly boarded her on a bus to Ranchi. On being expelled from their house, she came to her father's house, where she sought asylum. Numerous attempts by the parents of the girl for reconciliation had failed. She has alleged that the demand for a Tata Sumo vehicle followed by threats, used to be issued by her husband in course of her telephonic conversation with him at her father's house and thereby continuously causing mental torture upon her.

5. Charge sheet at the conclusion of the investigation by the Police recommending trial of the petitioners for the offences u/s 498A, 313 I.P.C. and u/s 3/4 of the Dowry Prohibition Act. At the stage of framing of charge, petitioners

had filed a petition for their discharge on the grounds mentioned above u/s 227, Cr.P.C. It may be relevant to note that though the petitioners had taken the other grounds, namely, that the allegations in the F.I.R. and the statements of witnesses recorded during investigation do not make any case u/s 498A or 313 of the I.P.C. the ground of want of territorial jurisdiction has not been taken by the petitioners before the trial court for consideration. The learned court below by taking into consideration the evidences of the witnesses recorded in course of the investigation and the allegations contained in the F.I.R. and other materials on record, came to the conclusion that a prima facie case for the offences u/s 498A, 313 I.P.C. and u/s 3/4 of the Dowry Prohibition Act is made out against the petitioners and there is sufficient materials to frame charge against the petitioners. It is against this order of the learned court below that the petitioners have filed the instant application.

6. Learned Counsel for the petitioners submits that the Opposite Party No. 2 has instituted the instant case by way of a counter blast to the earlier matrimonial proceeding initiated by the husband, namely, the petitioner No. 1 against her in the courts at Purnea. It is further submitted that though admittedly the informant had left her matrimonial house in the month of December, 2000 but she has instituted the present case after a lapse of more than one and half years without any explanation for the delay. Learned Counsel adds further that even otherwise, the entire allegations of misconduct as leveled against the petitioners is confined to the several places including the matrimonial house of the informant at Purnea and there is no allegation whatsoever that any of the petitioners had indulged in any offensive acts of causing cruelty to the informant either at the place where the house of the informant's father is situated i.e. at Ghatshila or at any such place within the territorial jurisdiction of the court below and, therefore, the continuation of the criminal proceedings against the petitioners in the court below would be an abuse of the process of the Court.

7. Learned Counsel for the Opposite Party No. 2 on the other hand controverts the grounds advanced by the petitioners and submits that the F.I.R. as lodged by the Opposite party No. 2 is exhaustive and contains details of the incident and transactions, which had occurred and it specifies the various acts of cruelty inflicted by them physically and mentally on the informant on account of non-fulfillment of their demand for a Tata Sumo Vehicle. Learned Counsel adds further that the mental torture had continued even after the informant had returned to her father's house by issuance of threats telephonically, which the informant had suffered while living at her father's house at Ghatshila.

8. On going through the impugned order of the learned trial court, it appears that the learned trial court has considered the F.I.R., the statements of the informant and the witnesses recorded in course of investigation of the case and had recorded its satisfaction that a prima facie case for the aforesaid inference is made out against the petitioners. As pointed out above, the ground of territorial jurisdiction was not taken by the petitioners in their prayer for their discharge. A

controversy appears to have been raised by the Opposite Party No. 2 by virtue of her allegation that even after she had returned to her house at Ghatshila, her husband and other members of his family used to threaten her by making telephonic calls reiterating their demand for the Tata Sumo vehicle and followed by threats of suffering serious consequences, if the demand is not fulfilled.

9. This controversy is in itself an issue, which can be raised for consideration by the trial court on the basis of the evidences, which may be led in course of trial. As regards, the claim of the petitioner that no prima facie case for the offence either u/s 498A I.P.C. or u/s 313 I.P.C. or the offence u/s 3/4 of the Dowry Prohibition Act, the same does not appear to be persuasive. It has been observed by the learned trial court on the basis of the evidences and materials on record that the allegations do constitute a prima facie case for the aforesaid offences, thereby indicating sufficient materials to proceed with the trial for the said offences against the petitioners.

10. Section 227 of the Code of Criminal Procedure provides for discharge and it lays down that:

if upon consideration of record of the case and the documents submitted, therein, and after hearing the submissions of the accused and the prosecution in this behalf, the court considers that there is no sufficient ground for proceeding against the accused, who shall discharge the accused and record his reasons, if so made.

11. Section 228 on the other hand contemplates the stage after the case survives as envisaged u/s 227 Cr.P.C. When the court is of the opinion that there is ground to presume that the accused had committed an offence, the procedure laid down u/s 228 of the Cr.P.C. has to be adopted. To assess whether there is sufficient ground for proceeding against the accused the court has to find out only as to whether a prima facie case is made out for any offences. The standard of proof normally adhered to at the final stage of the trial, has not to be applied at the stage where the scope of consideration is whether there is sufficient ground for proceeding.

12. In the instant case, the trial court has recorded its satisfaction that there is sufficient ground for proceeding against the accused. There appears no infirmity or illegality in the impugned order of the trial court. I find no merit in this application, accordingly, the same is dismissed. The petitioners may agitate the grounds in course of the trial, which the trial court may consider on the basis of the evidences adduced by the parties.