

(1997) 11 RAJ CK 0037

In the Rajasthan High Court

Case No : Criminal Mis. Petition No. 175 of 1992

K.K. Sharma and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 162, 190(1), 204
Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 145
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 498A

Citation : (1998) CriLJ 2609 : (1998) 2 RLW 832 : (1998) 3 WLC 591

Hon'ble Judges : Amaresh Ku. Singh, J

Bench : Single Bench

Advocate : R.K. Singhal, for the Appellant; D.S. Rathore, Public Prosecutor and M.L. Garg, for the Respondent

Final Decision : Dismissed

Judgement

Amaresh Ku. Singh, J.—Heard the learned Counsel for the petitioners, the learned Public Prosecutor and the learned Counsel for the non-petitioner No. 2. Petitioner No. 4 (Arvind Sharma) is reported to have expired during the pendency of this petition. So far as proceedings relating to Arvind Sharma are concerned they stand abated on account of his death.

2. By this petition u/s 402, Cr. P.C. it is prayed that the order dated 8-8-1990 passed by the learned Additional Chief Judicial Magistrate should be quashed. By the above mentioned order the learned Additional Chief Judicial Magistrate took cognizance of the offence u/s 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act on the basis of the final report submitted by the police after conducting investigation relating to First Information Report No. 160/88 which was registered at Police Station, Shastri Nagar, Jodhpur in compliance with the directions issued by the learned Judicial Magistrate u/s 156(3), Cr. P.C. on a

complaint filed by Smt. Santosh non-petitioner No. 2.

2A. The facts of the case so far as they are relevant for the disposal of the position may be summarised as below.

3. Non-petitioner No. 2 Smt. Santosh is the wife of petitioner No. 3 Anil Bhamal. Their marriage was solemnised at Jodhpur on 14-12-1986 according to Hindu rites. A son was born on 23-8-1988. The non-petitioner No. 2 lived with petitioner No. 3 as a wife up to April, 1988. Petitioner No. 1 is the father of the petitioner No. 3 and he is father-in-law of non-petitioner No. 2. Petitioner No. 2 is the mother of petitioner No. 3 and, therefore the mother-in-law of non-petitioner No. 2. Petitioner No. 1 was previously posted at Jodhpur. He was at that time working as Squadron Leader in the Indian Air Force. The petitioner No. 1 retired sometime after the marriage of non-petitioner No. 2 with petitioner No. 3.

4. On 10-10-1988 the non-petitioner No. 2 filed a complaint in the Court of learned Additional Chief Judicial Magistrate, Jodhpur. In her complaint she made allegations against four persons, namely, K. K. Sharma (petitioner No. 1), Smt. Bimla Sharma (petitioner No. 2), Shri Anil Bhamal (petitioner No. 3) and Shri Arvind Bhamal (petitioner No. 4 who has expired). In her complaint following allegations were made by Smt. Santosh. (1) That after the marriage was solemnised her father was required to pay amount of certain bills. (2) that after her marriage she was asked to bring sum of Rs. 50,000/- from her father and that she was threatened to bring that amount if she wanted to survive. (3) that she was subjected to harassment by being treated as maidservant and by giving a beating to her. (4) that in September, 1987 she got an appointment and after her appointment she used to give whole of the salary to the accused persons but was still being treated as a maid-servant. (5) that during her pregnancy she had fallen ill and an operation was conducted but she was not given proper medicines which were prescribed by the doctor and, therefore, she had sent complaints to Home Minister and the Air Force Authorities".

5. The learned Additional Chief Judicial Magistrate directed the police u/s 156(3), Cr. P.C. to conduct investigation. In compliance of the order given by the learned Additional Chief Judicial Magistrate a First Information Report No. 160/88 was registered and started investigation. On 14-10-1988 Smt. Santosh, Shri Kishan Bhardwaj, Smt. Shakuntala Bhardwaj, Kum. Lata Bhardwaj were examined u/s 161, Cr. P.C. In their statements these witnesses generally supported the allegations made in the complaint. On 18-10-1988 a document purporting to be a promissory agreement notice and signed by petitioner No. 3 and some others was prepared. On the same day the police further examined the prosecution witnesses u/s 161, Cr. P.C. and their additional statements were recorded. In the second statement dated 18-10-1988 non-petitioner No. 2 Smt. Santosh admitted that she had exaggerated in her complaint and that differences with her husband and in-laws had been reconciled and she did not want any action against them and that her previous statement dated 14-10-1988 was made in haste and under an impulse and that her husband and in-laws did not harass her

for bringing any dowry. Regarding the payment of Rs. 50,000/- in her statement dated 18-10-1988 Smt. Santosh stated that she was never compelled to bring this amount and that previous statement was made at the instance of her counsel. And that in fact there were only minor domestic disputes which were exaggerated. Shri Arvind Bhamal, Smt. Vimla Sharma, Shri Anil Kumar Bhamal and Shri Kamal Kishore Sharma in their statements dated 18-10-1988 did not support the allegations made by the complainant.

6. After completing investigation the police submitted the final report. After submission of the final report the non-petitioner No. 2 filed a protest petition in which she retreated her allegations and alleged that she was not party to the agreement dated 18-10-1988. And that the final report was not justified. After hearing the parties and taking into consideration the evidence the learned Additional Chief Judicial Magistrate took cognizance of the offence u/s 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act and directed the issue of process against four accused persons.

7. Feeling aggrieved by the order dated 8-8-1990 all the four accused persons filed this petition u/s 482, Cr. P.C. As mentioned above petitioner No. 4 has expired.

8. The learned Counsel for the petitioners has submitted that the protest petition was filed on 23-7-1990. After the complainant came to know about the institution of a case u/s 9 of the Hindu Marriage Act by petitioner No. 3 in Chandigarh. And in fact the complaint as well as the protest petition were filed by non-petitioner No. 2 with the sole purpose of harassing the petitioners by making false allegations against them. He has tried to support his submission by the agreement dated 18-10-1988 and the statements recorded u/s 161, Cr. P.C. by the police on 18-10-1988.

9. The learned Additional Chief Judicial Magistrate has taken into consideration the statements of the witnesses recorded by the police, the agreement dated 18-10-1988 and other facts and circumstances. Regarding the compromise dated 18-10-1988 the learned Additional Chief Judicial Magistrate observed that offence u/s 498A, I.P.C. and u/s 4 of the Dowry Prohibition Act are not compoundable, therefore, compromise dated 18-10-1988 does not have the effect of entitling the accused to any relief on the basis of that compromise. On the basis of the statements recorded by the police on 14-10-1988 the learned Additional Chief Judicial Magistrate found that there was a prima facie case to proceed against the accused u/s 204, Cr. P.C.

10. The learned Counsel for the non-petitioner No. 2 has opposed this petition and supported the order of taking cognizance by the learned Additional Chief Judicial Magistrate.

11. In criminal cases, at the time of proceeding against any person Section 204, Cr. P.C, two things are required to be considered. The first is whether the facts brought to the notice of the Magistrate under Clause (a)/(b)/(c) of Sub-section

(1) of Section 190, Cr. P.C. constitute one or more offences according to law in force. If the facts brought to the notice of the Magistrate do not constitute any offence, he cannot take cognizance u/s 190(1)(a), (b) and (c), Cr. P.C. Even if the facts constitute an offence but the law prohibits the Magistrate from taking cognizance the Magistrate would not have the power to take cognizance on account of the prohibition imposed by law. Law requires that cognizance of the offence can be taken only if the conditions laid down by law are satisfied. Therefore, before cognizance is taken those conditions will have to be satisfied.

12. After taking cognizance of the offence and before proceeding against any person u/s 204, Cr. P.C. it is necessary for the Magistrate to judicially consider whether there are sufficient grounds to proceed against any person. Needless to say that in view of Article 21 of the Constitution which provides that no-one can be deprived of life and personal liberty except according to the procedure established by law, when the law contained in Section 204, Cr. P.C. requires presence of sufficient grounds, before anyone can be proceeded against, it is necessary that sufficient grounds must be shown to be existing before the process is issued against any person. In view of this, two questions arise for determination. First is whether the allegations contained in the final report and the documents attached thereto (including the statements of witnesses and the First Information Report) constitute the alleged offences and the second question to be decided is whether there were or there were not sufficient grounds to proceed against the petitioners for the offence u/s 498A, I.P.C. and Section 4 of the Dowry Prohibition Act.

13. The allegations contained in the First Information Report (which is a copy of the complaint filed by non-petitioner No. 2) do prima facie show that demand of Rs. 50,000/- was made from the non-petitioner No. 2 after her marriage and that her father was also required to pay certain bills and that she was subjected to harassment. Therefore, it cannot be said that the facts which were brought to the notice of the learned Additional Chief Judicial Magistrate did not constitute any offence.

14. The second question is more important. This question relates to sufficient grounds for proceeding against the petitioner u/s 204, Cr. P.C. In the statement recorded on 14-10-1988 non-petitioner No. 2 and her witnesses supported the allegations made in the First Information Report. Those statements unless discarded as untrue, do show that prima facie offences u/s 498A, I.P.C. and Section 4 of the Dowry Prohibition Act were made out. The statements which were recorded on 18-10-1988, however, do not support the allegations made in the complaint and in the protest petition. The learned Counsel for the petitioner has placed reliance on them for the purpose of supporting his submission that there were no grounds to proceed against the petitioners. He has submitted that in fact a compromise had been executed between the parties on 18-10-1988 and in pursuance of compromise a sum of Rs. 50,000/- has been deposited in joint account of petitioner No. 3 and non-petitioner No. 2 and that without entering

into any further controversy, the parties to the agreement agreed that they would not insist upon immediate living together of non-petitioner No. 2 with petitioner No. 3 and that, since the differences between the parties had been reconciled, in their statement dated 18-10-1988 non-petitioner No. 2 and her witnesses came out with the truth and made admission that their earlier statements were exaggerated and were not true. The crucial question is what importance should be given to the statements dated 14-10-1988, in view of the statement made on 18-10-1988. Apparently there is contradiction between them. The statement made on 18-10-1988 consists of the admission of fact that earlier statement dated 14-10-1988 were exaggerated and were incorrect. The learned Counsel for the petitioner has urged that subsequent statements dated 18-10-1988 should be acted upon by the Court and that the learned Additional Chief Judicial Magistrate has committed an error of law by not acting on them and by proceeding against the petitioner on the basis of earlier statement of 14-10-1988. He has further submitted that the petitioner No. 1 (K. K. Sharma) was an Air Force Officer and he was an educated person and it was not likely for him to indulge in any act of harassment and beating as has been alleged by non-petitioner No. 2 in her complaint. It is submitted that parents of non-petitioner No. 2 and petitioner used to reside at Jodhpur in Golf Course Scheme as neighbours.

15. The learned Counsel for non-petitioner No. 2 has submitted that non-petitioner No. 2 was not a party to compromise dated 18-10-1988 and that the statements purporting to have been recorded on 18-10-1988 cannot be used to the detriment of the non-petitioner No. 2 unless they are duly proved and found to be correct. In other words the submission of the learned Counsel for the non-petitioner No. 2 is that at this stage it cannot be decided whether statement dated 14-10-1988 is liable to be discarded, as being inconsistent with the statement recorded on 18-10-1988.

16. So far as the burden of proof is concerned, law is well established that if on the basis of certain fact no action is to be taken against any person nor any proceeding is initiated against that person nor any rights of such person are going to be jeopardised, there would be no necessity of proving that fact because the proposed action is not going to adversely affect the rights of anyone. Therefore, in such cases where no action is taken against any person the fact need not necessarily be proved. On the other hand if on the basis of fact as alleged before any authority (including a Court) if any action against the interest of any person is proposed to be taken then such fact must be proved in accordance with law. This classification is very important, for it enables the public authorities as well as the private citizens to avoid unnecessary expense of time and energy and it saves the party making allegations of the fact from the expense of proving that fact. If this is a correct view then so far as the statements recorded by the police are concerned, if no action is proposed to be taken on those statements then those statements need not be formally proved. On the other hand if on the basis of those statements any action is proposed to

be taken against any person whether a party or witness then that statements must be duly proved according to law. When a final report is accepted and cognizance is declined, the witnesses are not required to be examined to prove their statements because no action is taken against any accused. On the other hand if cognizance is taken and process is issued against any person and proceedings are initiated/commenced against such person and if the accused pleads not guilty, trial has to be conducted according to law. The statements recorded by the police u/s 161, Cr. P.C. cannot be treated as substantive evidence. The witnesses will have to be examined during examination. During examination their statements recorded by the police may be used for the purpose of contradicting them u/s 162, Cr. P.C. in the manner provided in Section 145 of the Evidence Act. Section 145 of the Evidence Act prescribes the manner of cross-examination, the object of which is to impeach the testimony of witness. It clearly provide that if a witness is to be impeached by contradicting him then his attention must be drawn to earlier statement. It is thus obvious that if any witness has not been cross-examined in accordance with Section 145 of the Evidence Act and his earlier statement is not otherwise duly proved according to law, the exercise of impeaching the testimony of witness on the ground of contradiction may be contrary to the principles of natural justices on the ground that the witness was not given an opportunity to explain the alleged conduct of making contradictory police statements u/s 161, Cr. P.C. can be used for the purpose of contradiction as provided in Section 162, Cr. P.C. and in accordance with Section 145 of the Evidence Act. But the law does not dispense with the necessity of proving the statements recorded by the police. Even for the purpose of contradiction during trial the portions of the statement which are used for contradicting witness must be proved by asking the Investigating Officer whether he recorded them or not, unless the witness admits them. Law in this behalf is well established by the Judgment of the Hon'ble Supreme Court in Tahsildar Singh and Another Vs. The State of Uttar Pradesh, Tahsildar Singh v. State of U.P. In view of this it is not difficult to hold that before the statement is discarded as false on the ground that it is inconsistent with a previous or subsequent statement, the statements which are contradictory should be duly proved. If it were possible to discard the testimony of the witnesses without requiring the formal proof of contradictory statements and without complying with the provisions of Section 145 of the Evidence Act, there would have been no necessity of Section 145 of the Evidence Act nor of any examination-in-chief nor of cross-examination. Suffice it to say that unless the statements recorded on 18-10-1988 are duly proved by the Police Officer who recorded them and unless those statements are put to the witnesses for the purpose of impeaching their credit, in accordance of Section 162, Cr. P.C. and Section 145 of the Evidence Act, I am, afraid at this stage it is not possible to discard the statement recorded on 14-10-1988, on the ground that they are contradictory with the statements recorded on 18-10-1988, In other words at this stage a final opinion whether the allegations contained in the statement recorded on 14-10-1988 are true or false cannot be made and since final opinion cannot be made at this stage, the learned

Additional Chief Judicial Magistrate could not have come to a definite conclusion that the statements recorded on 14-10-1988 were false. In this view of the matter the submission that in view of the statement dated 18-10-1988 the allegation should be held to be false or untrue cannot be accepted as correct.

17. In addition to statements recorded on 14-10-1988 there are two letters which are alleged to have been written by non-petitioner No. 2 on 12-5-1988 and 25-4-1988 to Shri S. K. Bharadwaj. These letters show that demand of Rs. 50,000/- has been made. These letters further show that non-petitioner No. 2 requested that it would be in her interest if the amount was paid. It would not be necessary to go into detail at this stage. It is a piece of circumstantial evidence. It could be looked into at the time of proceeding against the accused persons u/s 204, Cr. P.C. Regarding these two letters the learned Counsel for the petitioner has submitted that in Golf Course Scheme the petitioners and the non-petitioners' family used to reside as neighbours and as such there was no necessity of writing these two letters and send them by post. This aspect of the case can be considered after giving an opportunity to the writer of the letter.

18. In view of above reasons the order dated 8-8-1990 passed by the learned Additional Chief Judicial Magistrate does not call for any interference u/s 482, Cr.P.C. While parting with this case it may be observed that interest of justice as much requires the protection of innocent persons as it requires punishment of the guilty and, therefore, it is necessary that any such system should be devised by the society which succeeds in punishing the guilty persons without causing any harassment to the innocent persons. Probably an ideal system which may rule out harassment of the innocent person is proceeded against, the allegation would be required to be proved beyond reasonable doubt. Presently we do not have such a system and, therefore, the chances of making false allegation and setting up a false "prima facie case" cannot be eradicated, no matter what effort is done at the time of proceeding against accused person. u/s 204, Cr.P.C. the Courts cannot meticulously examine the evidence, though they are not precluded from declining to issue process if the allegation made before them appears to be inherently, improbable or false or of such nature that no prudent man under any circumstance would deem it fit to rely upon them. It is a common experience that in a large number of cases which are brought to trial the accused are acquitted as the allegations are not proved to be true or they are proved to be false. It requires serious consideration how to discourage the making of false allegation or making allegation without due care and caution so that innocent persons may not be harassed. It is a matter for the competent legislature and not for the Courts. Suffice it to say that while hearing a petition u/s 482, Cr.P.C. or u/s 397, Cr.P.C. against the orders by which cognizance is taken or process is issued against any person the argument generally advanced on behalf of the petitioners is that they are being subjected to harassment by making false allegations and this Court is called upon to consider the merits of the case and give relief by quashing orders of taking cognizance and the proceeding against accused person and, in view of the law in force this Court cannot do more than

finding out whether the facts alleged before the Court constitute any offence and whether the lower Court was competent to take cognizance and whether there was a prima facie case to proceed against the petitioner. The expectation of the litigants who approach this Court u/s 482, Cr.P.C. that this Court would give instant relief cannot be fully met in view of the limited scope of Section 482, Cr.P.C. The above mentioned expectations can be fulfilled only if the law were such as to require the allegation to be proved beyond reasonable doubt before the issue of process against the accused persons.

19. For reasons given in this order the petition deserves to be dismissed and is hereby dismissed. A copy of the order with original record be sent to the lower Court.