

(2007) 09 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 839 of 2002

Madan Mohan Sethi and Another

APPELLANT

Vs

State (NCT of Delhi) and Another

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2008) 1 ALT(Cri) 26 : (2007) 98 DRJ 457

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Dinesh Mathur and Vikram Panwar, for the Appellant; Mukta Gupta, Usha Bhati, ASI and Sanjiv K. Jha, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—This petition under Article 226/227 of the Constitution of India has been filed for quashing of FIR No. 292/2002 PS Hauz Khas u/s 406/498A/34 IPC. The FIR has been registered on the complaint of Mrs. Annie Sethi wherein she had alleged that she was married to Dr. Rajesh Sethi on 17th May, 1996. There was entrustment of dowry and istridhan including gold and diamond ornaments etc. to the petitioners. She accompanied Dr. Rajesh Sethi to Brooklyn USA. She gave a description of alleged cruelty meted out to her at USA at the hands of her husband. Her mother stayed with her at USA for some time during birth of child. A male child was born to her on 20th February, 1997. Her mother came back in May 1997 to India. The couple returned to India in November, 1997. While Dr. Rajesh Sethi left for USA on 1st December, 1997 she stayed back at her in-laws house. She submitted that her husband promised of returning to India in July, 1998, after completing his Residency however, he did not return. Thereafter, she described the conduct of her in-laws with her. She made allegations about her harassment for not bringing sufficient dowry and asking her to demand a house from her parents. She was asked to sign certain

documents which she refused. She alleged that she was forced to leave the house of her in-laws in April, 1998 itself. Her husband went to Arkansas to work in a hospital and filed a law suit against her in Arkansas for divorce. She replied to the Court at Arkansas, USA that the Court at US had no jurisdiction.

2. She alleged that she had requested the petitioners (her in laws) to return her istridhan but instead of returning her istridhan she was given filthy abuses. Her husband deserted her and she was subjected to cruelties and dowry demands.

3. Quashing of FIR is sought by the petitioner on the grounds that (i) reading of the FIR and the material available on record does not disclose commission of any offence by the petitioners as alleged by the respondent. (ii) The investigating agency did not appreciate that due to passage of time (delay in lodging complaint) a valuable right had accrued to the petitioners, which ought not to be disturbed mechanically by registration of FIR. (iii) The complaint was vague. Complainant had concealed the fact that divorce has been granted by the Court at USA and the decree of divorce granted by the Court has not been challenged so far. (iv) It was the complainant herself, who had refused to join her husband at USA. (v) The role of each accused was not specified by the complainant in her complaint. (vi) The investigating agency had unfairly investigated the matter and (vii) The story given by the complainant was false.

4. In State of Haryana and others Vs. Ch. Bhajan Lal and others, Supreme Court ruled that power of quashing criminal proceeding should be exercised very sparingly and with circumspection and that too in rarest of rare cases. The Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in FIR or in the complaint. For guidelines the Supreme Court laid down following instances where this extraordinary power can be exercised by the High Court:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate or contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a

just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings an/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide an/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. In *State of Punjab v. Subhash Kumar* 2006 (1) SCC 324 Supreme Court again emphasized that High Court cannot enter into the factual arena and quash an FIR. High Court cannot act as an investigating agency at the stage when FIR is under investigation. In *M. Narayandas v. State of Karnataka* AIR 2004 SC 555 Supreme Court observed that power to quash FIR must be exercised very sparingly and with circumspection. It must be exercised in rarest of rare cases and Court would not be justified in embarking upon an enquiry about the reliability or the genuineness of the allegations made in the FIR. Court also cannot enquire whether the allegations and the complaint are likely to be established or not.

6. During arguments, the counsel for the petitioners took me through the diary maintained by the complainant in order to show that in the diary complainant showed amicable relations between petitioners and complainant and there was no mention about alleged cruelties meted out to her by her husband or by in-laws and stated that the allegations made in the FIR were false.

7. I consider that while considering the petition for quashing this Court cannot act as an investigating agency nor can this Court adjudicate whether the complaint made by the complainant was false or truthful. This is the job of the trial court where petitioners would be at liberty to place all material in their defense.

8. The other ground raised by the petitioners is that the complaint was barred by limitation and cognizance of the offence could not have been taken and no FIR could be registered, I consider that considering the power of trial court u/s 473 Cr.P.C., this Court while quashing FIR cannot enter into the controversy whether the cognizance of offence can be taken by the Magistrate or not. Moreover, there is no limitation period prescribed under Cr.P.c. for registration of FIR. The limitation is prescribed u/s 468 Cr.P.C. for taking cognizance by the Court. The petitioner would be at liberty to take the defense of limitation before the Court concerned.

9. I do not find that this case is a rarest of rare cases where this Court should exercise its discretion for quashing of the FIR. The allegations made by the

complainant in the petition may or may not be established during the trial but the allegations prima facie disclose commission of an offence. FIR is not an encyclopedia of facts. The entire and complete facts are to be collected by the investigating agency before filing of challan to the Court. Even if there is certain vagueness in the allegations or certain facts have not been stated by the complainant that is not a ground for quashing of FIR. I, Therefore, find no force in this petition. The writ petition is hereby dismissed.