
(2008) 06 JH CK 0042
In the Jharkhand High Court

Mahanand Jha and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 379, 498A

Citation : (2009) 2 DMC 93 : (2008) 3 JCR 396

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Criminal Revision is directed against the validity and legality of the impugned order passed by the SDJM, Godda in T.R. No. 589 of 2005 on 16.5.2005 whereby and whereunder the petition for the discharge of the petitioners u/s 239 Code of Criminal Procedure was rejected.

2. The factual matrix of the case as it stood narrated by the O.P. No. 2 Smt. Vinita Jha in his written report presented before the Godda police was that she was married to Rajiv Kumar Jha son of the petitioner No. 1 and 2 on 11.7.1997 according to the Hindu rituals and after marriage she went to her matrimonial home at village Panjwara where she was terrorized and threatened to bring Rs. 1,50,000/- from her parental home as she had carried nothing with her on the eve of marriage, lest her life would be made miserable. Her husband was posted as lecturer at Mahila College. Godda. She further alleged that when she conceived during her stay at matrimonial home, her-in-laws put pressure for abortion. She informed her father who was posted at Biharsharif in the Electricity Board and he came there, took her to Godda where a male child was born to her. After a great persuasion her husband took her away to Panjwara in the month of May. 2002 where he again started extending threat to commit her murder and finally she was taken to Godda against her will in the month of October and left

there by extending threat that she would be accepted only when she would return with Rs. 1.5 lakhs lest, she would be eliminated. In the month of December, 2002 it was alleged that the petitioners came to Godda in absence of her father, abused in various manner and threatened her mother to return the informant with Rs. 1.5 lakhs otherwise she along with her son would be killed. On the basis of the written report, Godda P.S. Case No. 184 of 2003 was registered on 6.7.2003 for the offence u/s 498-A. IPC against all the petitioners herein and the husband of the informant Rajiv Kumar Jha. The police after investigation submitted charge-sheet against all the accused persons including the petitioners under Sections 498-A/379. IPC as also under Sections 3/4 of the Dowry Prohibition Act. Having been dissatisfied with the charge-sheet filed by the police, the petitioners preferred a petition u/s 239, CrPC for their discharge which was rejected by the learned SDJM, Godda and called upon the petitioners and another to stand charge in the alleged offence.

3. Learned Counsel for the petitioner submitted that no specific overtact of cruelty or harassment was attributed against any of the petitioners. According to the First Information Report the alleged occurrence in respect of involvement of the petitioners took place in the month of December, 2002 but the FIR was lodged after seven months on 6.7.2003 without explanation of inordinate delay. According to the learned Counsel, the Apex Court in catena of decisions held the FIR as an extremely vital and valuable piece of evidence for the purpose of corroborating or contradicting the evidence adduced in course of trial and the importance of FIR could be taken with all care and caution from the stand-point of the accused and that the delay in lodging of the FIR often resulted in embellishment, might be a creation of afterthought. The allegations made in the instant FIR did not indicate specific attribution against any of the petitioners of causing harassment to the informant with a view to coercing her to meet out any unlawful demand of dowry in cash or kind. The allegation was specific only against the husband and none else who allegedly demanded Rs. 1.5 lakhs from the informant to be brought from her parental home lest, her life would be made miserable and that the husband alone was the ultimate beneficiary of such demand if at all to which the petitioner had nothing to do.

4. Learned Counsel with reference to the allegation and the occurrence which took place allegedly in the month of December, 2002 submitted that it was peculiar for such an occurrence if took place on the instance of the petitioners in Godda town, no information was given to the police for long 7 months. The informant was silent in the written report in respect of individual attribution of the petitioners in extending threat and using abusive languages against her and her mother. According to the police report the petitioner No. 4 Smt. Mettu Jha, a married sister of the husband of the informant used to live with her husband Mirtunjay Jha at Mumbai. Similarly, Smt. Rupa Jha another sister of the husband of the informant used to live with her husband Pramod Jha (Petitioner No. 5) at Patna. Petitioner No. 6 Pitambar Jha and Petitioner No. 7 Smt. Ranjana Jha are the uncle- in-law and aunt-in-law of the informant, not at all concerned with the

family affairs of the informant. Similarly, the petitioner No. 1 Mahanand Jha is the father-in-law and the petitioner No. 2 Smt. Shanti Jha is the mother-in-law. The father-in-law is a retired ADM and at the relevant time he was a practicing lawyer at Katihar. He had produced pension book in which his address was given at Katihar. The specific defence with respect to the petitioner Smt. Meetu Jha was taken that at the relevant time of alleged occurrence she was under-going treatment at Mumbai under Dr. Mahesh Asher for her breast abscess and in support whereof prescriptions and pathological test reports were annexed, but surprisingly, her presence was shown by the informant at Godda. Finally, it was submitted that for the fault of the husband the entire relations of the husband cannot be implicated for the alleged offence under Sections 498-A and 379, IPC.

5. Heard Mr. Manoj Kumar Sah on behalf of the O.P. No. 2.

6. Having regard to the facts and circumstances of the case. I find from the perusal of the impugned order dated 16.5.2005 passed by the SDJM, Godda in T.R. No. 589 of 2005 that the petition filed on behalf of the petitioners herein u/s 239, CrPC was rejected mainly on the ground that the cognizance of the offence was taken by the Chief Judicial Magistrate under Sections 498-A/379, IPC and 3/4 of the Dowry Prohibition Act after perusal of the charge-sheet and the case diary against the named accused of the charge-sheet and expressed satisfaction that there was sufficient material on the record for framing of charge against the petitioners.

7. In catena of decisions, this Court held that whenever any petition for discharge is filed for and on behalf of the accused persons, it was incumbent upon the concerned Court to point out a few prima facie materials available on the record to the satisfaction to proceed against the accused, but in the instant case, the learned SDJM without application of judicial mind observed that there was sufficient material against the petitioners to frame charge without going through the materials i.e. the case diary, charge-sheet and the other relevant documents mainly relying upon the cognizance order passed by the CJM, Godda. The procedural law is very clear that the cognizance is taken of the offence whereas charge is framed against the accused. At- the time of framing of charge what the Court is required to do is to find out prima facie material/materials against the accused to proceed against him/them after framing of charge against the accused. The learned SDJM without discussing the specific defence of the petitioners dismissed their petition mainly relying upon the cognizance order which is unsustainable.

8. In the result, the order impugned dated 16.5.2005 passed by the SDJM, Godda in T.R. No. 589 of 2005 arising out of G.R. No. 701 of 2003 is set aside with the direction to pass an order afresh after hearing the parties and upon application of judicial mind in accordance with law.

9. Accordingly, this petition is allowed with the above observation.