
(2013) 08 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Rev. No. 1014 of 2012 and I.A. No. 5208 of 2013

Mahendra Prasad and Subhadra Gupta @ Devi

APPELLANT

Vs

The State of Jharkhand and Pritibala

RESPONDENT

Date of Decision : 19-08-2013

Acts Referred:

Citation : (2013) 4 AJR 89

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Sanjay Kumar Tiwari, Advocate for the Opposite party No. 2 and Mr. Arun Kumar Pandey, Assistant Public Prosecutor for the State, for the Respondent

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners, learned counsel for the State, as also learned counsel for the complainant-opposite party No. 2. The petitioners are aggrieved by the order dated 11.10.2012 passed by the learned Sessions Judge, Garhwa, in Sessions Trial No. 181 of 2010, whereby the application filed by the petitioners for discharge u/s 227 of the Cr.P.C., has been rejected by the Court below.

2. The petitioners along with other co-accused persons have been made accused in Garhwa P.S. Case No. 126 of 2008, corresponding to G.R. No. 582 of 2008 for the offences under sections 498A, 323, 385, 387, 307, 504, 316 & 494 of the Indian Penal Code. The petitioners are the uncle-in-law and aunt-in-law of the victim lady and they have been made accused in the case along with the husband, father-in-law and other near relatives of the husband of the victim. The F.I.R. was lodged on the basis of the complaint filed by the victim alleging atrocities against her by the husband and the in-laws, including the petitioners, for the demand of dowry.

3. From the complaint petition, on the basis of which the police case was instituted, it is apparent that the complaint was married to the co-accused, Gopal Krishna, a resident of village-Jawar, P.S.-Dudhi, District-Sonbhadra, in the State

of Uttar Pradesh. After the marriage she came to her matrimonial home and there is allegation against the husband and the in-laws, including the petitioners, to have subjected her to cruelty and torture for demand of dowry and also to have assaulted her and caused the miscarriage of her pregnancy at the matrimonial home in the State of Uttar Pradesh. Thereafter she was brought to her parents' place in the district of Garhwa, in the State of Jharkhand, where she is living since 12.6.2007. It is again alleged that on 4.5.2008 all the male accused persons came to her parents' place and got the signature of the complainant and her father on several papers threatening them on the point of revolver. With these allegations the complaint was filed in the Court of Chief Judicial Magistrate, Garhwa, which was registered as Complaint Case No. 353 of 2008, and was sent for institution of the police case, whereupon the police case was instituted and the investigation was taken up.

4. The impugned order shows that after investigation, though the police had submitted the charge-sheet against the other co-accused persons, i.e., the husband and his immediate relatives, but so far as these petitioners are concerned, the police submitted the final form in their favour, in view of the fact that the allegations against these petitioners were not supported or corroborated by any of the witnesses. Even though no protest-cum-complaint was filed by the complainant-informant against the same, but by order dated 20.4.2009 the learned Chief Judicial Magistrate, Garhwa, took cognizance of the offence against all the accused persons, including the petitioners. The said order of cognizance was challenged by the petitioners in this Court in Cr. M.P. No. 1708 of 2010, which was dismissed by order dated 17.4.2012, giving the liberty to the petitioners to raise their points before the Court below at the time of discharge. After the commitment of the case to the Court of Session, the petitioners filed their application for discharge u/s 227 of the Cr.P.C., which was rejected by the Court below by the impugned order dated 11.10.2012.

5. The impugned order shows that the allegations against the petitioners in the complaint petition were supported by the informant in her re-statement and her family members, before the police, but the other witnesses stated that the petitioners were falsely implicated in this case. The Court below finding that there is no reason as to why the petitioners were falsely implicated in this case, has rejected the application filed by the petitioners.

6. It may be stated that by order dated 17.5.2013, notice was issued to the complainant-opposite party No. 2 in this case in the admission stage itself, and the proceedings in the Court below, qua these petitioners only, were stayed by this Court. The complainant appeared pursuant to the notice and also filed the I.A. No. 5208 of 2013 for recalling the stay order dated 17.5.2013, but both the parties were heard on the merits of the case.

7. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, admittedly the petitioners are the uncle-in-law and aunt-in-law of the victim lady. They are

living separately and they have no concern with the entire occurrence, rather the petitioners have been falsely implicated in this case, only being the close relatives of the husband of the complainant, with only omnibus allegations against the petitioners. It is also submitted that whatever allegations are there against the petitioners, they are making only casual reference of the petitioners. It is further pointed out that though some part of the occurrence has been shown to have been committed at the parents' place of the complainant, in the district of Garhwa, but the petitioners are not named therein, rather it is only stated that the male accused persons had visited her parents' place and they took signatures of the complainant and her father on several papers on the point of revolver. Learned counsel accordingly, submitted that there is no specific allegation against the petitioners within the territorial jurisdiction of the Court below. Learned counsel has placed reliance upon the decision of the Supreme Court of India in Preeti Gupta and Another Vs. State of Jharkhand and Another, wherein the Apex Court has taken note of the fact that it is a matter of common experience that most of the complaints u/s 498A of the Indian Penal Code are filed in the heat of the moment and implicating of the relatives of the husband only in order to harass and humiliate them, and in this backdrop, the law has been laid down by the Apex Court as follows:-

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husbands dose relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.

(Emphasis supplied).

Placing reliance on this decision learned counsel for the petitioner has submitted that the impugned order cannot be sustained in the eyes of law.

8. Learned counsel for the State, as also learned counsel for the complainant-opposite party No. 2, have submitted that in the complaint petition there are allegations against the petitioners also, who admittedly are the dose relatives of the husband, being his uncle and aunt. It is also submitted that though some witnesses might have stated before the police that these petitioners were falsely implicated, but the complainant and the other witnesses have supported the case against them and on the basis of these materials, the learned Chief Judicial Magistrate, Garhwa, had taken cognizance against the petitioners also, by order dated 20.4.2009. The petitioners challenged the said order in this Court in Cr.

M.P. No. 1708 of 2010, which was dismissed by order dated 17.4.2012. It is further submitted by the teamed counsels that after filing of the present application, the charge has already been framed and the trial is going on against the petitioners also, and as such this application cannot be entertained at this stage.

9. Learned counsel for the complainant has further placed reliance upon the decision of the Supreme Court of India in *Minu Kumari and Another Vs. The State of Bihar and Others*, wherein it has been held as follows:-

20. -----, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. -----.

(Emphasis supplied).

Placing reliance on this decision, learned counsel has submitted that in the present case, in view of the fact that the trial is still in the evidence stage and the entire evidence is yet to come, this Court should exercise extreme care and should refrain from giving any prima-facie decision in the case. Learned counsel accordingly, submitted that this is a fit case for dismissing the application and to continue the trial against the petitioners as well.

10. After having heard teamed counsels for both the sides and upon going through the record, I find that admittedly the petitioners are the uncle and aunt of the husband of the complainant. There are only omnibus allegations against them and that too are alleged to have taken place in the State of Uttar Pradesh. Though there is allegation that the male accused persons had also visited the parents' place of the complainant in the district of Garhwa, but the petitioner No. 1 is not named therein. This also excludes the presence of the petitioner No. 2 at the parents' place of the complainant informant. As such, it is apparent from the complaint petition itself that so far as the occurrence at the parents' place of the complainant is concerned, there is not even a casual reference of the petitioners in the same. The offence of subjecting the complainant to cruelty and torture may be a continuing offence against the husband and his immediate relatives, but the same cannot be a continuing offence against the petitioners, who are admittedly the uncle-in-law and aunt-in-law of the complainant, particularly in view of the fact that there are only casual and omnibus allegations against them

in the complaint petition. On the basis of the allegations made in the complaint petition, I am of the considered view that the petitioners are being unnecessarily harassed in the present case by the complainant, only because of the fact that they are the near relatives of the husband of the complainant, only with casual allegations against them. In a recent decision, the Apex Court has laid down the law in *Geeta Mehrotra and Another Vs. State of U.P. and Another*, as follows:-

24. ----- what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial tittering, it would be dear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

(Emphasis supplied).

The facts of the present case, in my considered view are fully covered by the decision of the Apex Court in *Geeta Mehrotra's* case (supra).

11. In view of the aforementioned discussions, I am of the considered view that it is a fit case for exercising the inherent powers u/s 482 of the Cr.P.C., for quashing the criminal proceedings so far as these petitioners are concerned. Accordingly, the entire criminal proceedings, qua the petitioners Mahendra Prasad and Subhadra Gupta @ Devi only, in Sessions Trial No. 181 of 2010, arising out of Garhwa PS. Case No. 126 of 2008, corresponding to G.R. No. 582 of 2008, pending in the Court of learned Sessions Judge, Garhwa, are hereby, quashed. This revision application is, accordingly, allowed. Consequently, the I.A. No. 5208 of 2013 filed by the complainant opposite party No. 2, for recalling the stay order dated 17.5.2013, stands dismissed.