
(2017) 03 MP CK 0152
In the Madhya Pradesh High Court
Case No : 11127 of 2007

Manoj Kumar Shrivastava

APPELLANT

Vs

State of Madhya Pradesh and Ors.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498-A](#)

Citation : (2017) 03 MP CK 0152

Hon'ble Judges : S.K. Gangele

Bench : Single Bench

Advocate : Manish Datt, Atul Choudhary, Vivek Lakhera, D.N. Shukla

Judgement

1. Petitioners have filed this petition under Section 482 of Cr.P.C., for quashment of the criminal case No.71/2005, pending before the Court of Judicial Magistrate First Class-I, Teothar, District Rewa.

2. Deceased-Shanti Devi, was married with the petitioner No.1 Lavlesh Mishra six years before the incident. She died on 17.06.2002. The dead body of the deceased was cremated. After 5 months of the death of Shanti Devi, on 01.11.2002 the father of the deceased lodged a complaint before the police Station Panwar District Rewa alleging that the demand of dowry was made by the family members from the deceased and she was subjected to harassment and cruelty. The deceased was murdered by administering poisonous substance. The police registered an offence vide Crime No.05/2002. The investigation was conducted by the police. The statements of the family members were recorded and police filed a charge-sheet against the petitioners for the offence punishable under Sections 498-A, 304-B and 34 of IPC and under Sections 3 & 4 of Dowry Prohibition Act.

3. The peculiar facts of the case are that at the time of death of the deceased,

Panchnama of the dead body was prepared. As per Panchnama, no definite opinion was made in regard to death of the deceased. The dead body was found beneath Mango tree in the field. It is further mentioned in the Panchnama that persons noticed some injuries of bite by insect. The dead body was sent for post-mortem. A team of doctors performed the post-mortem submitted the following opinion.

"In our opinion, cause of death of wife of Lavlesh is due to cardio respiratory failure as a result of suspected poisoning, however, viscera and skin of suspended bite has been preserved for chemical analays to confirm the diagnosis."

4. The Viscera, some part of skin of where there were signs of insects bite were sent for chemical examination to Forensic Science Laboratory Sagar. The Senior Scientific Officer of the laboratory submitted the report to the Superintendent of Police, Sagar on 02.08.2002, mentioning the facts that the articles sent by the CMO A, B and C were examined, those articles were of deceased. Articles A and B of particles of viscera and article C is the liquid containing Sault. As per result, no poison was found in the articles A, B and C. Thereafter, further opinion was sought from medico legal institute Government Medical College, Bhopal. The institute in its report dated 11.10.2003 send to the SDO (P) Police Station Sirmour in it's report opined that earlier an opinion was given in regard to death of the deceased on 21.08.2002, the matter was further reviewed and it is found that as per Panchnama of the dead body which was prepared at the time of death, no signs of any injury on the dead body was noticed. As per viscera report, there was no poison found. There were signs and injuries of bite insects near the left ankle. The aforesaid fact was mentioned in the Panchnama of the dead body. In the post-mortem, a blood was also found from the aforesaid injuries, hence the death was caused due to insect bite and earlier opinion dated 21.08.2002 in which it has been mentioned that the death of the deceased was caused due to snake bite is correct.

5. From the aforesaid medical and expert opinion, it is established that the deceased was died due to snake bite. There is no evidence of any other cause of death. The family members of the deceased levelled allegations that poisonous substance was administered to the deceased. These allegations are false and baseless. The allegation of demand of dowry and cruelty also not true because those allegations were made after a period of five months when the deceased was died due to accident. It appears that due to death of the deceased, family members of the deceased got annoyed .

6. The apex Court in the case of Preeti Gupta vs. State of Jharkhand reported in [2010] 7 SCC 667 has made its concern about levelling of allegations of demand of dowry and cruelty. The apex Court has held as under:-

"31. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:- "498-A. Husband or

relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purposes of this section, `cruelty' means:- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern. "

7. The apex Court in the aforesaid case further considered the power of the Court to quash criminal proceedings after relying various judgments and held as under:-

24 In *State of Haryana & Others v. Bhajan Lal & Others* 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

"(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 under Section 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 uncontroverted 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 as contemplated under Section 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 and/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 and/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."

25. In *G. Sagar Suri & Another v. State of UP & Others* (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

26. This court in *Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another* (2005) 1 SCC 122 observed thus:-

"It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

27. A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in *Inder Mohan Goswami and Another v. State of Uttaranchal & Others* (2007) 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:- "24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading

to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

8. On the basis of above principle of law, laid down by the apex Court in the aforesaid judgments and subsequent judgment of the apex Court in the matter of Geeta Mehrotra and another vs. State of Uttar Pradesh and another (2012) 10 SCC 741 in my opinion, the criminal proceedings lodged against the petitioners are without any evidence and continuation of proceedings would amount to harassment to the petitioners.

9. Consequently, the petition is allowed. The criminal proceedings vice case No.71/2005 pending against the petitioners in the Court of Judicial Magistrate First Class-I Teother District Rewa for the offence punishable under Sections 498-A, 304-B and 34 of IPC and under Sections 3 & 4 of Dowry Prohibition Act, are hereby quashed.