

(2024) 12 JH CK 0080
In the Jharkhand High Court
Case No : Cr.M.P. No.4012 Of 2018

Mohammad Fariduddin @ Md. Faruudin	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 18-12-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125, 227, 482
Indian Penal Code, 1860 — Section 313, 323, 342, 366, 448, 506

Citation : (2024) 12 JH CK 0080

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Awnish Shankar, P.D. Agrawal

Final Decision : Dismissed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceeding including the order dated 24.08.2023 passed by the learned Additional Sessions Judge-IV, Jamshedpur whereby and where under the learned court below framed charges under Section 366, 313, 323, 342, 448 & 506 of the Indian Penal Code against the petitioner no.1 and under Section 323, 342, 448 & 506 of the Indian

Penal Code against the petitioner no.2 in ST Case No.343 of 2019 arising out of C/1 Case No.2607 of 2015.

3. The allegation against the petitioners is that from 02.09.2010 to 05.05.2014, the petitioner no.1 kidnapped the victim/complainant with intent that she may be compelled to marry the petitioner no.1 against her own will or knowledge and she may be forced or seduced to illicit intercourse which amounts to commission

of the offence punishable under 366 of Indian Penal Code.

4. There is further allegation against the petitioners is that during the said period, the petitioner no.1 voluntarily caused the victim then being pregnant with a child to miscarriage without her consent and such miscarriage was not being caused by the petitioner no.1 in good faith for the purpose of saving the life of the victim; which amounts to commission of the offence punishable under Section 313 of Indian Penal Code. On 05.05.2014 and 26.07.2015, both the petitioners voluntarily caused hurt to the victim which amounts to the offence punishable under Section 323 of Indian Penal Code.

5. There is further allegation against the petitioners is that on 26.07.2015, the petitioners wrongfully confined the victim which amounts to the offence punishable under Section 342 of Indian Penal Code and on 26.07.2015, both the petitioners committed house trespass by entering into house in possession of the victim used as a human dwelling and thereby committed the offences punishable under Section 448 of Indian Penal Code.

6. Lastly, the allegation against the petitioners is that on 26.07.2015, they committed criminal intimidation by threatening the victim with injury in her person and to cause her assault and thereby they have committed the offence punishable under Section 506 of Indian Penal Code.

7. Learned counsel for the petitioners submits that cognizance has been taken by the learned Magistrate vide order dated 22.08.2017. The petitioner challenged the order taking cognizance dated 22.08.2017 in this Criminal Miscellaneous Petition. On 17.06.2023, the petitioners filed an application under Section 227 of Cr.P.C. to discharge them, which was rejected by the learned Additional Sessions Judge-IV, Jamshedpur vide order dated 03.07.2023 and the petitioners were directed to appear physically on 17.07.2023 for framing of the charge before the concerned court. The petitioners amended this criminal miscellaneous petition in terms of the order dated 10.09.2024. On 24.08.2023, the learned Additional Sessions Judge-IV, Jamshedpur framed charges against the petitioners. It is next submitted that the petitioner no.1 is the husband of the petitioner no. 2 and they have been maliciously implicated in this case by the opposite party no.2/victim for wrecking vengeance. It is next submitted that the opposite party no.2 married the petitioner no.1 voluntarily after converting her religion from Hindu to Muslim on account of love and affection. The said marriage was dissolved on 30.05.2014 and this fact has been suppressed by the opposite party no.2. It is next submitted that the opposite party no.2 filed Misc. Case No.235 of 2014 in the family Court, Jamshedpur under Section 125 of Cr.P.C. praying for maintenance, but the same was dismissed for non-prosecution; in terms of the order dated 03.02.2017. It is next submitted that in the said petition of Misc. Case No.235 of 2014, the opposite party no.2 has mentioned that she has changed her religion and converted to Muslim on account of love and affection with the petitioner no.1 and subsequently, the opposite party no.2

and petitioner no.1 married each other, by taking the permission of petitioner no.2, who happens to be the first wife of the petitioner no.1 and their marriage was solemnized at Islam Nagar Mosque. But after three years, the behavior of petitioner no.1 changed and he started neglecting the opposite party no.2, hence, the opposite party no.2 filed the petition for maintenance.

8. Relying upon the judgment of the Hon'ble Supreme Court of India in the case of Anita Malhotra v. Apparel Export Promotion Council and Another reported in (2012) 1 SCC 520, the learned counsel for the petitioners next submits that the certified copy of the petition of Misc. Case No.235 of 2014 as well as the order dated 03.02.2017 passed by the Family Court, Jamshedpur being public documents of sterling quality, hence, the same can be considered by this Court in exercise of its power under Section 482 of the Code of Criminal Procedure, if on the basis of such documents, an accusation against the accused person of a case cannot be made out. It is next submitted that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law, hence, it is submitted that the prayer as prayed for in this Cr.M.P., be allowed.

9. Learned Spl.P.P. appearing for the State vehemently opposes the prayer of the petitioners made in the instant Cr.M.P and drawing attention of this court to the order dated 03.07.2023 passed by the learned Special Judge, FTC-CAW, East Singhbhum in ST Case No.343 of 2019; it is submitted by the learned Spl.P.P. that therein the learned Additional Sessions Judge, Jamshedpur has taken note of direct and specific allegation that the petitioner no.1 took the complainant/victim/opposite party no.2 to a room and fed her something on account of which the complainant became senseless and she was subjected to physical contact forcibly and thereafter, the complainant came to know that she was forcibly embraced into Islam and became pregnant, but her pregnancy was terminated. The learned Special Judge, FTC-CAW, East Singhbhum has also considered, in the said order, that on 26.07.2015, both the petitioners trespassed to the house of the complainant, assaulted her, ransacked the household articles and took away Rs.25,000/- and also gold jewellery worth Rs.2,00,000/-. There is further allegation that on 10.10.2015, the petitioner no.1 came to the house of the complainant and threatened her to make physical relationship with him or else, he will kill her brother and the victim also. The learned Special Judge, FTC-CAW, East Singhbhum has also considered the contents of the Informatory Petition filed by the petitioner no.1 vide petition no.664 of 2014 wherein the petitioner no.1 has mentioned that the marriage of the victim with the petitioner no.1 occurred because either the complainant was suffering from some disease or her brother was suffering from some disease and the petitioner no.1 assured her to cure the victim of her miseries which led the victim to convert her religion and agreed to be the second wife of the petitioner no.1 and the Informatory Petition submitted by the petitioner no.1 also suggests that he contracted marriage with the victim while she was suffering from some mental disease and she became normal three years after the marriage with the petitioner no.1 and on the basis of such admission of the petitioner no.1, the learned Special Judge, FTC-CAW,

East Singhbhum arrived at the conclusion that the victim was not in normal state when she was made to marry with the petitioner no.1. The learned Special Judge, FTC-CAW, East Singhbhum also considered the contents of the own Informatory Petition of the petitioner no.1 wherein he has admitted that he acted in such manner so that no issue can be born through the complainant to protect the interest of the sons of petitioner no.1 born from his first legally wedded wife and when there is such overwhelming evidence against the petitioners; even assuming for the sake of arguments that the contents of the petition of Misc. Case No.235 of 2014 is true, still the same is not sufficient to absolve the petitioners of the accusations, for which charge has already been framed and when the charge is that the victim was compelled to marry against her own will, the admission of marriage by the complainant will be of no help to the petitioner no.1. It is next submitted that a single sentence favoring the petitioner no.1 from Misc. Case No.235 of 2014 cannot be extracted out of context and the petitioners if wants to rely upon the contents of the petition of Misc. Case No.235 of 2014 in support of their defence, as defence evidence, the same can be done by the petitioners during the trial of the case but in that case, the entire contents of the said document being the petition of Misc. Case No.235 of 2014, will be taken into consideration including that the petitioner no.1 claims to cure the brother of the complainant/victim within 6 months and under such belief gradually, the petitioner no.1 and opposite party no.2 attracted to each other is also to be accepted as the evidence and the appreciation of the evidence can only be done during the trial of the case and not in exercise of the power of this Court under Section 482 of Cr.P.C., hence, it is submitted that there is no justifiable reason to quash the entire criminal proceeding or the order by which the petition for discharge filed under Section 227 of Cr.P.C. has been rejected, more so, at the belated stage when trial of the case has already begun, after framing of the charge. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

10. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that so far as the contention of the petitioner no.1 that the petition for discharge filed under Section 227 of Cr.P.C. has erroneously been rejected by the learned Special Judge, FTC-CAW, East Singhbhum is concerned, it is a settled principle of law, as has been held by the Hon'ble Supreme Court of India in the case of Rajbir Singh vs. State of U.P. and Another reported in (2006) 4 SCC 51 that when FIR makes out a case of commission of offence, an order of discharge cannot be passed and the accused then must face trial.

11. Now coming to the facts of the case, there is direct and specific allegation against the petitioners of abducting the victim by deceitful means, inducing her to go with him on the pretext of curing her brother, who was suffering from some diseases and after feeding her something, which made her senseless, the victim was ravished and was made to embrace Muslim religion without her consent. There is also direct and serious allegation against the petitioner no.1 of

voluntarily causing the victim being pregnant with child to miscarry without her consent. The allegations are direct and specific and also serious in nature. The allegation against the petitioner no.1 and 2 of causing hurt, wrongfully confining the victim and trespassing her house as well as criminally intimidating her is also direct and specific. The contents of the petition purported to have been filed by the complainant vide Misc. Case No.235 of 2014 which was dismissed for non-prosecution as contended by the petitioner no.1; in the considered opinion of this Court, is not a document of such nature, if the contents of the same is considered to be true in their entirety, the accusations against the petitioners cannot stand, moreover, as submitted by the learned Spl.P.P., if the petitioners intend to use the same as their defence, they can do so only during the trial of the case and in such a situation, the contents of the entire petition will be read in evidence but not a sentence out of context, from the same.

12. It is settled principle of law that that no mini trial can be conducted by the high court in exercise of its power under Section 482 of Cr.P.C as has been reiterated in the case of State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors. reported in 2022 LiveLaw SC 594, the relevant portion of which reads as under:-

"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

13. It is also a settled principle of law that in exercise of its power under Section 482 of CrPC, the genuine prosecution cannot be stifled with as has been held in the case of Monica Kumar (Dr.) and Another vs. State of Uttar Pradesh and others reported in (2008) 8 SCC 781.

14. Now coming to the facts of the case, the accusations against the petitioners are of serious nature and triable by the Court of Sessions and the learned Special Judge, FTC-CAW, East Singhbhum has already framed charges and trial has already begun. At this belated stage, when the accusations are of serious nature and there are enough materials which if considered to be true in their entirety, then the offences for which charge has been framed is prima facie made out against the petitioners.

15. Therefore, this court is of the considered view that this is not a fit case where the entire criminal proceeding or the other prayers of the petitioners made in this Cr.M.P., be allowed in exercise of the power of this Court under Section 482 of Cr.P.C.

16. Accordingly, this Cr.M.P., being without any merit, is dismissed.

17. In view of disposal of the instant Cr.M.P., the interim relief granted vide order dated 13.11.2019, is vacated.