

(2023) 09 CHH CK 0042

In the Chhattisgarh High Court

Case No : Criminal Miscellaneous Petition No. 1112 Of 2016

Naveen Soni

APPELLANT

Vs

Sharda Soni

RESPONDENT

Date of Decision : 12-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B, 323, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 125, 156(3), 177, 178, 179, 200
Protection of Women from Domestic Violence Act, 2005 — Section 12
Hindu Marriage Act, 1955 — Section 9
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2023) 09 CHH CK 0042

Hon'ble Judges : Ramesh Sinha, CJ

Bench : Single Bench

Advocate : Shobhit Koshta, Bhaskar Payashi

Judgement

1. The petitioner is aggrieved by the order dated 22.07.2016 passed by the learned Sessions Judge, Raipur in Criminal Revision No. 119/2016 arising out of order dated 04.02.2016 passed by the Judicial Magistrate First Class, in Criminal Case No. 276/2015 by which the learned Magistrate has registered the criminal complaint of the respondent against the petitioners.

2. The facts, in brief, are that as per Hindu customs, marriage took place between the petitioner No. 1 and respondent on 17/11/2003. Thereafter, the respondent started living with the petitioner No. 1 at Delhi. From the said wedlock, a male child was born and now he is about 11 years old. Thereafter, on 06/06/2011, the respondent returned back to her parent's house at Raipur and did not return back to petitioner's house at Delhi.

3. In the year 2012, the respondent filed a criminal complainant under Section 200 against the petitioners for registration of a case under Section 498-A, 323 and 506 read with Section 34 of IPC and stating that her marriage took place with petitioner No. 1 on 17/11/2003. Out of the said wedlock, one male child was

born on 08/03/2005. When she used to live at the petitioners' house, the petitioners used to demand dowry of Rs. 15 lakhs and some times Rs. 2 lakhs and Rs. 5 lakhs for opening of jewellery showroom. Hence his father on 21/9/2003 had given one kilogram gold and on 13/10/2005, 50.17 gram silver and on 27/10/2010, 57.75 carat white diamond had been given to petitioners for opening showroom but the petitioners did not open the showroom and were subjecting the respondent with cruelty and assaulted her. Subsequently, the petitioners were demanding the amounts for purchasing flat in the name of respondent. But the aforesaid flat had been purchased in the name of Shrimati Santosh Soni, mother-in-law of the petitioners. She further stated that, at the time of marriage of Praveen Soni i.e. petitioner No. 4, she was pregnant and petitioners were asking respondent to do household works. On account of that, she suffered miscarriage. She further alleged that the petitioners No. 2 and 4 were gamblers and the entire amount given for showroom was lost in gambling and again they threatened the respondent and were demanding money. On account of that, she returned back on 06/06/2011 to her parents house at Raipur and did not again went to petitioners' house.

4. After receiving the complaint, the learned Magistrate recorded the evidence of the respondent, Mangilal Soni (father of respondent), Jitendra Kumar (Jija) and Rajeev Kumar Soni (maternal uncle). Thereafter, the learned Magistrate, after hearing the matter on admission, by order dated 17/10/2012 dismissed the complaint on the ground of jurisdiction of Raipur court. Being aggrieved by the order of the Magistrate, the respondent preferred a revision before the Sessions Court which was registered as Criminal Revision No. 50/2013 and after hearing, the learned revisional court by order dated 02/07/2015 allowed the revision and remanded back the case to the Magistrate for reconsideration as per provision of law. After remand, the learned Magistrate heard the matter on registration of complaint and by order dated 04/02/2016 held that as per evidence, it appears that prima facie case is made out against the petitioners an offence punishable under Section 498-A of IPC and registered the complaint and also issued notice to the petitioners for their appearance on 06/04/2016.

5. The petitioners, being aggrieved by the order dated 04/02/2016, preferred a revision before the learned Session Judge which was registered as Criminal Revision No. 119/2016 and submitted that as per complaint and complainant's evidences, it appears that no cause of action arose at Raipur regarding subjecting to cruelty, therefore, the order is without jurisdiction and against the provision of law. However, after hearing of the parties, the learned revisional court had given the finding at paragraph 9 that there is no evidence of subjecting respondent with cruelty at Raipur and within the jurisdiction of Raipur Court but at present stage, this court is not in a position to decide the question of jurisdiction and dismissed the revision by order dated 22/7/2016.

6. Mr. Shobhit Koshta, learned counsel for the petitioners submits the respondent had filed an application under Section 125 of Cr.P.C. for grant of maintenance at

Rohini Delhi Court which is registered as Maintenance Application No. 216/2011 and on 10/4/2013, the learned Family Court passed the order of grant of maintenance of Rs 9,000/- per month. The respondents also filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Additional Chief Metropolitan Magistrate, Rohini, Delhi and subsequently, when the matter reached the court on 15/4/2014, she withdrew the aforesaid application with liberty to file a fresh in concerned court. It is further submitted that the respondent also filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights before the Additional Principal Judge, Family Court- Rohini, Delhi and subsequently, by order dated 16/4/2014 withdrew the application. The respondent also filed the transfer petitions of the cases before the Hon'ble Supreme Court which is registered as Transfer Petition (Civil) No. (s) 1770/2014 and by order dated 16/7/2015, the Hon'ble Supreme Court dismissed the said application.

7. Mr. Koshta further submits that as per the complaint and its evidence, it clearly appears that the petitioners had not subjected the respondent with any cruelty at Raipur. Under these circumstances, as per provision of law and Section 177, 178, 179 of the Cr.P.C., the Courts at Raipur have no jurisdiction to entertain the complaint. Therefore, the order passed by the learned Magistrate and Revisional Court are against the provision of law and also the manner in which the respondent raised the disputes against the petitioners at Rohini Court, Delhi shows that the petitioners had not subjected the respondent with any cruelty. The learned Court below did not see the respondent's complaint in its true prospect because there is no pleading that when she returned back to Raipur, the petitioners subjected respondent with cruelty. Under these circumstances, the complaint registered against the petitioners is without jurisdiction at Raipur Court and it is liable to be set-aside. The learned court below completely failed to see that evidence of the complainant and her witnesses which has never stated in their court statement that the petitioners had subjected respondent with cruelty at Raipur. Under these circumstances, no question arise that the Raipur Court had jurisdiction to register the complaint. Therefore, the order impugned therein is liable to be set-aside. Further, it is an admitted fact that the respondent return back from petitioner's house to Raipur on 06/06/2011 and there is no evidence on record that the petitioners are coming to Raipur and subjected her with cruelty and also there is no electronic evidence on record that by way of mobile or telephonic message; the petitioners subjected the respondent with cruelty. Under these circumstances, no question arise that the complainant had been registered against the petitioners and the Raipur Court has jurisdiction to entertain the complaint. In fact to harass and mentally torture the petitioners, the respondent after having exhausted all the remedies of the Courts by filing of application before the Rohini Courts and Hon'ble Apex Court and when she was unsuccessful in above stated attempts, has filed a false complaint against the petitioners at Raipur Court and unfortunately without any clinching evidence from the records, pleadings,

evidence, the learned court below had registered the complaint against the petitioners an offence punishable under Section 498-A of the Indian penal Code is without jurisdiction and liable to be set- aside.

8. On the other hand, Mr. Bhaskar Payasi, learned counsel appearing for the respondent/complainant submits that the order passed by the learned Magistrate as well as the revisional order passed by the learned Sessions Judge is just and proper warranting no interference. The Court of JMFC Raipur has the jurisdiction to try the complaint case filed by the respondent.

9. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto.

10. In the complaint filed before the learned JMFC, Raipur, the respondent/complainant has alleged that she been treated with cruelty on account of demand of dowry at Delhi which is her matrimonial place as well as at Raipur, which is her parental place. The petitioners have raised an objection that the complaint case before the learned JMFC, Raipur, is not maintainable as the allegations relates to the matrimonial place i.e. Delhi.

11. So far as territorial jurisdiction of the Court is concerned, the Supreme Court, in State of M.P. v. Suresh Kaushal & another (2003) 11 SCC 126, observed as under:

"5. Obviously the learned single Judge has not considered the implication of Section 179 of the Code of Criminal Procedure. It is extracted below:

"179. Offence triable where act is done or consequence ensues - When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.

6. The above section contemplates two courts having jurisdiction and the trial is permitted to take place in any one of those two courts. One is the court within whose local jurisdiction the act has been done and the other is the court within whose local jurisdiction the consequence has ensued. When the allegation is that the miscarriage took place at Jabalpur it cannot be contended that the court at Jabalpur could not have acquired jurisdiction as the acts alleged against the accused took place at Indore."

12. Though the matrimonial place of the respondent/complainant is Delhi, but as per the allegations, she has been forced to leave her matrimonial house and is now constrained to live at her parental house. Applying the ratio laid down by the Supreme Court in Suresh Kaushal (supra), this Court is of the opinion that the complaint case filed by the complainant/respondent against petitioners is maintainable before the Court of JMFC, Raipur. The order of the revisional court so far it relates to the jurisdiction of the Court is concerned, is affirmed.

13. Now the next question that would arise for consideration for this Court would be whether in light of the complaint filed, the same is maintainable against the petitioners No. 2 to 4 also, who are family members of petitioner No. 1.

14. It is an admitted position that the complainant, after the marriage was solemnized on 17/11/2003, returned back to her parental house on 06/06/2011 and thereafter never returned back to her matrimonial house at Delhi. The son of the complainant and petitioner No. 1 is also living with his father and grand parents since then. The complaint case under Section 200 Cr.P.C. was filed before the Court of JMFC, Raipur, on 02.04.2012 making allegations against not only the husband i.e. petitioner No. 1 but also against the petitioners No. 2 to 4. Basically, the allegations are with regard to demand of dowry and treating the respondent/complainant with cruelty. The respondent made a complaint to the Station House Officer, Model Town Police Station, New Delhi, but it appears that no action was taken by the police on the said complaint. The complaint filed before the JMFC, Raipur, though has some substance so far it relates to the petitioner, but it appears that only just to rope all the other family members, the petitioners No. 2 to 4 have also been arrayed as accused in the complaint case.

15. Chapter XXA of the IPC deals with offence of cruelty by husband or relatives of husband. Section 498A of the IPC defines the offence of cruelty as under:-

"498A. 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 purpose 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."

16. A careful perusal of the aforesaid provision would show that in order to establish offence under Section 498A of the IPC, the prosecution must establish,

(i) That, woman must be married;

(ii) She has been subjected to cruelty or harassment and

(iii) Such cruelty or harassment must have been shown either by husband of the woman or by relative of her husband.

The word 'relative' has not been defined in the IPC or in this Chapter, but in order to be covered under Section 498A of the IPC, one has to be relative of the husband by blood, marriage or adoption. The word 'relative' in Section 498A of

the IPC would be limited only to blood relation and relations by marriage.

17. The word 'cruelty' within the meaning of Section 498A of the IPC has been explained in Explanation appended to Section 498A of the IPC. It consists of two clauses namely clause (a) and clause (b). To attract Section 498A of the IPC, it must be established that cruelty or harassment to the wife to coerce her or cause bodily injury to herself or to commit suicide or the harassment was to compel her to fulfill illegal demand for dowry. It is not every type of harassment or cruelty that would attract Section 498A of the IPC. Explanation (b) to Section 498A of the IPC contemplates harassment of woman to coerce or any relation of her to meet any unlawful demand for any property or valuable security. The complainant if wants to come within the ambit of Explanation (b) to Section 498A of the IPC, she can succeed if it is proved that there was an unlawful demand by the husband or any of his relatives with respect to money or of some valuable security.

18. In the matter of Geeta Mehrotra and another v. State of Uttar Pradesh and another (2012) 10 SCC 741, the Supreme Court has held that casual reference to the family member of the husband in FIR as co-accused particularly when there is no specific allegation and complaint did not disclose their active involvement. It was held that cognizance of matter against them for offence under Sections 498-A, 323, 504, 506 and 304-B of the IPC would not be justified as cognizance would result in abuse of judicial process.

19. In the matter of K. Subba Rao and others v. State of Telangana represented by its Secretary, Department of Home and others (2018) 14 SCC 452 the Supreme Court delineated the duty of the criminal Courts while proceeding against relatives of victim's husband and held that the Court should be careful in proceeding against distant relatives in crime pertaining to matrimonial disputes and dowry deaths and further held that relatives of husband should not be roped in on the basis of omnibus allegations, unless specific instances of their involvement in offences are made out.

20. In the matter of Rashmi Chopra v. State of Uttar Pradesh and Another 2019 SCC OnLine SC 620, it has been held by the Supreme Court relying upon the principle of law laid down in State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) SCC 33 that criminal proceedings can be allowed to proceed only when a prima facie offence is disclosed and further held that judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment and the High Court should not hesitate in exercising the jurisdiction to quash the proceedings if the proceedings deserve to be quashed in line of parameters laid down by the Supreme Court in Bhajan Lal (supra) and further held that in absence of specific allegation regarding anyone of the accused except common and general allegations against everyone, no offence under Section 498A IPC is made out and quashed the charges for offence under Section 498A of the IPC being covered by category seven as enumerated in Bhajan Lal (supra) by holding as under:-

"24. Coming back to the allegations in the complaint pertaining to Section 498A and Section 3/4 of D.P. Act. A perusal of the complaint indicates that the allegations against the appellants for offence under Section 498A and Section 3/4 of D.P. Act are general and sweeping. No specific incident dates or details of any incident has been mentioned in the complaint. The complaint having been filed after proceeding for divorce was initiated by Nayan Chopra in State of Michigan, where Vanshika participated and divorce was ultimately granted. A few months after filing of the divorce petition, the complaint has been filed in the Court of C.J.M., Gautam Budh Nagar with the allegations as noticed above. The sequence of the events and facts and circumstances of the case leads us to conclude that the complaint under Section 498A and Section 3/4 of D.P. Act have been filed as counter blast to divorce petition proceeding in State of Michigan by Nayan Chopra.

25. There being no specific allegation regarding any one of the applicants except common general allegation against everyone i.e. "they started harassing the daughter of the applicant demanding additional dowry of one crore" and the fact that all relatives of the husband, namely, father, mother, brother, mother's sister and husband of mother's sister have been roped in clearly indicate that application under Section 156(3) Cr.P.C. was filed with a view to harass the applicants....."

21. Following Bhajan Lal (supra), the Supreme Court has recently quashed the case of Section 498A IPC against the in-laws in the matter of Abhishek v. State of Madhya Pradesh 2023 SCC OnLine SC 1083.

22. The perusal of the complaint case would make it clear that the allegations made by respondent-complainant against the present petitioner No. 2 to 4 are vague and omnibus in nature and no specific allegations are made against them.

23. On the basis of aforesaid discussion, I am of the considered opinion that the complaint case filed against the petitioners No. 2 to 4 are quashed. So far as the complaint case against the petitioner No. 1 is concerned, the same shall proceed in accordance with law.

24. Resultantly, the petition filed by the petitioner No. 1 is dismissed and the petition so far it relates to petitioners No. 2 to 4 stands allowed.