
(2015) 02 JH CK 0029
In the Jharkhand High Court
Case No : Criminal M.P. No. 723 of 2002

Om Prakash Sinha and Others	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 323, 333, 498 A, 498A

Citation : (2015) 02 JH CK 0029

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : R.C.P. Sah, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard learned counsel for the petitioners and learned counsel for the State. No one appears on behalf of O.P. No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding in connection with C.P. Case No. 379 of 2001 including the order dated 5.7.2001, passed by Shri P.N. Upadhyay, learned Judicial Magistrate, 1st class at Dhanbad, whereby and whereunder cognizance has been taken against the petitioners for the offence punishable under sections 498 A and 323 of the Indian Penal Code.

3. It appears that earlier a complaint case was instituted being C.P. Case No. 441 of 1997 by the opposite party No. 2, in which cognizance was taken for the offence punishable under section 498 A of the Indian Penal Code, which was under challenge before this Court in Cr.Misc. No. 7117 of 1997 R. During the pendency of the proceeding, since the matter was compromised between both the sides an order was passed on 9.3.1998, in which the compromise petition was accepted and in terms of the said compromise petition, the entire criminal proceeding in C.P. Case No. 441 of 1997 including the order taking cognizance

was quashed. Subsequent to the quashment of the earlier case instituted by the informant, the present case has been lodged with an allegation that after the compromise was entered into between both the sides, the torture and assault had once again started on the opposite party No. 2 for non fulfillment of dowry demand of Rs. 50,000/-, which the accused persons had spent on fighting litigation.

4. After an inquiry was conducted under section 202 Cr.P.C., the learned Judicial Magistrate, 1st class, Dhanbad was pleased to take cognizance for the offence punishable under sections 498A and 323 of the Indian Penal Code vide order dated 5.7.2001.

5. Learned counsel for the petitioners has submitted that prior to institution of C.P. Case No. 379 of 2001, which was instituted on 18.04.2001, a matrimonial suit under section 13 of the Hindu Marriage Act for dissolution of marriage was preferred by the petitioner No. 1 against the opposite party No. 2 on 3.4.2002 and thus as a counter blast to the suit for dissolution of marriage filed by the petitioner No. 1, the present complaint case has been instituted. He has further submitted that earlier also, a case was instituted under section 498A of IPC, which ended in compromise and the entire criminal proceeding was quashed by this Court but after that the complainant never used to reside with the petitioner No. 1 and her in-laws and she on wrong advice of her father again implicated the petitioner No. 1 and all her in laws in the present case. He has also submitted that so far as the suit for dissolution of marriage is concerned, vide judgement dated 24th May, 2006, the same was allowed in favour of petitioner No. 1. In such circumstances, as has been submitted by learned counsel for the petitioners, the present case cannot be allowed to proceed against the petitioners.

6. After hearing learned counsel for the parties and after perusing the documents appended to this application as well as on perusal of the judgement dated 24th May, 2006, passed in Title Matrimonial Suit No. 1 of 2002, I find that in the complaint petition, the date of occurrence has been mentioned as 30.06.1998 and is still continuing. Earlier, the complaint case was instituted being Complaint Case No. 441 of 1997, which ended in compromise and in terms of the said compromise petition, the application under section 482 Cr P.C. filed by the petitioners was allowed by this Court on 9.3.1998. It appears that earlier a case for restitution of conjugal rights was instituted by the petitioner No. 1 being Title Matrimonial Suit No. 51 of 1998, in which an ex parte decree was passed in favour of petitioner No. 1. It has been the consistent stand of the petitioners that the present complaint case has been filed only with a view to falsely implicate all the family members of husband-petitioner No. 1. On perusal of the judgement dated 24th May, 2006 the same reveals that the learned trial court had given a finding that admittedly both the parties are living separately since 25.03.1998. This fact has been reiterated in paragraph 30 of the judgment in M.T.S. No. 1 of 2002, in which it has been noted thus:--

"It is admitted that both parties are living separately since 25.03.1998 and there has been no resumption of cohabitation and restitution of conjugal relation between them since 25.03.1998." 7. Therefore, the admitted position is that since 25.03.1998, there was no conjugal relationship between the petitioner No. 1 and opposite party No. 2 but in spite of the said fact in complaint petition, she has given the date of occurrence as 30.06.1998, which is within the period when no conjugal relation was established by the petitioner No. 1 with opposite party No. 2.

8. The aforesaid facts disclose that it is a case of malicious prosecution only in order to harass the petitioners. Apparently, the complaint petition also does not reveal any specific allegation against the other petitioners and only vague allegations have been resorted to by the complainant-opposite party No. 2 and as indicated above, the date in which as per the version of the complainant, the occurrence is said to have taken place, she was not in conjugal relationship with the petitioner No. 1 and thus the entire story seems to be concocted only with a view to implicate all her in-laws.

9. Considering the entire facts as also in view of what has been discussed above, I do find merit in this application. This application is allowed and the entire criminal proceeding in connection with C.P. Case No. 379 of 2001 including the order dated 5.7.2001, passed by Shri P.N. Upadhyay, learned Judicial Magistrate, 1st class at Dhanbad, whereby and whereunder cognizance has been taken against the petitioners for the offence punishable under sections 498 A and 333 of the Indian Penal Code, is hereby quashed.