

(2011) 12 JH CK 0100
In the Jharkhand High Court
Case No : Criminal M.P. No. 1039 of 2011

P. Jogeshwar Rao and others

APPELLANT

Vs

State of Jharkhand and another

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4, 6(2)
Hindu Marriage Act, 1955 — Section 11
Penal Code, 1860 (IPC) — Section 406, 420, 494, 498A

Citation : (2012) 1 JCR 295

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. Heard learned counsel appearing for the petitioners and learned counsel appearing for the State.

2. This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal proceeding of complaint case bearing no.668 of 2011, pending in the court of Judicial Magistrate, Jamshedpur including the order dated 18.3.2011 whereby and whereunder cognizance of the offences has been taken under Sections 498A, 494, 406 and 420 of the Indian Penal Code and also u/s 3/4, 6(2) of the Dowry Prohibition Act against the petitioners.

3. The facts giving rise this application are that the complainant came in contact of one P. Vijay Kumar (not the petitioner) in the year 2005. Since then they were meeting each other. In course of time, she fell in love with the said P.Vijay Kumar who represented her that he is unmarried whereas she came to know that she had had wife and two children. Even then, she married him in the year 2010. At the time of marriage, a sum of Rs. 1 lac was given as dowry to the said P. Vijay Kumar. After the marriage, the said P. Vijay Kumar started saying her that he

would be going to Delhi in search of job and therefore, she should go to her parents house. As per his wish, she came to her parents' house when her husband was away from the house. When the husband returned back from Delhi, he took her to another rented house where both were living. The other day, these petitioners came to that house and assaulted the complainant. On such allegations, a complaint was filed as Complaint case no.668 of 2011 in which statement of the complainant was recorded on solemn affirmation and then the matter was taken for enquiry. After holding enquiry, cognizance of the offence was taken under Sections 498A, 494, 406 and 420 of the Indian Penal Code and also u/s 3/4, 6(2) of the Dowry Prohibition Act which order has been challenged to be bad.

4. Learned counsel appearing for the petitioners submits that admittedly the complainant is the second wife and hence, no complaint with respect to commission of any offence u/s 498A can be maintained and hence, cognizance taken u/s 498A of the Indian Penal Code is quite bad. At the same time, the allegations made in the complaint do not constitute offence either u/s 494 or under Sections 406 and 420 of the Indian Penal Code or even u/s 3/4 of the Dowry Prohibition Act and hence, the order taking cognizance is quite bad.

5. In this context of the submission advanced on behalf of the petitioners, notice of the provision as contained in Section 498A needs to be taken which reads 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.

6. The word "woman" used in the aforesaid provision would always mean as legally wedded woman as second marriage during subsistence of first one is void, in view of the provision of Section 11 of the Hindu Marriage Act.

7. In that situation, in my view, no complaint can be maintained for an offence u/s 498A of the Indian Penal Code by the second wife. Further I do find that no offence is made out u/s 494 of the Indian Penal Code as the petitioners are never the husband of the complainant, rather they are relative of the husband and the petitioners had never been alleged to have abetted husband of the complainant to marry the complainant.

8. Further I do find that there has been no allegation for constituting offence either u/s 406 or u/s 420 of the Indian Penal Code or even for an offence u/s 3/4 of the Dowry Prohibition Act.

9. In that view of the matter, the entire criminal proceeding of Complaint case no.668 of 2011 including the order dated 18.3.2011 taking cognizance of the offence as aforesaid being bad is hereby quashed.

10. In the result, this application is allowed.