
(2009) 08 AHC CK 0090
In the Allahabad High Court

Pravin Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 227, 228, 239, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2009) 08 AHC CK 0090

Hon'ble Judges : Surendra Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surendra Singh, J.—The applicants by way of filing present application u/s 482 Cr.P.C. have sought for quashing the proceedings of Criminal Case No. 5850/9 of 2004 as well as charge sheet dated 30.4.2004 arising out of case crime No. 353 of 2003 under Sections 498-A, 323, 504, 506 IPC and Section 3/4 of Dowry Prohibition Act of P.S. Medical, District Meerut pending in the Court of Additional Chief Judicial Magistrate IV, Meerut. The background facts giving rise to this application in a nutshell are as follows:

2. Applicant No. 1 Pravin Yadav was married with Smt. Rachna daughter of Dr. Satyapal Singh Yadav, opposite party No. 3 who is informant of case crime No. 353 of 2003 under Sections 498-A, 323, 504, 506 IPC and Section 3/4 of Dowry Prohibition Act of P.S. Medical, District Meerut. The FIR of the said crime number was lodged by him on 28.12.2003 at 12.30 PM pertaining to an incident which took place in between February 1997 and August 2002. The applicants are husband, father-in-law and mother-in-law of the aggrieved wife respectively.

3. The allegations in brief are that the daughter of opposite party No. 3 Smt. Rachna was married with applicant No. 1 Pravin Yadav according to the Hindu Rites and Rituals on 16.12.1997. She was allegedly subjected to cruelty and harassment for want of additional dowry and Maruti Zen Car by the applicants

after the marriage. It is further alleged that after the victim gave birth to a female child on 7.12.1998 the applicants became enraged and the demand of dowry was raised consequently they also started passing lewd remarks and giving threats of dire consequences on account of non-fulfillment of demand. Thereafter on the basis of the said allegations an FIR was got registered at the Police Station Medical, District Meerut in the above mentioned crime number.

4. The police after an usual investigation submitted a charge sheet against the applicants only on 30.4.2004 in the Court of concerned Magistrate who took cognizance of the offence on 31.7.2004 against the applicants.

5. Submissions have been made on behalf of the applicants that no offence against the applicants is disclosed and the present prosecution has been instituted with mala fide intentions for the purposes of harassment. He has further submitted that the FIR lodged by opposite party No. 3 is manifestly attended with mala-fides and falls under the category of maliciously instituted prosecution with an ulterior motive for wreaking vengeance. It has further been contended that in order to put the applicants under pressure, the victim has filed a suit u/s 125 Cr.P.C. against applicant No. 1 and the same is still pending. Learned Counsel in support of this argument has placed reliance upon the decision of the Hon''ble Apex Court in N. Suriyakala Vs. A. Mohandoss and Others, and unreported decision of Delhi High Court in Smt. Sangeeta Kalra v. State decided on 2.3.2007.

6. On the other hand, the learned AGA has contended that from the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. At this stage only a prima facie case is to be seen in the light of law laid down by the Hon''ble Apex Court in the cases of R.P. Kapur Vs. The State of Punjab, State of Haryana v. Bhajan Lal 1992 SCC 426, State of Bihar v. P.P. Sharma 1992 SCC 192, and lastly Zandu Pharmaceutical Works LTD. v. Mohd. Saraful Hage and Anr. (Para 10) 2005 SCC 283. He has further submitted that the case cited by the counsel for the applicants are not applicable in the given facts and circumstances of the present case.

7. Taking note of the submissions of the learned Counsel for the parties and having gone through the material placed on the record as well as the decisions of the Hon''ble Apex Court as well as another Court cited by the counsel for the parties, I am of the considered view that since the applicants are husband, father-in-law and mother-in-law of the aggrieved wife and indisputedly all of them are living jointly, against whom there is specific allegations and prima facie commission of an offence is disclosed against them on the face of the record. All the submissions made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Hon''ble Apex Court in the cases mentioned above. Even the disputed defence of the accused also cannot be considered at this stage. However, the applicants have

got a right of discharge u/s 239 or 227/228 Cr.P.C. as the case may be.

8. The scope and ambit of Section 482 of the Code have been elucidated in the case of *State of Haryana v. Bhajan Lal* XXVIII 1991 ACC 111 wherein several judicial precedents including those of *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, and *State of Bihar v. J-A-C-Saldanha* XVII 1980 ACC 279 (SC) and held that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the prosecution to complete its task. The ratio of *Bhajan Lal*'s case has been consistently followed in the subsequent decisions of the Hon''ble Apex Court. In the recent decision in *Sanapareddy Maheedhar v. State of A. P.* SC XVI 2008 ACC 319 the Hon''ble Apex Court in paragraph 30 of the judgment has held in the below noted terms:

30: A careful reading of the above noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges *malus animus* against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power u/s 482, Cr.P.C.

9. In the State of Punjab v. Inder Mohan Chopra 2009 2009 (2) SCC 150, the Hon'ble Apex Court has observed that the High Court should not exercise its inherent power to stifle or to legitimate prosecution. The extract portion of paragraph 8 of the judgment is being quoted herein below wherein it has been held that

It would not be proper for the High court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala-fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.

10. The only conclusion fathomable from the aforementioned decisions of the Hon'ble Apex Court is that while exercising powers under the section, this Court will not function as a court of appeal or revision, meaning thereby it would be ordinarily embark upon the enquiry whether the allegations in the FIR/complaint and the material evidence collected in support thereof is reliable or not and whether such evidence would be sufficient to prove the guilt of the accused applicants or not.

11. I do not mean to say that any action which would result in injustice and prevent promotion of justice should be allowed to persist. Indisputably, in exercise of the power this Court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of the Court.

12. Apart from the above mentioned facts and circumstances the dispute appeared to be between the husband and wife, a chance was given to the applicants to settle their differences on their own terms and conditions through

process of the Mediation and Conciliation Centre, on their request, by another Bench of this Court vide order dated 20.3.2009. The matter was remitted to the mediation centre and the applicants were directed to deposit Rs. 8000/- within two weeks from that date with mediation centre to meet out the expenses borne by the centre and the aggrieved wife. Till the next date of listing, further proceedings before the Court below were directed to be stayed. Despite the said direction the applicants failed to deposit the said amount with mediation centre rather did not show any respect to the Court's order and enjoyed with the interim order. This attitude of the applicants is strongly deprecated. A dexterous litigant cannot be allowed to reap fruits of his illegal design of impeading the course of justice by resorting to unscrupulous methodology.

13. In the facts and circumstances and law discussed above it is held that the order taking cognizance of an offence and thereupon the consequential proceedings before the Court below is well in conformity in law and does not suffer with material irregularities or illegalities, therefore, does not warrant any interference in this application u/s 482 Cr.P.C., therefore, the application has no force and is liable to be dismissed. The interim order dated 20.3.2009 is hereby stand vacated.

14. The trial court is directed to expedite the hearing of the trial of the applicants and make an endeavour to conclude it within reasonable period. It would be open to the trial court to draw appropriate inferences from the evidence on record, unfettered by any finding entered in this order.