

(2008) 08 JH CK 0095
In the Jharkhand High Court

Priyanka, Manish Kumar Sah and Dinesh Kr. Sah	APPELLANT
Vs	
The State of Jharkhand and Babita Shah	RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 161, 319, 482
Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 406, 498, 498A

Citation : (2008) 4 JCR 296

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the entire criminal proceedings initiated against them including the order dated 7.1.2005, passed by the Sub-Divisional Judicial Magistrate, Porahat at Chaibasa in G.R. Case No. 75 of 2000, arising out of Sadar P.S. Case No. 15 of 2000, drawn on a compliant petition C/I Case No. 8 of 2000 wherein petitioners were summoned u/s 319 of the Code of Criminal Procedure to stand trial u/s 6 of the Dowry Prohibition Act.

2. Prosecution story, in short, was that the complainant-opposite party No. 2 Babita Shah was married to the accused Rajesh Kumar Shah on 18.2.1999 at Chaibasa. A sum of Rs. 6,00,000/- was spent by her father in her marriage including the cost of the articles and cash. When she came to her matrimonial home after marriage, it was alleged that the accused persons including the petitioners started passing derogatory remarks upon her and her parents alleging that sub-standard articles were given in dowry on the eve of her marriage and that her father did not fulfill their demand. They put a demand of Rs. 1,00,000/- and on information her uncle and brother came to her matrimonial home. It was alleged that her father-in-law and mother-in-law expressed their displeasure on their arrival and humiliated them by throwing the sweets and fruits what they

had carried for them. Yet, they put their demand of Rs. 1,00,000/- constituting dowry agreed to be paid by the parents of the complainant extending otherwise caution that her life would be made miserable in her matrimonial home failing to deliver such amount within a week. In spite of their constant persuasion, the accused were not prepared to listen to their entreaties and gave out pointedly that it was for them to decide as to whether Rs. 1,00,000/- was more precious or the peace and wellbeing of the complainant. Her miseries aggravated when her food was stopped, followed by frequent physical violence on her person which shocked her conscience.

3. Allegation against the petitioners was that they used to relish taunt extended by other accused persons to the complainant-opposite party No. 2 with the specific allegation against the petitioner No. 1 Priyanka that once she had peeped into her bathroom while the complainant was taking bath.

4. The complaint petition was forwarded u/s 156(3) of the Code of Criminal Procedure and the local police having received the same lodged F.I.R. After investigation, the Investigating Officer submitted final form having found the alleged offence under Sections 498-A/406 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act against the accused persons including the petitioners.

5. The accused persons preferred a petition for their discharge before the learned S.D.J.M., Porahat at Chaibasa which was rejected by order dated 29.5.2002 and against that a Criminal Revision No. 286 of 2002 was preferred by them before this Court which was partly allowed with the following observation,

Thus the order impugned against the petitioner Nos. 1, 2 and 4 is hereby set aside. This application is allowed in part. The petitioner Nos. 1, 2 and 4 are discharged.

However, it is made clear that the court below will proceed with case after framing of charge against petitioner Nos. 3, 5 and 6 for the aforesaid offence. It is also made clear that the court below will be at liberty to proceed with the case against other petitioners as well, if evidence collected during trial as laid down under 319 Cr.P.C.

6. Accordingly charge was framed only against the husband Rajesh Kumar Shah, father-in-law Gopal Shah and mother-in-law Sumitra Devi for the offence under Sections 498-A/406 of the Indian Penal Code as also under Sections 3/4 of the Dowry Prohibition Act and the accused other than the petitioners were put on trial during which P.W.-1 Hiralal Dodrajka, P.W.-2 Sanjay Dodrajka and the complainant-P.W.-3 Babita Shah were examined. A petition u/s 319 of the Code of Criminal Procedure thereafter was filed by the prosecution on 17.11.2004 praying before the Trial Court therein to issue summons to the petitioners for the reasons that the evidence of the prosecution witnesses as well as materials on record reflected prima facie involvement of the petitioners for the charge the other three accused viz. husband, father-in-law and mother-in-law of the

complainant stood for. Having considered the submissions the S.D.J.M, Porahat at Chaibasa by an exhaustive order dated 7.1.2005 directed summons to be issued against the petitioners and hence the present Criminal Miscellaneous Petition for quashment of the impugned order and their criminal proceeding.

7. Mr. V.P. Singh, learned Sr. Counsel attracted the attention by submitting that the petitioner No. 1 Priyanka is unmarried nanad of the complainant, whereas other two petitioners Manish Kumar Sah and Dinesh Kr. Sah are younger brothers of her husband, none of the three at all concerned with the alleged demand of dowry or any kind of mental or physical torture to the complainant being much junior in the family and no specific overt act whatsoever was attributed against any of them in the compliant petition.

8. Mr. V.P. Singh further submitted that in order to implicate the petitioners, the witnesses produced and examined on behalf of the prosecution viz. P.W.-1 Hiralal Dodrajka, P.W.-2 Sanjay Dodrajka and P.W.-3 Babita Shah deposed an improved version beyond what they had stated in their statements recorded u/s 161 of the Code of Criminal Procedure or by the complainant-P.W.3 Babita Shah in her complaint petition. Prosecution failed to show any material in course of investigation or in the evidence of P.W-1, P.W-2 and P.W-3 during trial that the petitioners herein at any point of time, during stay of the complainant-P.W.3 in her matrimonial home, had demanded dowry and in this connection extended torture to her. The Senior Counsel exhorted that any kind of improvement made in course of trial beyond what was stated earlier during investigation or enquiry was not tenable in the eyes of law. On the other hand improvement, development or omission in the statement of the prosecution witnesses makes the prosecution case doubtful and the learned S.D.J.M., Porahat at Chaibasa ought not to have relied upon the improved version of the witnesses aforesaid while issuing summons u/s 319 of the Code of Criminal Procedure, as the intention of prosecution witnesses was to maliciously implicate the petitioners.

9. Mr. Singh by assailing the order impugned dated 7.1.2005 submitted that the learned S.D.J.M., Porahat at Chaibasa almost has decided the case against the petitioners and other accused facing trial. The impugned order of the learned S.D.J.M. suffers from error of record, when it was held that the statement of the witnesses produced on behalf of the prosecution and the materials on record indicated the prima facie material against the petitioners for the offence u/s 6 of the Dowry Prohibition Act But Section 6 of the Dowry Prohibition Act, 1961 is not relevant, even not attracted against the petitioners in the facts and circumstances of the case which shows non-application of judicial mind of the learned S.D.J.M.

10. Finally, Mr. Singh submitted that in the facts and circumstances even no offence nearly or remotely was made out against the petitioners u/s 498-A/406 of the Indian Penal Code or under Sections 3/4 of the Dowry Prohibition Act Petitioners would suffer irreparable loss and injury if they would be allowed to be proceeded maliciously at the caprice and whim of the prosecution without

materials on record at all and hence the impugned order including their criminal proceedings may be quashed.

11. Heard Mr. Ananda Sen, the learned Counsel on behalf of the opposite party No. 2 and also the A.P.P.

12. I have gone through the impugned order and found that the learned S.D.J.M., Porahat at Chaibasa has almost decided the prosecution case against the accused persons including the petitioners by the order impugned and directed summons to be issued u/s 319 of the Code of Criminal Procedure against the petitioners to stand trial which amounts to misuse of the process of the Court. I find from the facts of the case that at the initial stage, the petitioners were exonerated from their criminal liability by this Court in exercise of inherent jurisdiction in Criminal Revision No. 286 of 2002 with the liberty to the Trial Court that it may exercise jurisdiction u/s 319 on the basis of materials, but while exercising such jurisdiction the learned S.D.J.M. ignored to find out prima facie material so as to pass orders for summons. I find substance in the argument that the witnesses viz. P.W.-1 Hiralal Dodrajka and P.W.-2 Sanjay Dodrajka have substantially improved their version beyond what they earlier had stated u/s 161 of the Code of Criminal Procedure. Similarly the complainant-P.W-3 Babita Shah had not alleged against any of the petitioners in her complaint except against her nanad P.W.1 that once she had peeped in the bathroom while the complainant was taking her bath and that the petitioners had been passing derogatory remarks which in no manner attracted offence under Sections 498/406 of the Indian Penal Code or even u/s 6 of the Dowry Prohibition Act. Such improvements made by the prosecution witnesses in their statements before the Trial Court have got no leg to stand under the Evidence Act and I share the view that it makes the prosecution case doubtful for the limited purpose in so far as involvement of the petitioners herein was concerned.

13. The Supreme Court of India in Mohd. Shafi v. Mohd. Rafiq and Anr. reported in 2007 (3) PLJR 55 observed that before a Court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction could be arrived at inter alia upon completion of the cross-examination of the witness. The power conferred on the Trial Court u/s 319 of the Code of Criminal Procedure is an extraordinary power and according to Apex Court Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, such power should be exercised very sparingly and only if compelling reasons exist for taking cognizance against the other persons against whom action could not be taken.

14. In the given situation, I find and observe that there was no prima facie material and the learned S.D.J.M., Porahat at Chaibasa erred by directing summons to be issued to the petitioners u/s 319 of the Code of Criminal Procedure which cannot sustain. It goes without saying that the expression of the learned S.D.J.M. as contained in the impugned order is exhaustive which

lacks clarity of comprehension.

15. Having regard to the facts and circumstances of the case, I find that the criminal prosecution of the petitioners for the discussion made, cannot sustain and accordingly, their criminal proceedings and the order impugned dated 7.1.2005 passed u/s 319 of the Code of Criminal Procedure, calling upon the petitioners to stand trial by the S.D.J.M., Porahat at Chaibasa in G.R. Case No. 75 of 2000, arising out of Sadar P.S. Case No. 15 of 2000 are set aside.

16. Accordingly, this Criminal Miscellaneous Petition is allowed.