

(2000) 06 MAD CK 0058

In the Madras High Court

Case No : Criminal O.P. No. 7159 of 2000 and Criminal M.P. No's. 2234 and 2362 of 2000

R. Jayaprakash and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(I), 41(1)(a), 482

Penal Code, 1860 (IPC) — Section 406, 468(2), 498A

Citation : (2000) 2 LW(Cri) 961

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : V. Bhiman, for the Appellant; M. Babu Muthu Meeran Government Advocate (Crl.side), for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—The petitioners against whom a complaint has been preferred by one Nagalakshmi have come forward with the instant petition to quash the investigation. The first petitioner is the husband of the complainant Nagalakshmi. Petitioners 2 and 3 are sisters of the first petitioner. The fourth petitioner is the mother of the first petitioner. The fifth and sixth petitioners are the brothers of the first petitioner. The first petitioner married the complainant Nagalakshmi on 19.06.1996. According to him, Nagalakshmi lived with him for few days and left for her parents' house. she did not join him later and therefore, the first petitioner filed O.P.No.55 of 1998 before the Family Court, Madras for restitution of the conjugal rights The Family Court passed orders on 13.07.1998 directing Nagalakshmi to restore all the comforts of the married life to the first petitioner. But Nagalakshmi continued to desert him on 22.8 1999, the first petitioner's father died. On 17.11.1999, the sixth petitioner was taken to the office of the District Crime Branch on a complaint preferred by Nagalakshmi on 20.10.1999. The sixth petitioner was illegally detained in the office of the

District Crime Branch. Madras and a sum of Rs.25.000/- obtained by force from him and a letter was also obtained that the petitioners would pay a balance of Rs.33.000/- and gold jewels weighing about 25 sovereigns to Nagalakshmi on or before 04.12.1999. Later, Nagalakshmi preferred a complaint to the All Women Police Station. Thallakulam on 29.01.2000 alleging that the petitioners herein demanded down from her. The Inspector of Police. Thallakulam took the complaint and registered a case in Crime No.5 of 2000 under Sections 498A and 406 I.P.C. According to the petitioners the complaint contains false allegations, the complaint is vague and the matter is barred by limitation, because the complaint had been preferred more than three years after the alleged occurrence.

2. Heard both the sides The learned Counsel for the petitioners submitted that the complaint is vague, in that though Nagalakshmi had stated that she married the first petitioner on 9.06.1996 and there was a dowry demand, but in view of the subsequent proceedings before the Family Court, which indicates that Nagalakshmi neither lived with her husband, there would have been no such demand and the complaint is vague in not giving any date of demand of dowry. Even admitting that there had been a dowry demand prior to the marriage, which took place on 19.06.1996 the complaint preferred on 29.1.2000 is barred by limitation.

3. The learned Government Advocate (Crl.Side) submitted that the offence u/s 496A is a continuing offence and therefore by virtue of provisions of Section 468(2) IPC. question of limitation would not come

4. The only question that arises for consideration is whether the investigation can be quashed at the threshold? In Ram Lal Yadav and Others Vs. State of U.P. and Others, , a Full Bench consisting of seven Judges of the Allahabad High Court has held that the power of police to investigate into a report which discloses commission of cognisable offence is unfettered and cannot be interfered by the High Court in exercise of its inherent power u/s 482 Cr.P.C. The Allahabad High Court had gone to extent of holding that the High Court has no inherent power under S. 482 Cr.P.C. either when no offence is disclosed in the first information powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in Court and not during investigation which may even be illegal and unauthorised, and that if the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or mala fide in violation of S. 41(1)(a) Cr.P.C. The High Court can always issue a writ of mandamus under Art. 226 of the Constitution of India restraining the police officer from misusing his legal power.

5. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , Their Lordships of the Supreme Court have also laid down certain guidelines as to when this Court can interfere in the process of investigation. It has been pointed out that the investigation of a cognisable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the

power to investigate into the cognisable offence is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. The Apex Court have further held as under:-

In the following categories of cases, the High Court may in exercise of powers under Art. 226 of under Sec. 4X2 Cr.P.C. may interfere in proceedings relating to cognisable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

(1)Where the allegations made in the first Information Report the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)Where the allegations in the First Information Report and other materials, if any accompanying the F.I.R. do not disclose a cognisable offence justifying an investigation by police officers under S. 156(I) of the Code except under an order of a Magistrate with the purview of S. 155(2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused

(4)Where, the allegations in the F.I.R, do not constitute a cognisable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers of inherent powers, quashing of FIR was not justified.

6. In State of U.P. v. O.P. Sharma (1996 SCC (Cri) 497), Their Lordships have pointed out that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power u/s 482 Cr.P.C . or under Articles 226 and 227 of the Constitution, as the case may be. and allow the law to take its own course.

7. In State of Bihar v. Rajendra Agrawalla (1996 SCC (Cri.) 628), the Apex Court had pointed out that the High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case is made out.

8. I have applied the test laid down in Bhajan Lal's case cited supra to the instant complaint. The complaint clearly avers that dowry was demanded and because dowry was not sent, the complainant was sent out from home. She had also stated that the demand continued after her leaving the house for a long time. The question whether or not the complaint is barred need not be considered at this stage and it is within the domain of the learned Judicial Magistrate to consider if the respondent after investigation files final report which affects the rights of the petitioners. The process of investigation should not be interfered with by this Court, even if the police officer acts in a malafide manner. The investigation in the case is at the threshold and it does not warrant any interference from this Court. This Crl.O.P. is dismissed. Consequently, Crl.M.P.No.2234 and 2362 of 2000 are also dismissed.