
(2010) 07 UK CK 0068

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 91 of 2005

Radhika

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2011) 1 DMC 288 : (2010) 2 UC 1234

Hon'ble Judges : Nirmal Yadav, J

Bench : Single Bench

Judgement

Nirmal Yadav, J.—Smt. Radhika sister of Chandra Prakash has filed present application challenging the charge sheet filed against her under Sections 498-A, 304-B, IPC, cognizance in the matter taken by Judicial Magistrate, Pithoragarh vide order dated 13.12.2004 and order dated 16.2.2005 summoning the Petitioner for the above mentioned offence.

2. The facts in brief are that Rewadhar Murari father of Shobha @ Savitri submitted a written complaint on 26.11.2004 to Incharge, Police Station Pithoragarh. According to the complainant, his daughter Shobha was married with Chandra Prakash on 30.4.1998. After the marriage was fixed, the mother of the Chandra Prakash, Smt. Jeewanti Devi made a demand of Rs. 40,000 which was fulfilled by him. Chandra Prakash, his mother and sister Hansa also made a demand of several jewellery articles which were also given by him at the time of marriage. About fifteen days after the marriage, when Shobha came to her parental house, she disclosed that her husband, mother-in-law and sister-in-law Hansa were commenting for giving inadequate dowry and for not giving a scooter. They asked her to bring money for purchasing the scooter therefore, complainant gave Rs. 10,000 to his daughter. According to the complainant, he had been meeting his daughter every month as he used to go to Pithoragarh canteen to take required items from the canteen. She had been disclosing about the harassment caused to her by the above persons. She also disclosed

whenever complainant gave some money for personal expenses to Shobha, her husband took away the same from her. During the night intervening 11 and 12 February, 2002, Chandra Prakash, his mother and sister Hansa had thrown his daughter out of matrimonial home while she was pregnant, thus, Shobha went to her maternal uncle Sri D.N. Bhatt's house at Simalgar. She disclosed all the facts to her maternal uncle and also called the complainant by making phone call. The complainant got his daughter medically examined and went to lodge the report in police station, Pithoragarh but father of Chandra Prakash made a request not to report the matter. Chandra Prakash gave in writing that in future he will not harass Shobha. On 14.2.2002 Shobha went to her in-laws' house at Lohaghat where his daughter remained for one and a half years. Meanwhile she gave birth to a girl child. During the period Shobha stayed in her in-laws' house, she had been informing complainant about the harassment and cruelty meted out to her orally as well as in writing. On 10.11.2004, complainant's son Rajendra went to the house of Chandra Prakash to bring his sister for Bhaiya Dooj but Chandra Prakash, his mother and sister told Rajendra that she will not be sent till the amount for purchasing a scooter is given to them.

3. On 25.11.2004 Chandra Prakash made a telephone call to the complainant that Shobha had gone to bring the grass at 02.30 p.m. but she did not return back and enquired whether she had come to her parental house. On 26.11.2004 complainant went to Pithoragarh in search of his daughter, where he was informed by some persons that in the Nirada jungle, dead body of a woman was hanging. Therefore he went to the jungle along with some local people to bring his daughter who was hanging in the jungle. He categorically stated that his daughter was killed by her husband Chandra Prakash, mother-in-law Jeewanti and sister-in-law Hansa for not satisfying their demand of dowry.

4. During the investigation, the suicide note of Shobha was recovered. In the beginning the suicide note is addressed to her mother and father, mentioning therein that she is doing an act which would affect their prestige but the situation was out of her control. She was given so much beating by her mother-in-law and sister-in-law that she could not even sleep and her whole body had become a wreck. She further stated that she had fallen from hill and her nose pin was lost there, but her mother-in-law and sister-in-law alleged that she had sold the nose pin. She further mentioned that these people are not letting her live peacefully. Next paragraph is addressed to her husband stating therein that she did not want to die but both your mother and sister had made her life miserable. She further stated that she had been requesting all of you not to trouble her. She further mentioned that she is educated girl and studied upto M.A. but she was unlucky to get dangerous mother-in-law, sister-in-law and husband. She further mentioned that her father-in-law and her brother-in-law are not at all at fault. She requested her brother-in-law to send her daughter to some orphanage. She further stated that she knew that committing suicide is an act of cowardice but she was under pressure due to harassment caused by her husband, mother-in-law and sister-in-law, thus, she was forced to commit suicide.

5. The Investigating Officer recorded the statements of Rewadhar Murari, father of deceased, brother Rajendra Murari, her mother Smt. Leela Devi and Devendra Dutt Gairola, an independent person, resident of police line.

6. On the completion of investigation, challan was presented against Chandra Prakash (husband), Smt. Jeewanti Devi (mother-in-law), Hansa (unmarried sister-in-law) and Smt. Radhika, the present Petitioner (married sister-in-law) under Sections 304B/498A/306, IPC, on 8.12.2004. The petitioner has placed on record the order passed by the Judicial Magistrate, 1st class, Pithoragarh dated 7.12.2004, on an application for remand moved by Investigating Officer, S.I. Ram Dutt Joshi for granting remand of Smt. Radhika, the present Petitioner u/s 498-A. In the said order, the learned Magistrate has discussed in detail the statements of all the witnesses recorded by the police u/s 161, Code of Criminal Procedure Smt. Leela Devi, mother of the deceased stated that after the marriage of her daughter she had been informing her that whenever her father would give her some money for personal expenses, her sister-in-laws Radhika and Hansa, husband and mother-in-law would take away the said money from her. She also stated that Chandra Prakash was instigated to give beatings to Shobha by her mother-in-law and sister-in-law Hansa. On 12.2.2002 Chandra Prakash, his mother and sister Hansa had thrown out Shobha from the matrimonial house after giving beatings to her.

7. Learned Judicial Magistrate after going through entire record mentioned in his order that the arrest of Radhika is illegal, as there is no material available in case diary, on the basis of which offences for which she is charge-sheeted are not made out. Accordingly learned Magistrate refused to grant remand by rejecting the remand application submitted by Investigating Officer and released the Petitioner on her personal bond. However, on the very next day, challan was submitted by Dy. S.P., Pithoragarh against the Petitioner Radhika along with other accused. After perusal of charge-sheet dated 8.12.2004, Judicial Magistrate, 1st Class after taking cognizance of the offence summoned the Petitioner Radhika and other accused on 24.12.2004. Hence the present petition.

8. Learned Counsel for the Petitioner submitted that submitting the challan and summoning of the Petitioner is an abuse the process of law. According to her, there is not even an iota of evidence against the Petitioner for the offences alleged in the charge-sheet. She referred to the first information report lodged by Rewadhar Murari, father of the deceased wherein he has not alleged even a single allegation against Radhika petitioner. All the allegations in the FIR are against husband Chandra Prakash, his mother Jeewanti Devi and unmarried sister Hansa. The learned Counsel for the Petitioner also referred to the statement of Rewadhar Murari, father of the deceased, Rajendra Murari, brother of the deceased, Devendra Dutt Gairola independent witness and stated that none of them uttered even a single word against the Petitioner that she had caused any harassment to the deceased. Learned Counsel for the Petitioner further referred to the suicide note, alleged to be written by Shobha before her

death. In the said note also, she does not attribute any act of harassment by the petitioner. However, Leela Devi mother of the deceased only says that Shobha was being harassed on the instigation of Radhika, mother-in-law and sister-in-law to give her beatings. She has also stated that Chandra Prakash was helped by Radhika and Hansa to give beatings to Shobha. Even with regard to the incident of 12.2.2002, the allegation of Leela Devi is that Radhika had instigated Chandra Prakash and others to give beating to Shobha. Learned Counsel for the Petitioner further pointed out that in her statement Leela Devi states that Shobha had informed that Radhika had already left for her husband house at Almora. Learned Counsel for the Petitioner pointed out that admittedly Radhika was married much prior to the marriage of Shobha with Chandra Prakash. She was living with her husband at Almora and only allegations against her are that whenever she visited her parental house, she instigated her brother, mother and sister Hansa to give beatings to Shobha. There is no allegation that Radhika had ever made any demand of the dowry. There is also no evidence that she had instigated the deceased to commit suicide. There is also no evidence that Radhika had caused cruelty to deceased Shobha on account of demand of dowry.

9. On the other hand, Mr. B.S. Adhikari, learned Counsel for the complainant and Mr. S.S. Adhikari, learned A.G.A. submitted that there is categoric allegation in the statement of Leela Devi mother of the deceased that Radhika had played a definite role in causing harassment to the deceased. Shobha had informed his mother Leela Devi about the harassment. Therefore, Radhika was also fully involved in the commission of the crime for which she has been charge-sheeted.

10. On careful consideration of rival submissions and documents on record, I am of the view that summoning the Petitioner is an abuse of process of law. Admittedly, Radhika sister of the Chandra Prakash was married much prior to the marriage of the deceased with Chandra Prakash. There is no evidence that Radhika is permanently residing with her parents. Mere allegation against her that whenever she visited her parental house, she would instigated her brother Chandra Prakash, mother Jeewant Devi and sister Hansa to give beatings to Shobha do not constitute any offence. There are mere allegations based on hearsay evidence. Devendra Dutt Gairola is independent person whose statement was recorded u/s 161, Code of Criminal Procedure According to him, one fine day when he was sitting on his roof, Shobha came to meet his wife. She was having several contusions on her hands, legs and mouth. According to her, her husband, mother-in-law and sister-in-law Hansa had been giving her beatings dally. She also disclosed that they were harassing and beating her for not fulfilling the demand for the scooter. However, he did not state that any thing was disclosed by Shobha against Radhika. Even her father Rewadhar Murari brother Rajendra Murari have not alleged anything against Petitioner Radhika. The allegation made by Leela Devi do not constitute any offence under Sections 304-B/498-A/306, IPC, against the petitioner.

11. In view of the facts and circumstances discussed above, charge-sheet dated

8.12.2004, order of cognizance dated 13.12.2004 and order for summoning the Petitioner dated 16.2.2005 passed by Judicial Magistrate, Pithoragarh, deserve to be quashed as there is no evidence against the petitioner. In case the proceedings, in view of the impugned order, are allowed to continue, it would certainly be an abuse of the process of law and provisions of the Criminal Procedure Code.

12. Accordingly, petition is allowed, charge-sheet qua the Petitioner and order dated 13.1.2.2004 and 16.2.2005, in respect of Petitioner are hereby quashed.