
(2006) 04 JH CK 0092

In the Jharkhand High Court

Case No : Criminal M.P. No. 428 of 2004

Raghunandan Pradhan and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 173, 202, 210, 482
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 498A

Citation : (2006) 04 JH CK 0092

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : J. Majumdar, for the Appellant; A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The petitioners in the present petition has prayed for quashing the order dated 13.1.2004 whereby cognizance of the offence was taken u/s 498A of the Indian Penal Code in C-1 Case No. 275 of 2003, pending in the court of Sri S.N. Tiwary, Judicial Magistrate, Jamshedpur and also for quashing the entire criminal prosecution.

2. Pursuant to the direction of this Court, vide order dated 26.8.2004, registered notice with A/D was sent to the opposite party No. 2 and A/D has been received.

3. Learned Counsels for the petitioners as well as opposite party No. 2 appeared in the Court on 6.3.2006 and with the consent of the parties the matter was referred to the Conciliator, Jharkhand State Legal Services Authority, for the effective resolution of the dispute. Accordingly, the parties were directed to appear before the Conciliator on 23.3.2006.

4. The Conciliator in his report dated 24.3.2006 communicated that attempts were made for settlement of their differences as husband and wife. Though the petitioner- husband expressed his willingness to keep his wife-opposite party No.

2 and all the three grown up children in full dignity and care as also to give his full salary to his wife-opposite party No. 2 but she expressed her desire to the said offer only if her missing brother since 1997 was brought back first by the husband-petitioner. But the husband expressed his having no hand in such kidnapping and still there was no criminal case. Due to the rigidity on the above stand, the conciliator reported that attempt for conciliation failed at the instance of opposite party No. 2.

5. The prosecution story, in brief, is that opposite party No. 2-Dukhni Devi filed a Complaint Case No. 275 of 2003 in the court of Chief Judicial Magistrate, Jamshedpur as many as against six accused persons stating therein that she was married to petitioner No. 1 on 29th April, 1985 at Bamangora in Parsudih, Jamshedpur Police Station and after the marriage, they started living together as husband and wife and out of their wed-lock two daughters and one son were born. But there started dispute and animosity including family feud between the complainant and the petitioner/accused persons for the cause of dowry. It is alleged that petitioner No. 1 was drunkard and debauchery and lascivious type of person and since the date of marriage she had been facing inhuman persecution some times due to cause of dowry and some times due to diabolic devilish and detestable act of the other accused persons. It is alleged that accused No. 6 Smt. Sanjukta Devi was living with her husband-petitioner No. 1 as husband and wife at Rajkharswan and her husband also living in adultery with accused No. 11, Smt. Sunanda Pradhan. It is further alleged that the complainant-opposite party No. 2 on 9.6.2001 was mercilessly assaulted by the husband-petitioner No. 1 and other accused and she was driven out with her children after snatching all her belongings which were given on the eve of marriage and finding no other way and seeing the preponderance at critical juncture, she started living at her parental home with her two daughters and one son. In the meantime, it is alleged that younger brother of the complainant-opposite party No. 2, namely, Angad Kumar Giri was kidnapped by the accused petitioners No. 1 to 3 to which First Information Report was lodged at the local police station with a written complaint to the Chairman, National Human Right Commission, New Delhi. On 4.2.2003 the complainant-opposite party No. 2 with her parents and children went to the petitioner No. 1-husband to enquire the whereabouts of his kidnapped brother. It is alleged that all including the complainant, her parents and children were mercilessly assaulted.

6. The order impugned dated 13.1.2004 indicates that the cognizance of the offence u/s 498A of the Indian Penal Code was taken only against the petitioners after enquiry u/s 202 of the Code of Criminal Procedure.

7. Learned Counsel for the petitioners submitted that complaint was filed by the opposite party No. 2 admittedly after about 18 years of marriage and the allegation against the petitioner No. 1 that he was an alcoholic, living in adultery is blatant lie. Had it been the fact the married life could not have been continued between the parties for long 18 years. The allegation that petitioner No. 1 was

living in adultery with Smt. Sunanda Pradhan, a married woman, is also false, rather the lady is living peacefully with her husband. It would be evident from perusal of the address of petitioners No. 2 and 3 that they are native of District Mayurbhanj, Orissa. Petitioner No. 4 is the resident of Saraikela, Kharswan and not living with petitioner No. 1 and, therefore, the allegation of extending cruelty to opposite party No. 2 did not arise.

8. Learned Counsel for the petitioners pointed out that on 11.9.2003 Kharswan P.S. Case No. 31 of 2003 for the offence u/s 498A of the Indian Penal Code was lodged on the basis of Fardbeyan of the complainant-opposite party No. 2 against the petitioner No. 1 and two others, the First Information Report being Annexure 3. In that case petitioner No. 1 has been admitted to bail.

9. Learned Counsel further pointed out that on the same set of facts, the police case as well as complaint case were instituted against the petitioner No. 1 and so many other persons, besides Misc. Case No. 16 of 2003 before the Principal Judge, Family Court, Jamshedpur u/s 125 of the Code of Criminal Procedure against the petitioner No. 1, in which petitioner No. 1 appeared and filed his show cause. In this manner it is evident that opposite party No. 2-complainant has filed three cases against the petitioner No. 1 and on being fed up, petitioner-husband filed Matrimonial suit u/s 13 of the Hindu Marriage Act, 1955 for the dissolution of marriage. It is stated that since the case was filed for the offence u/s 498A of the Indian Penal Code after 18 years much beyond 7 years, therefore, the present case was not maintainable.

10. Finally it has been submitted that for the same set of facts and allegations, two cases cannot run concurrently.

11. Reliance has been placed upon the decision in Sishir Kumar Chowdhury @ Bachu Choudhary and Ors. v. State of Bihar and Ors. reported in 2000 ECr.C 795 (Pat) and Ranchi Bench of Patna High Court held as under:

The learned Magistrate should have stayed the proceeding of such inquiry in the instant case as soon as such petition was filed that the police case has already been registered at Saharsa and investigation is also going on but instead of staying the proceeding of the complaint case, he took cognizance which is fit to be quashed. It is also manifest that the object of underlying Section 210 of the Code of Criminal Procedure is that when the offence in the complaint case and the police case are identical, they should be tried together to avoid unnecessary multiplicity of the proceedings. There is no doubt that the present case is fully covered by Section 210 of the Code of Criminal Procedure and the proceedings of the complaint case should have been stayed in view of the fact that the investigation of the criminal case which was registered on the basis of the fardbeyan of the victim Ranjana Choudhary, is going on.

12. From perusal of the facts and circumstances of the case, it is evident that complaint was filed by the complainant-opposite party No. 2 Smt. Dukhini Pradhan (Annexure 1) on 21.3.2003 against the petitioner No. 1 and six others

and subsequently on the fardbeyan of the complainant-informant-opposite party No. 2, Kharsawan P.S. Case No. 31 of 2003 was lodged on 11.9.2003 for the offence u/s 498A of the Indian Penal Code against the petitioner-husband, married Nanad and husband of the Nanad.

13. For such a situation provision has been laid down u/s 210 of the Code of Criminal Procedure which speaks as under:

Procedure to be followed when there is a complaint case and police investigation in respect of the same offence - (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

14. Section 210 of the Code of Criminal Procedure provides that once a complaint is lodged before the Court and it comes to the notice of the Court that police investigation is also pending, proceedings have to be stayed and the report has to be sent to ascertain whether the police investigation is in relation to the same offence. If the report is submitted by police u/s 173 of the Code of Criminal Procedure, then the Magistrate can take cognizance and proceed with the police case as well as the complaint case as if both were instituted on police report.

15. It is settled law that both the complaint case and police case exist side by side and continue to have their specific identities and the court has no jurisdiction to merge them, rather both the cases be tagged together since cannot be merged for trying both the cases as one case. In the present case learned Counsel failed to satisfy this Court that the institution of police case against the petitioner No. 1 and two other accused for the allegation u/s 498A of the Indian Penal Code was pointed out before the Judicial Magistrate in complaint case before the cognizance was taken and, therefore, I do not find any illegality or irregularity in the order impugned dated 13.1.2004 whereby and whereunder cognizance of the offence u/s 498A was taken against the petitioners on being satisfied upon the material collected in course of enquiry u/s 202 of the Code of Criminal Procedure. Therefore, this petition u/s 482 of the Code of Criminal

Procedure is dismissed.

16. However, learned Judicial Magistrate is directed to follow the provisions of Section 210 of the Code of Criminal Procedure before proceeding further and to pass necessary order in accordance with law.