

(2016) 01 GAU CK 0027

In the Gauhati High Court

Case No : Criminal Pet. No. 270 of 2015.

Rajiv Deori @ Rajiv Kumar Deori and Others

APPELLANT

Vs

Riju Bharali and another.

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 3 GauLJ 56 : (2016) 3 GauLR 589 : (2016) 2 GauLT 340

Hon'ble Judges : Paran Kumar Phukan, J.

Bench : Single Bench

Advocate : G.P. Bhowmik, R. Hazarika and B. Deb, Advocates, for the Appellant; B.J. Dutta, Addl. PP, S.S. Sharma, L. Sharma, A. Sharan and B.J. Mukerjee, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Paran Kumar Phukan, J.(CAV) - By means of this application under Section 482 of the Cr.P.C., the petitioners have prayed for setting aside and quashing of the proceedings of C.R. Case No. 339/2014 which is now pending in the Court of the learned Sub-Divisional Judicial Magistrate (Sadar), Bongaigaon.

2. It is contended inter-alia by the petitioners that the respondent No. 1 filed the aforesaid complaint before the learned Court alleging therein that the petitioners tortured her both mentally and physically demanding dowry from her. According to the petitioners, the respondent No. 1 was a close relative of the petitioners and they were within prohibited the degree and marriage was not possible between the petitioner No. 1 and respondent No. 1 due to such relationship. By filing the complaint, the respondent No. 1 was trying to blackmail the petitioners with a view to extort money to the tune of Rs. 5,00,000/- and the respondent No. 1 and her family members were trying to force him to marry her and repeatedly demanded money for which he had to file a complaint against them vide C.R. Case No. 112C/2014 which was sent to police for investigation by the learned Chief Judicial Magistrate after recording initial deposition of the

complainant and two of his witnesses.

3. Aggrieved by the order, he preferred revision before the learned Sessions Judge and the learned Sessions Judge dismissed the revision against which criminal petition has been filed. During pendency of the case, the respondent No. 1 in collusion with other family members filed the complaint against him and his family members.

4. Mr. G.P. Bhowmik, learned Senior counsel appearing for the petitioners strenuously submitted that the respondent No.1 has filed a concocted case against the petitioners with a view to extort money. According to him, no marriage ceremony was performed between the petitioner No. 1 and the respondent No. 1. According to him, the respondent No. 1 along with her parents and cousin brother went to his house with the marriage proposal of respondent No. 1 with petitioner No. 1 but the proposal was turned down on the ground that they were within prohibited relationship. The respondent and her family members became annoyed for turning down the proposal and they started demanding money from him and he also paid some amounts to them.

5. Learned counsel for the complainant/respondent No. 1 submitted that the marriage between the petitioner No. 1 and respondent No. 1 was solemnised according to customs of the petitioner No. 1 and they were living together as husband and wife but soon after the marriage, all the petitioners started demanding money from her and for her failure to meet the illegal demands, she was tortured by all the petitioners which compelled her to file the complaint before the Court.

6. Both the parties to the case filed affidavits in support of their respective cases. The petitioner in his affidavit denied having married the respondent No. 1 whereas, the respondent No. 1 stated that she was married by the petitioner No. 1 and she was tortured both mentally and physically by him and his family members.

7. Mr. Bhowmik, learned Senior counsel for the petitioners submitted that taking of cognisance on the basis of the complaint filed by the respondent No. 2 against the petitioners was nothing but abuse of the process of Court and the allegations made in the complaint prima facie did not disclose commission of any offence by the petitioners. Learned counsel for the respondent, on the other hand, submitted that there was specific allegation in the complaint that the petitioners soon after the marriage tortured the respondent No. 1 both mentally and physically demanding dowry from her and this Court at this stage cannot question the truthfulness of the statements made in the complaint. It is further submitted that the power under Section 482 Cr.P.C. cannot be exercised to stifle a legitimate complaint.

8. In *State of Haryana and Ors. v. Ch. Bhajanlal and Ors.* 1992 SUPP (1) SCC 335, the Apex Court laid down the principles of law while exercising power under Section 482 of the Cr.P.C. and it has been observed that the inherent powers

under Section 482 of the Cr.P.C. could be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court. One important guideline is where the allegations made in the first information report or 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.

9. The guideline given by the Apex Court is squarely applicable in the fact situation of the present complaint filed by the respondent No. 2. She has alleged that she was legally married wife of the petitioner No. 1 and soon after the marriage, she was tortured both mentally and physically demanding dowry from her. In support of her case, she has already examined two witnesses and the case is in the stage of consideration of charge. The High Court at this stage cannot call into question the truthfulness or veracity of the complaint case. It is for the Trial Court to decide as to whether charge is to be framed against the petitioners basing on the evidence adduced by the complainant and her witnesses.

10. Mr. Bhowmik, relied on the decision of the Apex Court in *Preeti Gupta and Anr. v. State of Jharkhand and Anr.* reported in (2010) 7 SCC 667, wherein, the Apex Court observed that the allegations made in the complaint are to be scrutinised with great care and circumspection specially against the relatives of the husband who were living in different places and never visited or rarely visited the matrimonial home of the complainant. The facts of the present case is totally different from the above referred case and consequently, is of no assistance to the petitioners.

11. Having heard the learned counsel appearing for the parties and having regard to the facts and circumstances of the case, I am of the considered view that this is not a fit case to quash the C.R. Case No. 339/2014 in exercise of the power under Section 482 of the Cr.P.C. and consequently, the petition stands dismissed. Send down the LCR along with a copy of the judgment for information and necessary action.