
(2015) 04 RAJ CK 0138

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 706 of 2014

Rajneesh Satyadev Rajpurohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Companies Act, 1956 — Section 633

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 482

Hindu Marriage Act, 1955 — Section 13, 13(1)(i-a), 13-B, 25

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

Citation : (2015) 04 RAJ CK 0138

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Vikram Rajpurohit, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—This criminal misc. petition under section 482 Cr.P.C. has been filed by the petitioner with a prayer for setting aside the order dated 01.06.2012 passed by Additional Sessions Judge (Fast Track) No. 2, Bikaner (for short "the revisional court" hereinafter) in Cr. Revision Petition No. 123/2011 filed by the petitioner, whereby the revisional court has dismissed the said revision petition. The said revision petition was filed by the petitioner while challenging the order dated 17.02.2009 passed by Judicial Magistrate No. 3, Bikaner (for short "the trial court" hereinafter), whereby the trial court, while taking into consideration the Final Report No. 23/2003 and the protest petition filed on behalf of respondent No. 2, has ordered for taking cognizance against the petitioner for the offence punishable under section 498-A IPC.

2. Brief facts of the case are that respondent No. 2 had filed a complaint in the Court of Chief Judicial Magistrate, Bikaner on 26.05.2001 alleging offences punishable under sections 498-A and 406 IPC against the petitioner and her father-in-law, mother-in-law, brother-in-law, his wife, sisters and their husbands

and brother and sister-in-law of her mother-in-law. The said complaint was forwarded to the police by the concerned court under section 156(3) Cr.P.C. for investigation and the police has registered the FIR No. 33/2001 dated 01.06.2001 at Mahila Police Station, Bikaner.

3. The respondent No. 2 in the FIR has stated that her marriage with the petitioner was solemnized on 27.04.1996 at Bikaner. She has alleged that the petitioner started abusing and beating her and the remaining accused used derogative language and used to say that her father and mother did not give anything to him. It is alleged that two years ago, in an evening, the accused-persons gave beating to her, snatched her hairs, tore her cloths and abused her. She has further alleged that they demanded Rs. 5,00,000/- as dowry and, therefore, she is forced to file this complaint. The police started investigation on the complaint filed by the respondent No. 2.

4. It is noticed that on 26.05.2001 itself, the respondent No. 2 had filed an application under section 13 of the Hindu Marriage Act, 1955 (for short "the Act of 1955" hereinafter) before the District Judge, Bikaner seeking divorce from the petitioner on the ground of cruelty and desertion. In the application under section 13 of the Act of 1955, the respondent No. 2 had alleged that the petitioner and his family members are demanding dowry and are also assaulting and abusing her for not bringing more dowry. It is further alleged that in April, 1999, she was thrown out of her in-laws house and at present she is residing at her father's house in Bikaner.

5. During the course of investigation into the FIR No. 33/2001 and during the pendency of the proceedings under section 13 of the Act of 1955, the Criminal Misc. Petition No. 487/2001 was filed on behalf of the petitioner and others before this Court challenging the FIR No. 33/2001. The said criminal misc. petition was allowed by this Court vide order dated 07.10.2003 and the FIR No. 33/2001 was quashed.

6. Thereafter, during the pendency of the proceedings under section 13 of the Act of 1955 before the District Judge, Bikaner, the petitioner had filed a counter claim and sought decree of divorce on the ground of cruelty and desertion. It is also to be noticed that during pendency of that proceeding, both the petitioner and respondent No. 2 had filed an application under section 13-B of the Act of 1955 and sought divorce by mutual consent. The District Judge, Bikaner has taken into consideration all the facts and circumstances of the case and granted decree of divorce to the petitioner and respondent No. 2 under section 13-B as well as under section 13 of the Act of 1955 on the ground of cruelty and desertion.

7. After passing of the decree of divorce by the District Judge, Bikaner, the police had submitted negative final report in the FIR No. 33/2001. However, in an appeal preferred by respondent No. 2, Hon'ble Supreme Court vide order dated 18.01.2005 in Cr. Appeal No. 132/2005 filed on behalf of respondent No. 2 has

set aside the order dated 07.10.2003 passed by this Court in Cr. Misc. Petition No. 487/2001 and directed the Mahila Police Station, Bikaner to proceed with the investigation into the allegations levelled in the FIR No. 33/2001. The police had again started investigation into the above-mentioned FIR and submitted negative final report in the Court of Judicial Magistrate No. 3, Bikaner on 14.08.2007 while concluding that allegations levelled in the FIR are false.

8. Being aggrieved with the negative final report submitted by the police, respondent No. 2 had filed a protest petition and after considering the same, the trial court has passed the impugned order dated 17.02.2009, whereby it has ordered for taking cognizance against the petitioner for the offence punishable under section 498-A IPC. The revision petition filed by the petitioner against the order dated 17.02.2009 has also been dismissed by the revisional court vide order dated 01.06.2012. Hence, this criminal misc. petition.

9. Assailing the validity of the orders passed by the revisional court as well as the trial court, the petitioner has submitted that the trial court has grossly erred in taking cognizance against him for the offence punishable under section 498-A IPC, though the District Judge, Bikaner, in the judgment and decree dated 04.02.2004, had given a specific finding to the effect that the petitioner and his family members have not committed any cruelty upon the respondent No. 2 while demanding dowry. It is contended that on the other hand, it was held by the District Judge, Bikaner that the behaviour of the respondent No. 2 was cruel towards the petitioner and his family members. The petitioner has further argued that in view of the specific finding given by the District Judge, Bikaner in the judgment and decree dated 04.02.2004 to the effect that the petitioner and his family had not committed any cruelty upon respondent No. 2, the trial court has grossly erred in taking cognizance against the petitioner for the offence punishable under section 498-A IPC because the finding given by a civil court is binding on the criminal court. The petitioner has placed reliance on decisions of Hon"ble Supreme Court rendered in Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others, AIR 1971 SC 1244 : (1971) CriLJ 1072 : (1970) 3 SCC 694 : (1971) 3 UJ 26 ; V.M. Shah Vs. State of Maharashtra and another, AIR 1996 SC 339 : AIR 1995 SC 339 : (1996) 85 CompCas 465 : (1995) 71 FLR 747 : (1995) 6 JT 433 : (1995) 5 SCALE 191 : (1995) 5 SCC 767 : (1995) 3 SCR 79 Supp and Shanti Kumar Panda Vs. Shakuntala Devi, AIR 2004 SC 115 : (2004) CriLJ 1249 : (2005) 11 JT 122 : (2004) 1 SCC 438 : (2003) 5 SCR 98 Supp : (2004) AIRSCW 6354 : (2003) 7 Supreme 719 ;

10. It is further contended that the trial court while relying on the findings given by the District Judge in judgment and decree dated 04.02.2004, wherein it has been held that as the petitioner has levelled several allegations against the respondent No. 2 about her character and, therefore, that amounts to cruelty, has taken cognizance against the petitioner in illegal manner. The petitioner has argued that despite the said findings, he cannot be prosecuted for the offence punishable under section 498-A IPC. The petitioner has also submitted that word

"cruelty" as has been used in section 498-A IPC, has to be read in terms of the definition given in the Explanation of that section and no other meaning can be attributed thereto. The action of the petitioner levelling the allegations against respondent No. 2 in the divorce petition regarding her character may be the act of cruelty on his part for the purpose of judicial separation or dissolution of marriage but the same would not attract the provisions of section 498-A IPC.

11. In support of the arguments to the effect that the scope of term "cruelty" as used in section 498-A IPC is different from the term "cruelty" used in section 13 of the Hindu Marriage Act, the petitioner has placed reliance on decision of Hon"ble Supreme Court in U. Suvetha Vs. State by Insp. of Police and Another, (2009) CLT 1126 : (2009) CriLJ 2974 : (2009) 7 JT 222 : (2009) 7 SCALE 149 : (2009) 6 SCC 757 : (2009) 8 SCR 902 : (2009) AIRSCW 3491 : (2009) 3 Supreme 797 .

12. Per contra, learned Public Prosecutor has opposed the petition and submitted that the trial court as well as the revisional court have not committed any illegality in passing the impugned orders because from the material collected by the police and from the statements of the respondent No. 2 and other witnesses recorded before the trial court under section 200 and 202 Cr.P.C., prima facie material for taking cognizance against the petitioner for the offence punishable under section 498-A IPC is available on record.

13. It is noticed that this Court vide order dated 02.04.2014 has issued show cause notice to the respondent No. 2, however, despite service of show cause notice, none had appeared on her behalf. Thereafter, this criminal misc. petition was admitted on 25.04.2014 and notice of admission was also sent to the respondent No. 2, however, despite service of notice of admission, none has appeared on behalf of the respondent No. 2 to defend the orders passed by the courts below.

14. Heard the petitioner personally and the learned Public Prosecutor.

15. The respondent No. 2 had filed a criminal complaint against the petitioner alleging commission of offences punishable under sections 498-A and 406 IPC on 26.05.2001. On the same day, levelling almost similar allegations, the petitioner had filed an application under section 13 of the Act of 1955 before the District Judge, Bikaner. After full fledged trial in the proceedings under section 13 of the Act of 1955, the District Judge, Bikaner had granted decree of divorce on 04.02.2004 while holding that the petitioner and his family members have not committed any cruelty with the respondent No. 2, rather it was respondent No. 2, whose behaviour was cruel towards the petitioner and his family members.

16. In the proceedings under section 13 of the Act of 1955, the District Judge, Bikaner has framed as many as five issues, out of which, Issue No. 5 was regarding relief. The District Judge, Bikaner in the judgment and decree dated 04.02.2004 decided the Issue Nos. 1 to 4 together. The issues framed by the District Judge, Bikaner and the findings regarding the said issues are reproduced

hereunder:

17. From perusal of judgment and decree dated 04.02.2004, it is clear that the District Judge, Bikaner has given a clear finding to the effect that the respondent No. 2 has failed to prove that petitioner or his family members have committed cruelty upon her while demanding dowry. The District Judge has given a finding that the marriage of the petitioner and respondent No. 2 was an ideal marriage. The allegations of beating and abusing have also not found proved against the petitioner and his family members. The District Judge, Bikaner has given a clear finding that the behaviour of the respondent No. 2 was cruel towards the petitioner and his family members and granted decree of divorce to the petitioner on the ground of cruelty. Though the District Judge, Bikaner has also held that the behaviour of the petitioner is also cruel towards respondent No. 2 because he has levelled charges against her regarding her character but has failed to prove the same but there is no finding to the effect that charges of cruelty against the petitioner while demanding dowry are proved.

18. In the impugned order dated 17.02.2009, the trial court has observed that from the material collected by the police during the course of investigation and from the statements of the respondent No. 2 and other witnesses in support of protest petition and in view of the findings given by the District Judge, Bikaner in judgment and decree dated 04.02.2004 to the effect that the petitioner has committed cruelty upon the respondent No. 2 by levelling allegation against her character, prima facie evidence for proceeding against the petitioner for the offence punishable under section 498-A IPC is made out.

19. With due respect to the trial court, I am of the opinion that the finding given by the trial court regarding availability of prima facie material to proceed against the petitioner is not tenable. As stated earlier, the allegations levelled by the respondent No. 2 regarding cruelty and demanding of dowry in the criminal complaint filed by her, which was resulted in lodging of FIR No. 33/2001 were similar in nature to the allegations levelled in the application under section 13 of the Act of 1955. The District Judge being a civil court, after full fledged trial, has given a specific finding to the effect that the allegations regarding cruelty levelled by the petitioner and his family members are not proved, rather the charge of cruelty is proved against the respondent No. 2. In view of the specific finding given by the civil court, the trial court has erred in holding that from the material collected by the police during the course of investigation and from the statements of the respondent No. 2 and other witnesses in support of the protest petition, prima facie material is available against the petitioner to try him for the offence punishable under section 498-A IPC.

20. The Hon"ble Supreme Court in case of M/s. Karamchand Ganga Pershad and Anr. v. Union of India and Ors. (supra), has observed as under:

"It is a well established principle of law that the decisions of the civil courts are binding on the criminal courts."

21. In *V.M. Shah v. State of Maharashtra and Anr.* (supra), the Hon''ble Supreme Court has observed as under:

"As seen that the civil court after full-dressed trial recorded the finding that the appellant had not come into possession through the Company but had independent tenancy rights from the principal landlord and, therefore, the decree for eviction was negatived. Until that finding is duly considered by the appellate court after weighing the evidence afresh and if it so warranted reversed, the findings bind the parties."

22. In *Shanti Kumar Panda v. Shakuntala Devi* (supra), the Hon''ble Supreme Court has observed as under:

"It is well-settled that a decision by a Criminal Court does not bind the Civil Court while a decision by the Civil Court binds the Criminal Court (See - Sarkar on Evidence, Fifteenth Edition, page 845)."

23. It seems that the trial court has not taken into consideration the observations made by the Hon''ble Supreme Court in order dated 18.01.2015 in Criminal Appeal No. 132/2005 filed by respondent No. 2 against the order of this Court, whereby the FIR No. 33/2001 was quashed. The Hon''ble Supreme Court in order dated 18.01.2015 passed in Criminal Appeal No. 132/2005 has observed as under:

"The second respondent relied upon a judgment of this Court in the case of *V.M. Shah Vs. State of Maharashtra and another*, AIR 1996 SC 339 : AIR 1995 SC 339 : (1996) 85 CompCas 465 : (1995) 71 FLR 747 : (1995) 6 JT 433 : (1995) 5 SCALE 191 : (1995) 5 SCC 767 : (1995) 3 SCR 79 Supp wherein this Court while entertaining an appeal against the conviction under Section 633 of the Companies Act had held that a finding given by the civil court is binding on the criminal court. We have no quarrel with the said proposition, but we are of the opinion that such consideration of a finding of the civil court can not be done by a court entertaining a criminal petition for quashing an FIR wherein an investigation has not even started.

The second respondent further contended that subsequently in the divorce proceeding the Court has given a conclusive finding that the allegation made by the appellant-Savita is not established, but that is a finding again given by the civil court subsequent to the impugned judgment in this case. Even otherwise as held by us hereinabove that is a material to be taken note of by the investigating agency or the court before whom the charge sheet is filed."

24. In view of the observations made by the Hon''ble Supreme Court on 18.01.2015, the trial court ought to have taken into consideration the finding of District Judge, Bikaner given in judgment and decree dated 04.02.2004 and as per those findings, cognizance could not be taken against the petitioner for the offence punishable under section 498-A IPC.

25. The another ground on which the trial court has found prima facie case

against the petitioner for being tried for the offence punishable under section 498-A IPC that the District Judge in the judgment and decree dated 04.02.2004 had given a finding to the effect that behaviour of the petitioner towards the respondent No. 2 is cruel as he has levelled several allegations regarding her character, is also not tenable. The scope of cruelty in the matrimonial matters is different from the scope of cruelty in criminal proceedings. The Hon''ble Supreme Court in *U. Suvetha v. State by Inspector of Police and Anr.*, (supra), while taking into consideration the provisions of section 498-A IPC has held as under:

"7. Ingredients of Section 498-A of the Penal Code are:

(a) The woman must be married:

(b) she must be subjected to cruelty or harassment; and

(c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

8. Appellant herein had not been charged for abetment of a crime. Any conspiracy amongst the accused persons has also not been alleged. A woman in terms of the aforementioned provision must be subjected to cruelty by her husband and/or his relative. The word "cruelty" has also been defined in the explanation appended thereto. It is in two parts. Clause (a) of the said explanation refers to a conduct which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); Clause (b) provides for harassment of the woman, where such harassment, is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

9. The word "cruelty" having been defined in terms of the aforesaid Explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498A of the Indian Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to be the "husband" or his "relative". Either the husband of the woman or his relative must be subjected to her to cruelty within the aforementioned provision. If the appellant had not (sic) been instigating the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and appellant may be held guilty for abetment of commission of such an offence but not an offence under Section 498-A of the Penal Code."

(Emphasis supplied)

26. The Hon''ble Supreme Court in *Shobha Rani Vs. Madhukar Reddi*, AIR 1988 SC 121 : (1987) 4 JT 433 : (1987) 2 SCALE 1008 : (1988) 1 SCC 105 : (1988) 1

SCR 1010 , while taking into consideration the provisions of section 498-A IPC and the provisions of section 13(1)(i-a) of the Act of 1955 has crafted a distinction between the scope of cruelty in matrimonial matters and criminal law. The Hon"ble Supreme Court has observed as under:

"9. A new dimension has been given to the concept of cruelty. Explanation to Sec. 498A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty.

10. We are, however, not concerned with criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code. We are concerned with a matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Such cruelty if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases.....

17..... The High Court while dealing with this part of the case has observed that there is no evidence to show that the demands were such as to cause harassment to the wife. The High Court appears to have misconstrued the scope of cruelty in matrimonial affairs. The evidence as to harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law. It is the requirement of the offence of "cruelty" defined under sec. 498A of the Indian Penal Code."

27. In view of the law laid down by the Hon"ble Supreme Court, while making distinction between the scope of cruelty in the matrimonial matters and criminal law, I am of the opinion that the trial court as well as the revisional court have erred in placing reliance on the findings given by the District Judge, Bikaner in decree of divorce dated 04.02.2004 regarding cruelty committed by the petitioner towards the respondent No. 2, wherein he has levelled allegations regarding her character because the said action of cruelty would not attract the wrath of section 498-A IPC and can be termed as an act of cruelty on the part of the petitioner for the purpose of judicial separation or dissolution of the marriage which has already been granted by the District Judge, Bikaner.

28. It is also to be noted that after granting the decree of divorce by the District Judge, Bikaner vide order dated 04.02.2004, the respondent No. 2 had moved an application before the District Judge, Bikaner under section 25 of the Act of 1955 claiming maintenance from the petitioner. In those proceedings under section 25 of the Act of 1955, the Court has decided Issue No. 2 and 8 as preliminary issues and rejected the prayer of the petitioner for dismissing the application under section 25 of the Act of 1955 filed on behalf of the petitioner vide order dated

08.07.2005. Being aggrieved with the order dated 08.07.2005, the petitioner has preferred S.B. Civil Revision Petition No. 371/2005 before this Court and this Court vide judgment dated 04.04.2008, has allowed the said revision petition and while exercising supervisory powers, has dismissed the application filed by the respondent No. 2 under section 25 of the Act of 1955. In the order dated 04.02.2008, this Court has observed as under:

"The petitioner's contention is that his father decided to go for an ideal marriage for petitioner as his father was reformist. This fact has been proved by the petitioner in earlier round of litigation in divorce case No. 83/2001 wherein it has been held that not only there were 6-7 Baraties but no dowry was taken by the petitioner and his family members. The court held in said judgment that the non-petitioner was given car facility to pursue her studies of LL.B. Part I and II and no cruelty was committed upon non-petitioner and the non-petitioner could not prove that she was turned out from petitioner's house by the petitioner and his family members and in fact non-petitioner is guilty of committing cruelty upon the petitioner. The marriage which was without any pomp and show with Barat of 6-7 persons only and solemnized without obtaining dowry and where full facility was given to the non-petitioner to pursue her studies while living in the house of the petitioner's father and she became advocate after her marriage resulted into divorce after short period. The non-petitioner filed the divorce petition wherein the petitioner submitted counter claim and stated some facts which according to the petitioner, the non petitioner uttered and said to the petitioner which were misunderstood by the court in the judgment dated 4.2.2004 passed in the divorce proceedings so as to mean that the petitioner levelled some allegations against the non-petitioner about her character, whereas in fact the petitioner only stated that whatever the non-petitioner told her that he has mentioned in the reply filed by him in divorce proceedings. In divorce proceedings the court clearly held that the non petitioner lodged false FIR against the petitioner and his family members and she failed to prove any allegation of cruelty against the petitioner, however, in divorce proceedings the civil court recorded finding against the petitioner also about committing cruelty by him but the reason given by the trial court is that the petitioner narrated some facts about the character of the non-petitioner but as observed above, that was not the allegation of the petitioner upon non-petitioner No. 1 but only the statement of fact what non-petitioner stated to the petitioner and another ground for holding the petitioner guilty of committing cruelty or creating situation for desertion is that the petitioner did not make any effort to bring the non-petitioner back to his house."

[Emphasis supplied]

29. It is admitted position that the judgment and decree passed by the District Judge, Bikaner on 04.02.2004 in the proceedings under section 13 of the Act of 1955 and judgment passed by this Court in S.B. Civil Revision Petition No. 371/2005 decided on 04.04.2008 have attained finality.

30. In view of the above discussions, this criminal misc. petition under section

482 Cr.P.C. is allowed. The impugned orders dated 17.02.2009 and 01.06.2012 passed by Judicial Magistrate No. 3, Bikaner as well as by Additional Sessions Judge (Fast Track) No. 2, Bikaner respectively are hereby set aside. The proceedings in FR No. 23/2003 pertaining to the FIR No. 33/2001 of Mahila Police Station, District Bikaner, pending in the Court of Judicial Magistrate, First Class No. 3, Bikaner are also quashed.