

(2005) 09 AHC CK 0191

In the Allahabad High Court

Case No : Criminal Miscellaneous Petition No. 5883 of 1999

Rakesh Kumar Bansal and Others

APPELLANT

Vs

Smt. Beena Bansal and D/o Shri J.K. Jain

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 200, 202, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 147, 323, 352, 452, 498A
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2005) 09 AHC CK 0191

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : D.K. Dewan, for the Appellant; R.N. Rai and A.K. Rai, for the Respondent

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—Heard Sri D.K. Dewan learned counsel appearing for the applicants and Sri Ravindra Nath Rai. Advocate, appearing for the contesting opposite party. Counter and rejoinder affidavits have been exchanged. Supplementary rejoinder affidavit has been filed on behalf of the applicant to bring certain facts on record.

2. This application has been filed for quashing the complaint (Annexure No. 2) vide criminal case No. 1226 of 1998, Smt. Beena Bansal v. Rakesh Kumar Bansal and Ors. pending in the court of Additional Chief Judicial Magistrate, Hapur, Ghaziabad.

3. Facts giving rise to the dispute are that the applicants are member of the same family. The applicant No. 1 married contesting opposite party Smt. Beena Bansal on 23.7.1998, some matrimonial dispute ensued between .them, which resulted filing of divorce suit u/s 13 of Hindu Marriage Act, which is still pending

in the court of District Judge, Delhi. A copy of the plaint has been annexed as annexure No. 1 to the affidavit filed in support of this application. Another proceedings u/s 125 Cr.P.C. vide criminal case No. 29 of 1997 was instituted in the court of Judicial Magistrate Hapur and interim maintenance was awarded to the tune of Rs. 250/- per month. Submission on behalf of the applicant is that Smt. Beena Bansal left her matrimonial home on her own on 24.6.199-1 and did not return, subsequently with a view to cause harassment filed instant complaint in the court of Additional Chief Judicial Magistrate Hapur, on 10.11.1998 under Sections 147, 452, 352, 323, 504, 506, 498A I.P.C. read with Section 3/4 Dowry Prohibition Act. A copy of the complaint has been annexed as. annexure No. 2 to the affidavit filed in support of this application. The opposite party examined herself u/s 200 Cr.P.C. and two other witnesses namely Suraj Singh and Vinod Kumar u/s 202 Cr.P.C. The Additional Chief Judicial Magistrate, Hapur summoned the applicants under Sections 498A I.P.C. read with Section 3/4 Dowry Prohibition Act. A copy of the summoning order has been annexed as annexure No. 6 to the affidavit filed in support of this application. The applicants filed their objections challenging the summoning order, which was also rejected on 29.5.1999. A criminal revision No. 300 of 1999 was filed against the aforesaid order, which was also rejected on 5.11.1999. Submission on behalf of the applicants is for quashing the complaint on the ground that instant complaint has been filed with a view to cause harassment and it amounts to an abuse of the process of the court It is further submitted that a perusal of the complaint shows that no relationship has been mentioned in the body of the complaint and it is only that the accused No. 1 is husband of Smt. Beena Bansal. I have perused the complaint. In paragraph No. 1, it has specifically been stated that the complainant is wife of" Rakesh Kumar Bansal. In the array of the parties, parentage of Rakesh Kumar Bansal is shown as Rameshwar Dayal Bansal, who is also accused No. 2, accused No. 3 is son of Rameshwar Dayal Bansal, accused No. 4 is wife of second son of Rajiv Bansal In paragraph No. 2, it has been stated that all the accused are members of the same family. In the circumstances, it is wrong to say that necessary ingredients are missing from the complaint. It has been brought on record that the accused are living separately and they have separate roll residence. A copy of the electoral own pertaining to the year 1993 as well as identity card issued by the Election Commission of India has been brought on record. It has further been submitted that the opposite party herself has given separate address in the complaint and, she had full knowledge that they are residing separately. Therefore, the complaint is liable to be quashed.

4. I have gone through the complaint and summoning order. No doubt, the parties are litigating since some time and a number of litigations are continuing between them but this alone cannot be sufficient to quash the proceedings. Counsel for the applicants has placed reliance on the decision of Pepsi Food Ltd, and Anr. v. Special Judicial Magistrate and Ors. 1998 S.C.C. 1400 and also another decision Anand Prakash Malviya v. State of U.P. and Ors. 1996 L C R 206 , the second case relates to the essential requirement in a summoning order.

Perusal of the said decision shows that allegation of the prosecution should be such, that the Magistrate could conclude that a prima facie case is made out against the applicant and it should be a speaking order. No doubt the summoning order should be such that on a reading of the order, it is apparent and clear that the learned Magistrate had applied his mind before summoning an accused. It appears that the cases cited by counsel for the applicants, the summoning order was cryptic one whereas it is not the present case. I have examined the summoning order, which is annexed as annexure No. 6 to the affidavit filed in support of this application. Perusal of the said order shows that it has been passed after going through the complaint, statements under Sections 200/202 Cr.P.C. and after hearing arguments of counsel for the complainant and he has specifically recorded his satisfaction that prima facie case is made out against the applicants. In the circumstances, decisions relied upon are of no help to the applicants. The first case cited by the counsel is Pepsi Food Ltd (supra), I find in the said case that the Apex Court had quashed the proceedings but facts and evidence discussed in the said judgment is altogether different. In fact there were twelve accused in the complaint, it was a case u/s 7/16 of Food Adulteration Act. The Apex Court "had gone through the complaint and held that a bare reading of the complaint and summoning order on the basis of allegation made, evidence available on record, it appears that all the twelve accused had committed offence u/s 7/16 of Food Adulteration Act and the Supreme Court analyzed difference between manufacturer and purchaser as well as different role of the respective accused. While coming to the conclusion that the summoning order was bad, the Apex Court was conscious of the earlier decision of the Supreme Court and the different categories where the prosecution can be quashed in exercise of inherent powers. In the cases of R.P. Kapur Vs. The State of Punjab, three categories are carved out and seven categories in case of State of Haryana and Ors v. Chaudhary Bhajan Lal, 1991 (28) A.C.C., 111 (S.C.). Though no straight jacket formula can be laid yet the Apex Court had broadly categorized the instances when prosecution could be quashed in exercise of inherent powers. Therefore, a perusal of the complaint, summoning order as well as statements under Sections 200/202 Cr.P.C. prima facie makes out a case against the applicants and it cannot be said that it deserves quashing right at its inception. Counsel for the applicants has brought several documents on record by means of supplementary affidavit to show that they were residing separately and, therefore, no case for demand of dowry is made out against other accused. The documents brought on record by means of supplementary affidavit are evidence, which can be sifted only during the trial and it cannot be looked into by this Court while exercising inherent powers u/s 482 Cr.P.C., this Court is not sitting as the trial court or as a court of appeal. Therefore, I do not find any merits in the case and is accordingly dismissed.