

(2017) 01 PAT CK 0110

In the Patna High Court

Case No : 36105 of 2013

Ramashish Tiwari & Ors

APPELLANT

Vs

The State of Bihar & Anr

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 379, Section 498A - Acts done by several persons in furtherance of common intention - Punishment for theft - Husband or relative

Citation : (2017) 01 PAT CK 0110

Hon'ble Judges : Aditya Kumar Trivedi

Bench : SINGLE BENCH

Advocate : Arun Kumar Gupta, Sharda Kumari, D. Singh, Pushpa Sinha

Judgement

1. All these petitions commonly originate against an order dated 07.05.2013 passed by the Chief Judicial Magistrate, Buxar in connection with Buxar Mufassil P.S. Case No.213 of 2012 whereby and whereunder petitioners have been summoned to face trial for an offence punishable under Sections 498A, 379, 34 of the I.P.C.

2. Opposite Party No.2 was noticed at the stage of admission of Cr. Misc. No.26600 of 2013 as well as Cr. Misc. No.30732 of 2013, who entered into an appearance, but at the time of hearing over admission, none turned up to represent her on account thereof, vide order dated 01.11.2013, both the petitions have been admitted. Another petition having on behalf of Ramashish Tiwari came up under Cr. Misc. No.36105 of 2013 wherein also opposite party no.2 was noticed, but as she failed to appear, on account thereof, all the three petitions have been heard together and are being adjudicated upon by a common order.

3. Anita Devi @ Madhu (O.P. No.2) had filed written report putting an allegation against the petitioners to the effect that her father-in-law Ramashish Tiwari

happens to be under illicit relationship with Manorama Devi wife of Daya Shankar Choubey and on account thereof, allowed her to stay at his place as his mistress. Furthermore, he also developed immoral relationship with his niece Shobha Devi, Renu Devi and Laxmi Devi which was protested by her in-law and for that, ultimately, she had to face curse at the end of her father-in-law by way of driving her out from her society. Because of the fact that her husband used to remain outside for his livelihood and further, finding his absence a good opportunity her father-in-law began to pressurize her to enter into unscrupulous relationship with him and as she revolted, he began to coerce her to bring Rs.1,50,000/- cash as well as a Hero Honda Motorcycle otherwise threatened to face dire consequences. When she informed the aforesaid event to her husband as well as father, the accused persons began to torture her as well as also occasionally, began to tease with physical activities. It has further been specified that on 27.09.2012, her father-in-law, Manorama Devi, Shobha Devi, Renu Devi, Laxmi Devi, Daya Shankar Choubey, Santosh Choubey along with two unknown persons intruded inside her room at about 11.00 p.m. At that very time, she was sleeping alone. Just after entering, Shobha Devi and Manorma Devi caught hold her hair and threw her on the ground and further, directed that as the demand is not being fulfilled, she will not be allowed to survive. During midst thereof, Ramashish Tiwari snatched golden chain, ear-top. Then thereafter, all of them, took out ornaments after breaking open her Elmira as well as valuable articles. On protest, Manorma Devi sprinkled kerosene oil and Shobha Devi lighten the match and threw over her on account of which, her Sari caught fire. She, to save her life, raised alarm and rushed to ground floor where her Dewar Ajay Tiwari, Bijay Tiwari, Ram Pratap Mishra along with others rescued her.

4. On the basis of the aforesaid written report, Buxar Mufassil P. S. Case No.213 of 2012 was registered followed with investigation and after completing the same, chargesheet was submitted and further, after perusal of the case diary, the learned lower Court took cognizance of an offence and summoned the petitioners to face trial. Consequent thereupon, challenged under present petitions in three independent segments by the respective petitioners/ accused.

5. There happens to be common flank of argument that no offence is made out and so, the action of the learned lower Court happens to be bad. Furthermore, it has also been submitted that wife of petitioner Ramashish Tiwari is responsible for whole illegal activity, who taking the informant in her collusion got this case filed. It has also been submitted that Ramashish Tiwari is on litigating term with his wife Kaushalya Devi and further, having this case filed at the instance of Kaushalya Devi, would not justify the order impugned as the allegation whatsoever been disclosed in the written report not only suggest improbable one rather smacks fragrance of malice and grudge. So, submitted that it is a fit case wherein the order impugned should be set aside.

6. Refuting the submission, it has been submitted on behalf of learned Additional Public Prosecutor that the law is well-settled on that very score. From the

Annexures having filed on behalf of petitioners themselves, it is apparent that on account of lascivious character of Ramashish Tiwari whereunder he allowed entry of Manorma Devi under the banner of his mistress, forced Kaushalya Devi, mother in-law of opposite party no.2 to stay away from petitioner Ramashish Tiwari and further, presence of Manorma Devi till today with a further undesirable activities of Ramashish Tiwari whereunder he developed some sort of enamoured relationship with his own niece and further, coercing the informant to follow same path and on being resisted at her end been forced to face such consequences would not justify the submission having made on behalf of petitioners and so, the order impugned is fit to be confirmed.

7. In State Of Haryana And Ors vs. Ch. Bhajan Lal And Ors. reported in 1992 AIR 604, the Hon''ble Apex Court had laid down certain criteria in order to facilitate quashing of the order at its nascent stage and for better appreciation the same is quoted below:- "8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- myriad kinds of cases wherein such power should be exer- cised:

(a) 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 ac- cused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or "complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress

for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence just- i7 on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished."

8. Recently in Taramani Parakh v. State of M.P. & Others reported in 2015 CRI.L.J. 2031, a matter relating to matrimonial issue whereunder the High Court had quashed the proceeding and the issue was brought up before the Hon"ble Apex Court at the end of the victim wherein the order of the High Court was set aside, and during course thereof, observed:- "11. Law relating to quashing is well settled. If the allegations are absurd or do not made out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the Court does not go into reliability or otherwise of the version or the counter version. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue. Referring to earlier decisions, in Amit Kapoor vs. Ramesh Chander and Anr. (2012) 9 SCC 460, it was observed:

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers. 27.5. Where there is an express legal bar enacted in any of

the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours,

otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

(Ref. *State of W.B. v. Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949]; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234]; *Janata Dal v. H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892]; *Rupan Deol Bajaj v.* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059]; *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]; *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]; *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128]; *State of U.P. v. O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497]; *Ganesh Narayan Hegde v. S. Bangarappa* [(1995) 4 SCC 41 : 1995 SCC (Cri) 634]; *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]; *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869]; *Shakson Belthissor v. State of Kerala* [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412]; *V.V.S. Rama Sharma v. State of U.P.* [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356]; *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297]; *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82]; *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260]; *Lalmuni Devi v. State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19]; *Savita v. State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of Gujarat* [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201: (AIR 2001 SC 3253)]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

12. In *Kailash Chandra Agrawal & Anr. vs. State of U.P. & Ors.* (Criminal Appeal No.2055 of 2014 decided on 6.9.2014), it was observed:

"9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In *Kans Raj vs. State of Punjab & Ors.* [(2000) 5 SCC 207: (AIR 2000 SC 2324)], it was observed:-

"5.....A tendency has, however, developed for roping in all relations of the in-

laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.

10. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court's process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. vs. State of Bihar and Anr. [(2000) 8 SCC 547] Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors. [(1998) 5 SCC 749] State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors. [(1992) Suppl 1 SCC 335](AIR 1992 SC 604) and Asmathunnisa vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Anr. [(2011) 11 SCC 259]:(AIR 2011 SC1905)]."

15. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has infact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible."

9. Facts of the case contains some sort of peculiarity in the background of lascivious conduct of her father in-law Ramashish Tiwari and further, the activities having at their end happens to be on account of frustration which Ramashish Tiwari faced on account of resistance by the opposite party no.2/ victim. In order to properly ascertain whether Opposite Party No.2 was harassed and tortured simpliciter as she turned down advances having at the end of her father-in-law permitting herself to stand in queue with other co-accused, or was harassed and tortured in lieu of fulfilment of demand of Rs.1,50,000/- and a motorcycle, will need thorough examination which is only permissible during course of trial, and being so, order impugned did not attract interference. Stay so granted at an earlier occasion vide order dated 08.08.2013 is recalled. All the petitions are accordingly, dismissed.