
(2010) 01 MP CK 0033
In the Madhya Pradesh High Court

Ramdeen and Others

APPELLANT

Vs

Smt. Suman Tyagi

RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 397, 482

Hindu Marriage Act, 1955 — Section 13

Penal Code, 1860 (IPC) — Section 294, 302, 323, 498A, 506B

Citation : (2010) CriLJ 2945

Hon'ble Judges : Shyam Sunder Dwevedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Dwivedi, J.—The applicants have preferred this revision u/s 397 Cr. P. C. aggrieved by the order dated 22-7-2009 passed by Additional Sessions Judge (Fast Track), Jaura in Criminal Revision No. 182/ 06 whereby allowed the revision petition preferred by respondent No. 1 /complainant against the order dated 2-9-2006 passed by JMFC, Jaura in unregistered private complainant Case No. 0/06 whereby the trial Magistrate has dismissed the complaint u/s 203 of Cr. P. C.

2. Brief facts of the case are that respondent No. 1 Suman Tyagi claiming herself to be the legally wedded wife of the applicant No. 2 Gopal. The applicant No. 1 Ramdeen is the father-in-law, applicants Nos. 3 & 4 are the sisters-in-law and Nos. 5-6 and 7 are the aunts-in-law (chachiya saas) of the complainant. The complainant respondent No. 1 has filed a private complaint before the JMFC, Jaura on 9-1-2006 with the allegation that all the applicants-accused after her marriage started harassing her coupled with demand of dowry and on 30-11-2005 when the complainant went to her in-law's house, at that time, all the applicants-accused started abusing and again started demanding dowry and also caused injury to her by means of legs and fists. The complainant has also lodged an FIR at the police station, Jaura but the police had not taken any cognizance against the applicants-accused, therefore, she filed the aforesaid

complaint before the JMFC. The learned JMFC recorded the statement of respondent No. 1/Complainant, Suman Tyagi and the witnesses Nanakram, Rakesh and Hakim Singh and thereafter hearing the complainant, by order dated 2-9-2006, dismissed the complaint and held that this complaint has been lodged only to harass the applicants-accused because of the fact that the complainant faced a trial u/s 302 IPC for the alleged murder of her mother-in-law Rampyari Bai on 9-10-2003 and because of the aforesaid prosecution the complainant with mala fide intention filed the aforesaid complaint under sections 498A, 323 and 506B of IPC. Aggrieved by the aforesaid order of dismissal, the respondent/complainant has filed Criminal Revision No. 182/2006 which has been decided by the Additional Sessions Judge, Jaura by the impugned order dated 22-7-2009, allowed the revision petition and set aside the order of dismissal of the complaint filed by the respondent/complainant and directed the trial Court to register the case under sections 498A, 323, 294 and 506B of IPC and proceed with the trial in accordance with law. Aggrieved by the aforesaid order passed by the Revisional Court, the applicants came up before this Court by this revision petition.

3. Having heard learned Counsel for the parties and perused the record.

4. It is submitted on behalf of the applicants that the respondent/complainant Suman Tyagi faced a murder trial for the alleged murder of her mother-in-law Rampyari Bai in Sessions Trial No. 182/06 and the alleged incident of murder of Rampyari Bai taken place on 9-10-2003 and since then the complainant / respondent was living in her parental house, therefore, no question arise for coming of the complainant to the in-laws house on the date of alleged incident as mentioned in the private complaint on 30-11-2005. Therefore, the whole incident as stated in the private complaint by the complainant appears to be false one as held by the trial Magistrate. Similarly, before lodging of the private complaint by respondent No. 1/complainant on 9-1-2006, the applicant No. 2 Gopal, the husband of the complainant Suman Tyagi has already filed a civil suit u/s 13 of the Hindu Marriage Act for a decree for divorce. This Civil suit is also pending before the 3rd Additional District Judge, Morena as Civil Suit No. 14-A/ 2008. This suit for decree of divorce has been filed on 22-12-2004 wherein it is clearly stated that the wife has already left the in-laws house from 9-10-2003 itself and in such circumstances the learned trial Magistrate came to the conclusion that the allegation of the alleged harassment on 30-11-2005 to the complainant by any of the accused applicants also appears to be a false allegation and this complaint has been filed only to take revenge with the applicants because of the fact that the applicant No. 2 has filed a divorce petition before the Civil Court and all the applicants are the witnesses in the Sessions Trial No. 270/2004, which was faced by the complainant Suman Tyagi for the offence u/s 302 IPC and thus, the learned trial Magistrate has rightly rejected the complaint u/s 203 of Cr. P. C. and the learned Revisional Court has committed error by setting aside the aforesaid order of rejection passed by the learned trial Magistrate, hence prayed for setting aside of the impugned order passed by the learned Revisional Court

and restoration of the order passed by the trial Magistrate.

5. The learned Counsel for the respondent No. 1/complainant supported the impugned order and prayed for dismissal of the revision petition.

6. The State is a formal party in this petition.

7. On consideration of the rival contentions of both the parties, it is apparent that admittedly, the complainant faced criminal trial u/s 302 IPC in Sessions Trial No. 270/04 for the alleged murder of her mother-in-law namely, Rampyari Bai on 9-10-2003. This Sessions Trial continued from 9-10-2003 and the order of acquittal passed by the 5th Additional Sessions Judge, Morena in the aforesaid Sessions Trial is on 18-11-2005 and in such circumstances, if the complainant faced the murder trial for the alleged murder of her mother-in-law Rampyari Bai then it cannot be gathered that the complainant after her acquittal went to her in-laws house on the date of the alleged incident on 30-11-2005 on which date the alleged harassment and demand of dowry has been stated against the applicants-accused. In view of the aforesaid peculiar circumstances of the case, the learned trial Magistrate has rightly come to the conclusion that the allegation for harassment to the complainant on 30-11-2005 appears to be a false allegation for which no cognizance can be taken by the trial Magistrate.

8. Similarly, it is also pertinent to note that this private complaint has been filed by the respondent/complainant on 9-1-2006 and before filing of this complaint the complainant's husband, the applicant No. 2 Gopal has already filed a civil suit u/s 13 of the Hindu Marriage Act for decree of divorce against the complainant Suman Tyagi. This civil suit has been filed on 22-12-2004, much before the alleged incident of harassment to the complainant as per the allegation made in the complain on 30-11-2005. It is also apparent that if a case of divorce petition is already pending before the competent Civil Court then unless directed by the Court to live together the complainant cannot be supposed to go to her in-laws house to live and the alleged incident happened for which the allegation has been made for the alleged harassment by the applicants. In view of the aforesaid circumstances also, the allegation with regard to harassment to the complainant by any of the applicants also found to be false; as held by the trial Magistrate.

9. In the private complaint, the complainant has also alleged with regard to some previous harassment on 2-12-2002 and thereafter also, but immediately after the aforesaid harassment, no complaint has been filed and no FIR has been lodged since 30-11-2005. Therefore, allegation with regard to the previous harassment is also found to be a false allegation.

10. In view of the aforesaid circumstances of the case, the filing of the private complaint u/s 498A IPC by the respondent No. 1/complainant appears to be mala fide and with an intent to take revenge with the applicants because of the fact that they had falsely implicated the complainant in a trial for the alleged murder of Rampyari Bai, wherein the complainant has been acquitted by the trial Court

in Sessions Trial No. 270/. 2004. Till the pendency of the aforesaid sessions trial, the complainant has not lodged any FIR or private complaint against the applicants for the alleged harassment and the demand of dowry. Under these circumstances also, the allegation for the alleged harassment is found to be groundless and false one.

11. The learned Counsel for the applicants placed reliance on the decision of the Apex Court in the case of Sushil Kumar Sharma Vs. Union of India (UOI) and Others, , in which it is held as under:

The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complainants are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measure can be taken to prevent abuse of the well intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon.

12. The learned Counsel for the applicants also placed reliance on the decision of this Court in the case of Kailash Chandra Maheshwari and Ors. v. State of M.P. and Ors. reported in 2006 Cr. L.R. (M.P.) 166 in which it is held as under:

(13) The facts and circumstances as discussed above clearly establish that the criminal proceedings were initiated against the petitioners with a view to pressurize the husband and other family members of Sandhya, as Sanjay, the husband had filed the divorce petition against her on 22-8-1996.

(14) It is right that inherent powers should not be exercised to stifle a legitimate prosecution and it would be improbable to analyse the case of complainant in the light of probabilities in order to determine whether a conviction would be sustainable, however, the exercise of inherent powers to quash the proceedings is called for in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence, of which the cognizance has been taken, it is open for this Court to quash the same in exercise of inherent powers u/s 482 of Cr. P. C.

(15) Considering the scope of exercise of power u/s 482 of Cr. P. C. the Apex Court in State of Haryana v. Bhajanlal 1992 (3) SCC Cri. 426, indicated the illustrative categories of the cases in which such power may be exercised:

(5) where the allegations made in the first information report or the complaint are so absurd and inherently improbable on the basis of such no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused...

(7) where a criminal proceeding is manifestly attended with mala fides 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.

(16) On meticulous analysis of the case it is manifestly clear that the criminal proceeding against the petitioners is frivolous and suffers with mala fide. The allegations made against the petitioners appear to be inherently improbable, absurd and malicious.

(17) A Court of law cannot remain a silent spectator and cannot be made a tool of gratifying personal vengeance of any party. Tendency to wreak vengeance against all the family members and relatives of husband has to be checked and deserves to be nipped in the bud. In cases where the facts available on record prima facie indicate at the stage of framing charge that criminal proceedings have been initiated by the wife or her family members for wreaking her vengeance against all the family members of her husband, the trial Court should carefully examine the material on record and should not frame the charge against the persons, against whom the criminal proceedings prima facie appears to be maliciously instituted and the allegations being absurd and inherently improbable.

13. In view of the aforesaid decision of the Apex Court as well as of this Court, on perusal of the aforesaid facts of the present case, the filing of the private complaint by the respondent/complainant found to be mala fide and with ulterior motive to harass the applicants because of the fact that the applicants put the complainant in a trial for the alleged murder of Rampyari Bai. In such circumstances, the learned Revisional Court has wrongly set aside the order of rejection passed by the JMFC, Jaura.

14. Resultantly, the revision petition is allowed. The impugned order passed by the Revisional Court is set aside and the order passed by the JMFC is restored, meaning thereby the private complaint filed by the respondent/complainant against the applicants is dismissed.

15. A copy of this order be sent to the trial Court for necessary compliance.