
(2011) 12 DEL CK 0367
In the Delhi High Court
Case No : Criminal MC 210 of 2009

Saguna Sharma @ Guddi and Others

APPELLANT

Vs

Mahesh Chand Tiwari

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 363, 366, 406, 494

Citation : (2011) 12 DEL CK 0367

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Arvind Nayar with Mr. Bharat Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This is a petition u/s 482 Cr.P.C for quashing of Criminal Complaint No. 194/1 of 2007 pending before the learned Metropolitan Magistrate and summoning order dated 2.6.2008 passed by learned MM against the petitioners herein.

2. The petitioner Saguna Sharma was summoned by learned MM u/s 494 IPC and other petitioners for abating the said offence as also u/s 506 IPC. The petitioners have challenged the said very complaint as well as summoning order dated 2.6.2008.

3. Before adverting back to the averments as set out in the present petition seeking quashing of the complaint and the summoning order, it would be essential to see as to what was the aforesaid complaint against the petitioners herein which was made by the respondent to the learned MM. As per the averments as set out in the complaint, the complainant was married with Smt. Saguna Sharma @ Guddi (petitioner no. 1 herein). The petitioners no. 2 and 3 i.e. Mahesh Chand Sharma and Smt. Chameli Sharma who were arrayed as accused no. 2 and 3 in the said complaint are parents of Smt. Saguna Sharma,

whereas others are their relatives. The complainant and Smt. Saguna Sharma were in long love affairs and they both married against the wishes of the parents of Saguna Sharma on 25.7.2002 as per Hindu rites and ceremonies at Arya Samaj Mandir and the said marriage was duly registered with the Registrar of Marriages. After the marriage, they both started living in Delhi as husband and wife. On 28.6.2002 the parents of Saguna Sharma lodged a complaint with the police alleging that Saguna was a minor. A case was registered against the complainant and his relatives vide FIR no. 131/2002 u/s 363, 366, 120B IPC. The complainant requested the parents of Smt. Saguna to withdraw the said complaint as she was major. On the assurance given by her father that he would accept them back and celebrate their marriage, he and Saguna returned back to Gohad, District Bhind, M.P. on 4.9.2002. When they were at Gohad Railway Station, they were taken away by the police. It was alleged by the complainant that father and all relatives of Saguna also assaulted him and threatened him of dire consequences in case he did not leave Saguna. He alleged that Saguna was also pressurized to give statement on their dictates. He was detained by the police for two days and Saguna was handed over to her father. On 6.9.2002 she was produced before the Court at Bhind, MP. During this period, she had been brainwashed by her father and other relatives. She made a statement before the Court that she of her own went along with the complainant. However, she narrated that she now wanted to go and stay with her parents.

4. It was in October 2002 that the complainant learnt that her parents and other petitioners were planning to perform her second marriage. Thereupon the complainant filed a suit bearing number 113 of 2002 before the court seeking permanent injunction against the second marriage of Saguna. The said suit came to be dismissed by the court vide its order dated 14.11.2002. Thereafter, he made repeated efforts to contact her but was not allowed by her parents to do so. He continued to get threats from her parents. In the said case of FIR no. 131/2002, Saguna in her statement stated that she was married with the complainant at Arya Samaj Mandir, New Delhi. She, however, stated that this marriage was solemnized under pressure. In her statement made on 7.5.2005 in the said case, she admitted having written few letters to the complainant. In her statement made on 22.8.2005, she stated that after coming from Delhi, her father has solemnized her marriage with Rajinder Sharma. It is alleged that from all this it appeared that the second marriage of Saguna was performed with Rajinder Sharma during subsistence of her earlier marriage with the complainant. It is also averred that in the written statement that was filed by Saguna in the Civil Suit filed by the complainant she averred that her marriage with the complainant was null and void. Based on these averments, it was alleged that since it was admitted that her marriage was performed with him and now her parents have performed her second marriage with Rajinder Sharma, her father and other relations committed offences u/s 494, 497, 406, 506 read with Section 120B IPC. On the basis of averments of complaint and the statement of complainant the learned MM took cognizance and issued summons to the

petitioners herein.

5. The plea that has been taken by the petitioners in the present petition in brief is that on 24.5.2002, when petitioner Saguna Sharma was in the bazaar, respondent/ complainant in the complaint came there on motorcycle and forcibly asked her to sit thereon and made her sit on the motorcycle at the point of a pistol. Thereafter, they took her to Gohad Chauraha where a jeep was standing. The respondent took Saguna Sharma in the said jeep. Then she was given some intoxicated substance on drinking of which she became unconscious and found herself sitting in a train. She further alleged that she was taken to a house of Brij Narain in Delhi and was made to stay there forcibly for three months and was made to perform marriage ceremony with the respondent Mahesh Chand Tiwari against her will. The veracity of the averments made in the instant petition cannot be looked into at this stage when the trial is pending before the learned trial court.

6. It may also be noted herein that a Writ Petition 102 of 2003 of Habeas Corpus was filed by the respondent Mahesh Chand Tiwari for the liberty of his wife. In the said petition it was recorded that detainee Saguna Sharma who was major as per the documentary proof, had given her statement before the District & Sessions Judge, Bhind, that she has gone with her parents out of her own will. In view of the averments of complainant and material on record, as noted above, it is prima facie seen that admittedly Saguna was married with the complainant and that during the subsistence of their marriage, she was again married with Rajinder Kumar Sharma and that it was all with the active involvement and assistance of her parents and other relations. Thus, the criminal complaint no. 194/1 of 2007 pending before the learned MM cannot be quashed summarily without going into the evidence which is to be led by both the parties. In *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, , the Supreme Court held, "High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence.- If on consideration of the allegations in the light of the statement made on oath of the complainant it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, the proceedings cannot be quashed".

7. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, , this Court has reiterated the same principle and laid down that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. Again in the case of *State of Bihar Vs. Murad Ali Khan and Others*, , Venkatachalian, C.J. [as His Lordship then was] has laid down that the jurisdiction u/s 482 of the Code has to be exercised sparingly and with circumspection and has observed that in exercising that jurisdiction, the High Court should not embark upon an inquiry whether the allegations in the

complaint are likely to be established by evidence or not.

8. Having regard to the above facts and circumstances, I do not find any merit in the petition. The petition is hereby dismissed. No costs.