
(2003) 04 OHC CK 0014

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 9474 of 2001

Samir Francis and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 178
Dowry Prohibition Act, 1961 — Section 4

Citation : (2003) CLT 719 (Suppl CrI) : (2003) CriLJ 2923 : (2004) 2 DMC 159 : (2003) 25 OCR 52 : (2003) 4 RCR(Criminal) 206

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M.R. Mohanty, for the Appellant; S. Pradhan, A.S.C. and Debasis Panda, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This application u/s 482, Cr. P.C. has been filed challenging the order dated 18-9-2001 passed by the learned J.M.F.C., Baripada in G.R. Case No. 214 of 1999 framing charge for commission of offences under Sections 498-A, 406 and 34 of the Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act.

2. Petitioner No. 1 is the husband of the informant, Puja Shaw. The F.I.R. has been lodged on the allegation that the marriage of the informant with the petitioner No. 1 was solemnised on 24-8-1996 at Bhubaneswar and at the time of marriage a part of the dowry demanded had been paid and it was also agreed for payment of the balance dowry at a later stage. On perusal of the F.I.R. it also appears that due to nonpayment of the dowry demanded by the petitioner No. 1 and the family members of petitioner No. 1, the informant was subjected to torture at Bhubaneswar, Berhampur as well as at Oman where the petitioner No. 1 was serving. The F.I.R. describes in detail the manner in which the informant was subjected to physical and mental torture due to non-fulfilment of dowry at

the above places. Accordingly, on the basis of such allegations the case was registered for commission of offences under Sections 498-A, 406 and 34 of the Penal Code read with Section 4 of the Dowry Prohibition Act. On completion of investigation, charge-sheet was submitted for commission of the offences mentioned above and in the impugned order charge has been framed in respect of the above offences.

3. The learned counsel appearing for the petitioners challenged the impugned order solely on the ground that the learned J.M.F.C., Baripada has no jurisdiction to entertain the case and the allegations of the alleged demand of dowry, torture having taken place at Bhubaneswar, Berhampur and Oman, the learned Magistrate at Baripada lacks territorial jurisdiction to entertain the case. In support of the contention, the learned counsel for the petitioners also relied upon a decision of this Court in the case of K.S. Vishwanath and Others Vs. State of Orissa and Another, The learned counsel for the State as well as the learned counsel appearing for the informant opposite party No. 2 submitted that the said question was raised before the learned S.D.J.M. at the time of framing of charge and it was considered and decided in favour of the informant with reasons and, therefore, there is no justification for this Court to reconsider the same question again in exercise of the powers u/s 482, Cr. P.C.

4. Shri Mohanty, the learned counsel appearing for the petitioners submitted that a bare reading of the F.I.R. and the statements of the witnesses recorded during investigation clearly indicate that the allegations with regard to demand of dowry and torture took place either at Bhubaneswar or at Berhampur or at Oman. There is absolutely nothing in the case diary to show that there was any demand of dowry or torture within the jurisdiction of the learned Magistrate at Baripada. Shri Mohanty, the learned counsel appearing for the petitioners further submitted that the learned Magistrate at Baripada having no territorial jurisdiction could not have either taken cognizance or framed charge in connection with the alleged offences. In order to appreciate such contention, it is necessary to look into the allegations made in the F.I.R. as well as the statements of witnesses recorded during investigation. Undisputedly the F.I.R. was lodged in the Baripada Town Police Station by the opposite party No. 2 alleging commission of offences as stated earlier. There is no dispute that the opposite party No. 2 was staying with her parents at Baripada before the marriage. After marriage, she was taken to Bhubaneswar, Berhampur and Oman. There is no dispute that allegations are made with regard to demand of dowry and subsequent torture due to non-fulfilment of demand. In paragraph 6 of the F.I.R. it is alleged that after the informant returned to her parents on 8th October, 1997, her husband namely, the petitioner No. 1 and parents-in-laws used to give various threats over phone at Baripada and asked her to go with the gold and money. The relevant portion is quoted below :--

"That during this period, my husband and parents-in-law used to give various threats over phone to me at Baripada and asked me to go with the gold and

money."

In paragraph 9 of the F.I.R. it is alleged as follows :--

"That suddenly on 27th February, 1999, Saturday at about 4.30 p.m. Samir arrived at my house at Baripada without any information. He was in a violent mood. He refused to take me unless my father pays the amount of money. He slapped me and pushed me. When my father came to my rescue, he ran out of my house."

5. From the above two statements made in the F.I.R., it is very clear that not only the informant was threaten over phone when she was staying with her parents at Baripada but also on 27th February, 1999 the petitioner No. 1 arrived at Baripada in her house and demanded payment of money and also physically assaulted the informant. With the above background the question that arises for consideration is whether the decision relied upon by the learned counsel for the petitioners in the case of K.S. Vishwanath and Others Vs. State of Orissa and Another, has any application. There can never be any dispute that the question of jurisdiction can be decided depending on facts of each case. So far as the aforesaid reported decision is concerned, it appears that the allegations with regard to demand of dowry and torture had taken place at Bangalore and no part of the offence had been committed at Bhubaneswar. The allegation with regard to demand of dowry at Bhubaneswar was not accepted by the Court and this Court held that in order to bring the case within the jurisdiction of the learned Magistrate at Bhubaneswar such allegation was made and the said allegation was an afterthought. So far as the present case is concerned, the F.I.R. indicates sequence of the events that had taken place from the date of marriage till the date of filing of the F.I.R. The first occurrence that took place at Baripada was over telephone sometime after October, 1997 and the second occurrence took place on 27th February, 1999 at Baripada. Therefore, it cannot be said that the allegation of demand of dowry and torture at Baripada was an afterthought. It is not necessary that the demand of dowry can be made being present physically. Such demand can also be made over telephone and threats can also be given for non-fulfilment of dowry over telephone. I am, therefore, of the view that the decision relied upon by the learned counsel appearing for the petitioners has no application to the facts of the present case. The learned Magistrate before whom this point was also urged has taken note of the aforesaid decision as well as the decision of the Apex Court in the case of Smt. Sujata Mukherjee Vs. Prashant Kumar Mukherjee, and held that it had the territorial jurisdiction to entertain the case. On perusal of the facts in the case of Sujata Mukherjee v. Prashant Mukherjee (supra), it appears to me that same are more or less similar to the facts of the present case.

I am, therefore, of the view that the order of the learned Magistrate does not suffer from any infirmity and does not warrant interference by this Court.

Accordingly, I do not find any merit in the petition and the same stands

dismissed.