
(2014) 02 RAJ CK 0077

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 2407 of 2006

Sanjay Acharya and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202 — Penal Code, 1860 (IPC) -
Section 406, 498A, 498-A

Citation : (2015) 2 RLW 1070

Hon'ble Judges : M.C. Sharma, J.

Bench : Single Bench

Advocate : Mahendra Goyal, Advocate, for the Appellant; Virendra Godara, P.P.,
for the Respondent

Final Decision : Disposed off

Judgement

M.C. Sharma, J.—This Cr. Misc. petition has been filed by the petitioners against the order dated 3.11.2006 passed by Sessions Judge, Kota in Cr. Revision Petition No. 144/2006, whereby the revision petition has been partly dismissed, which was filed against the order dated 19.6.2006 passed by trial court in Cr. Case No. 7/2005, whereby cognizance under Sections 498A and 406 IPC was taken against the accused petitioners. Brief facts of the case are as under:

"Complainant-respondent No. 2 filed a complaint against the petitioners for the offence under Sections 498A and 406 IPC. In that complaint, it was mentioned that she was married on 15.4.2001 with Sanjay Acharya. After marriage, a baby "Hunny" was both on 14th March, 2002. On 6.11.2002, the complainant-respondent No. 2 went her parental house at Kota on certain family occasions, but did not return to her matrimonial home since then. On 15.9.2004, petitioner-husband Sanjay Acharya gave a notice to the complainant, in which it was mentioned either to join him or to take a divorce from him. On 5.12.2004, after receiving the aforesaid legal notice, the complainant lodged a false and concocted FIR against the petitioners including the married sister-in-law for the

offence under Sections 498-A and 406 IPC. On 31.12.2004, after thorough investigation, the police submitted a Final Report. Thereafter the complainant filed a protest petition and got recorded her statement and other witnesses under Sections 200, 202 CrPC. The trial Court took cognizance against the accused petitioners for the offence under Section 498A and 406 IPC vide order dated 19.6.2006. Against the said order dated 19.6.2006 passed by the trial court, the accused petitioners filed a revision petition before the Sessions Judge, Kota, but the same was dismissed by the Sessions Judge, Kota vide order dated 3.11.2006. Against the said orders dated 19.6.2006 and 3.11.2006 passed by the courts below, this Cr. Misc. petition was preferred."

2. Learned counsel for the petitioner Mr. Mahendra Goyal has contended that the findings given by the courts below are illegal, perverse and against the material on record, as such the orders dated 19.6.2006 and 3.11.2006 passed by the courts below deserve to be quashed and set-aside. He has further contended that the revisional court has not taken into consideration the fact and circumstances of the case at all in a very lackluster manner and dismissed the revision petition vide order dated 3.11.2006. He has further contended that the police officer after investigation, submitted the final report, but upon that Final Report, the learned Magistrate while taking the cognizance has not given grounds for disagreement with the grounds given by the Investigating Officer. He has further contended that both the parties have entered into the consent divorce on 30.8.2008, the relevant portion of which is reproduced as under:

3. Learned counsel for the petitioners has contended that albeit the consent divorce was given by the respondent No. 2, but she is not fulfilling the condition. He has further contended that it is the consistent view of this High Court and other High Courts also that at the time of taking cognizance, the Court should have given the reasons for disagreement with the grounds given by the Investigating Officer. For that purpose, he has cited the following judgment:

Ajaipal vs. State of Rajasthan & Anr. Reported in 2012 (3) Cr.L.R. (Raj.) 1280

4. Further he has drawn the attention of this Court towards territorial jurisdiction and for that purpose, he has cited the following judgment:

Bhura Ram and Others Vs. State of Rajasthan and Another, .

5. He has further contended that the courts below should have decided the matter in accordance with the consistent view of this High Court as well as other High Courts, but the learned courts below have committed error while not doing so, hence the impugned orders should be quashed and set-aside and the matter should be remanded back to the trial Court with the direction to decide the matter afresh in the light of the aforesaid judgments.

6. Mr. Mahesh Gautam, learned counsel for the respondent has contended that if this Court is going to remand the matter, in such circumstances, the respondent No. 2 should also be permitted to raise the objections before the courts below

and to submit the judgments, if any, at the time of deciding the matter afresh, although learned PP appearing for the State has opposed the same.

7. I have heard learned counsel for the parties and carefully perused the relevant material on record. Looking to the facts and circumstances of the case that the parties have entered into the consent divorce, the relevant part of which is mentioned here-in-above, and they did not want to proceed further in any of the case pending in between the parties and the Investigating Officer has submitted the Final Report before the Magistrate, but the learned Magistrate has not given any cogent reason why he is not accepting the Final Report, I dispose of this petition with the following directions;

(i) The order dated 3.11.2006 passed by Sessions Judge, Kota in Cr. Revision Petition No. 144/2006 and the order dated 19.6.2006 passed by the trial Court in Cr. Case No. 7/2005 are quashed and set-aside;

(ii) The matter is remanded to the trial Court with the direction to decide the matter afresh in the light of the aforesaid judgments, as also the other judgments to be submitted by the party concerned, and also in the light of facts mentioned here-in-above, in accordance with law.

(iii) For that purpose, the matter shall be taken up by the trial Court on 9.5.2014.

(iv) However, after hearing the arguments on the point of territorial jurisdiction as well as on other points, if the trial court reaches on the conclusion that the cognizance should be taken against any of the accused petitioners, in such circumstances he will issue summon to the accused petitioners otherwise the accused petitioners need not to appear before the trial Court till any order is passed by the trial court regarding cognizance and the trial court will decide the matter as a fresh. At that time, the trial court shall take into account the fact that police has submitted the Final Report and the parties have entered into the consent divorce, on the basis of conditions, as mentioned here-in-above.

(v) The concerned advocates are free to appear before the trial Court and may assist the Court, if so desire by the party concerned.

Registry is directed to send a copy of this order along-with the record to the trial Court for doing needful in the matter.