
(2010) 11 RAJ CK 0065

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2029 of 2010

Sanjay Kumar Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2010) 11 RAJ CK 0065

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This petition u/s 482 Code of Criminal Procedure has been filed by Petitioner husband against order dated 29.07.2010 of learned Additional Civil Judge (JD) and Judicial Magistrate, Kishangarh, Ajmer, taking cognizance in Criminal Case No. 218/2009 for offence under Sections 498A IPC in FIR No. 216/2009 lodged at Police Station Kishangarh, Ajmer, for offence under Sections 498A and 406 IPC.

2. Learned Counsel for Petitioner has argued that police during investigation has found alleged offence of Sections 406 and 498A IPC not proved and that in fact Investigating Officer u/s 173 Code of Criminal Procedure has given a finding that a false criminal case was registered against Petitioner. Even then learned Magistrate has mechanically taken cognizance of matter against him. Learned Counsel submitted that Respondent wife was deliberately staying away from Petitioner and Petitioner had to file an application against him u/s 13 of Hindu Marriage Act for dissolution of marriage. However, initially ex-parte order was passed but subsequently that matter was compromised between the parties and accordingly the matter was disposed of. Now after lapse of five-six years, filing of complaint is totally baseless and not maintainable. There is no evidence either

demand of dowry or any cruelty. The order taking cognizance deserves to be set aside.

3. Learned Public Prosecutor opposed the petition and submitted that, apart from complainant, four more witnesses have consistently stated against Petitioner that he used to subject complainant mental and physical cruelty and demand of dowry. There was no other way except to take cognizance because evidence which has come on record justifies taking cognizance and as such no interference is called for in the matter.

4. After hearing learned Counsel for parties and perusing impugned order, I find that learned Magistrate, in so far as allegation against Petitioner u/s 406 IPC is concerned, has not believed statements of witnesses recorded on protest petition but has only taken cognizance against him only u/s 498A IPC. What this Court has to examine at this stage whether evidence of five witnesses so proved involvement of Petitioner in offence. If that was there, learned Magistrate was justified in taking cognizance.

5. Learned Magistrate summoned Petitioner by way of bailable warrant. Petitioner should go and face trial. No interference is called for.

Petition is dismissed.