
(2016) 04 JH CK 0230
In the Jharkhand High Court
Case No : Cr. M.P. No. 2026 of 2014

Sanjeev Kumar Mohindra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Citation : (2016) 3 ECrC 291 : (2017) 1 PCCR 140

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Indrajit Sinha, Advocate, for the Appellant; Mr. Ranjit Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Rongon Mukhopadhyay, J.—In this application the petitioner has prayed for quashing of the order dated 20.04.2010 passed by Sri N. Kumar, Judicial Magistrate, 1st Class, Jamshedpur whereby and where under proclamation has been issued under Section 82 of the Cr.P.C. A further prayer has been made for quashing the order dated 30.09.2010 by which process under Section 83 Cr.P.C. has been issued. The petitioner has also challenged the order dated 04.10.2010 by which the withdrawal petition of the complainant has been rejected.

2. A complaint case was instituted in which it was stated that the complainant was married to the accused No. 1 on 21.02.1996. It has been alleged that initially the complainant was treated with dignity but subsequently after a few months the complainant could detect that her husband was in adulterous relationship with his sister-in-law. On protest the complainant was subjected to physically torture and there was an allegation against the complainant of bringing meagre dowry. It has also been alleged that the brother-in-law of the complainant had suggested a relationship with him. In view of the torture meted out to the complainant she had returned to her parental house in early 2005 along with her son who was born out of the said wedlock. The complainant

however was reluctant to stay in her matrimonial house to which she returned back as she was being tortured by the accused persons. It has been alleged that on 01.04.2008 some unknown persons accompanied by the husband and brother-in-law of the complainant had assaulted her and had threatened to eliminate her as well as her father. Further allegation has been levelled that the complainant had tried to commit suicide but she was saved by her father who had taken her to a doctor for treatment.

3. Based on the aforesaid allegation C/1 Case No. 781 of 2008 was been instituted.

4. Upon conducting an enquiry by examining the complainant on solemn affirmation and her witnesses cognizance was taken by the learned Judicial Magistrate, Jamshedpur on 07.05.2008 for the offence punishable under Section 498A of the Indian Penal Code. Since in spite of summons the accused persons did not appear non-bailable warrant of arrest was issued vide order dated 11.09.2009. Thereafter vide order dated 20.04.2010 and 13.09.2010 proclamation under Section 82 Cr.P.C. and process under Section 83 Cr.P.C. had been issued against the petitioner. In course of the proceeding an application for withdrawal was filed by the complainant. It however was rejected by the learned court below vide order dated 04.10.2010.

5. Heard Mr. Indrajit Sinha, learned counsel appearing for the petitioners and Mr. Ranjit Kumar, learned counsel appearing for the opposite party No. 2.

6. It has been submitted by the learned counsel for the petitioners that the complainant through her minor son had filed a civil suit before the learned Civil Judge (Jr. Division), Chandigarh for possession and for declaration that house No. 3457, Sector ? 35D, Chandigarh is Hindu Joint Family Property and alleged will dated 26.05.2006 executed by the deceased B.P. Mohindra in favour of the petitioner No. 1 is illegal inoperative and void ab initio. It has been submitted that on 22.09.2010 a compromise was entered into between the petitioners and the opposite party No. 2 wherein it was decided that the petitioners had to pay a sum of Rs. 11 lacs to the opposite party No. 2 and her minor son for present and future maintenance. It has been submitted that on the basis of compromise deed the suit was withdrawn by the opposite party No. 2. Learned counsel submits that since the matter has already been compromised a withdrawal application was filed by the complainant which, however, was rejected on 04.10.2010 without considering the fact that the amount agreed upon during the compromise has already been received by the opposite party No. 2. So far as the issuance of process under Sections 82 and 83 Cr.P.C. are concerned, learned counsel for the petitioners submits that without awaiting for the execution report and without assigning any reasons the impugned orders dated 20.04.2010 and 13.09.2010 have been passed and in such circumstance, therefore, the said orders also deserve to be quashed and set aside.

7. Learned counsel appearing for the opposite party No. 2, on the other hand,

has submitted that the factum of compromise is not being denied nor there is any denial with respect to the acceptance of money. It has been stated that as per the terms and conditions of the compromise the parties had decided to move joint/individual application before the respective courts to withdraw all the pendencies complaints and suits.

8. It is an admitted fact derived from the records of the case that pursuant to the institution of the complaint case a compromise was entered into between the complainant and some of the accused persons. The application for withdrawal filed by the complainant was rejected on the ground that it was a warrant triable case and that the petitioner No. 2 was never a party to the said compromise. The compromise deed was entered into on 22.09.2010 between the petitioner Nos. 1, 3 and 4 on one hand and the complainant on the other. The compromise deed clearly depicts that the disputes have been settled amicably and the second party had agreed to pay Rs. 11 lacs towards her present, past and future maintenance. Clause 3 of the deed deals with the decision taken to end the matrimonial relationship between the petitioner No. 1 and the opposite party No. 2 through mutual divorce. It is an admitted fact that pursuant to clause 4 of the compromise deed an amount of Rs. 11 lacks was paid to the opposite party No. 2 vide Demand Draft No. 003244 dated 21.09.2010 drawn on HDFC, Bank and accordingly the suit instituted by the complainant on behalf of her minor son was also withdrawn. The compromise deed further indicated that both the parties have agreed to withdraw all the pending complaints and suits on the basis of compromise. The learned court below vide order dated 04.10.2010 had dismissed the withdrawal application as the petitioner No. 2 was never a party to the compromise petition. The main parties to the dispute were the petitioner Nos. 3 and the complainant and since it is a matrimonial dispute and both the parties have decided to bury the hatchet it could not be a case of piecemeal withdrawal. All disputes having been settled by the petitioner No. 3 and the opposite party No. 2 and the amount pursuant to the compromise has already been paid the suit was also allowed to be withdrawn.

9. In the case of Ruchi Agarwal v. Amit Kumar Agarwal and Others reported in (2005) 3 SCC 299 it was held as follows:-

"8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the above mentioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending

that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents."

10. Taking into consideration the judgment in the case of Ruchi Agarwal v. Amit Kumar Agarwal and Others (Supra) the entire criminal proceedings was quashed in the case of Mohd. Shamim And Others v. Nahid Begum (Smt) And Another reported in (2005) 3 SCC 302.

11. The aforesaid judgments have been referred only to show that once the compromise has been entered into and the benefit having been taken arising out of the said compromise the complainant/informant could not go back on such compromise. As has been stated above, the complainant ? opposite party No. 2 has already received the monetary benefit pursuant to the compromise deed and had also withdrawn the suit filed by her as also a withdrawal application before the learned trial court for withdrawal of C/1 Case No. 781 of 2008 and, therefore, the proceeding against the petitioners in the complaint case cannot be allowed to continue in view of the said compromise.

12. In view of what has been discussed above, this application is allowed and the order dated 04.10.2010 passed by the learned Judicial Magistrate, 1st Class, Jamshedpur by which the withdrawal application of the complainant was rejected is set aside and consequently the entire criminal proceedings initiated against the petitioners in connection with C/1 Case No. 781 of 2008 is also quashed and set aside on the ground of compromise.

13. Since the entire criminal proceedings have been quashed no further order is needed to be passed with respect to the issuance of proclamation under Section 82 Cr.P.C. and issuance of process under Section 83 Cr.P.C. as per the order dated 20.04.2010 and 13.09.2010 respectively.