

(2022) 08 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1094 Of 2016

Sanjiv Kumar And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 325, 379, 406, 494, 498A
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 08 JH CK 0043

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Saurabh Shekhar, Anurag Kumar, Nehala Sharmin, Aashish Kumar

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Saurabh Shekhar assisted by Mr. Anurag Kumar, learned counsel for the petitioners, Mrs. Nehala Sharmin, learned counsel for the State and Mr. Aashish Kumar, learned counsel for opposite party no.2.

2. At the outset Mr. Saurabh Shekhar, learned counsel for the petitioners on instruction submits that during the pendency of this petition, petitioner nos. 3 and 5 have died.

3. In view of such submission, let the name of petitioner nos. 3 and 5 be deleted from the cause-title of the petition, in course of the day.

4. This petition has been filed for quashing the order taking cognizance dated 30.03.2016 in connection with Giridih (T) P.S. Case No.189 of 2015, corresponding to G.R. No.1775 of 2015 registered under Sections 498(A)/494/325/379/34 of the Indian Penal Code, pending in the court of the learned Chief Judicial Magistrate, Giridih.

5. The FIR was lodged by opposite party no.2 alleging therein that she was

married to petitioner no.1 on 26.02.2001. At the time of marriage, her father had given Rs.9,00,000/- in cash as dowry and spend about Rs.5,00,000/- but her husband and in-laws were not satisfied with the same. They were eager for more dowry in spite of their rude behaviour, her father had given draft of Rs.90,000/- and Rs.40,000/- in cash to her husband in March, 2002, but his attitude could not be changed and she was being tortured mentally and physically. It was further alleged that in 2005, her husband had lodged a Matrimonial Suit for divorce but when she appeared then on 02.02.2007 the husband assured that he will never torture her and in spite of all that she resided peacefully in her in-laws house. In 2009, her father died and her mother died in 2012. It was also alleged that on 10.08.2014 her husband and mother-in-law started assaulting her for want of dowry on account of which her right hand fractured and her husband snatched her entire ornaments and on 01.05.2015 her husband came with his one friend at Giridih residence and by that time brother and sister of mother-in-law started assaulting her and told that they have got second marriage of her husband solemnized with one Niharika who is student of Sitamarhi. The marriage was solemnized at the instance of her father-in-law, mother-in-law, sister-in-law and husband of sister-in-law. She has further alleged that her father had purchased one flat at Ranchi and her husband wants to grab that and said her that if she wants to survive, execute a deed in his favour and has further claimed that husband and other in-laws are hurling threat with dire consequences. She has also stated that her husband is doing some construction work at Darbhanga. On the basis of the said information, the present case has been registered.

6. Mr. Saurabh Shekhar, learned counsel for the petitioners submits that petitioner no.1 is the husband of opposite party no.2 and petitioner nos. 2 to 7 are father-in-law, mother-in-law, sister-in-law and brother-in-law of opposite party no.2. He further submits that except the husband, there are omnibus allegations against rest of the accused. He also submits that the case is arising out of matrimonial dispute and the case has been registered under Section 498A and other sections of the Indian Penal Code. He relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Manjula Sinha v. State of U.P., reported in (2007) 12 SCC 503.

7. Paragraphs 9 and 10 of the said judgment are quoted herein below:

"9. On a reading of the complaint which appears at p. 23 of the paper-book, it is clear that there is no allegation so far as the respondent is concerned, so far as it relates to a case covered under Section 498 -A IPC. There is no allegation of any torture for dowry so far as the present appellant is concerned. The position is different so far as the allegations in relation to Section 406 IPC are concerned.

10. There are allegations contained in the FIR relating to the applicability of Section 406 IPC. If ultimately the prosecution is unable to substantiate the plea, the results would follow. It is a case where the power under Section 482 CrPC cannot be exercised so far as the allegations relating to Section 406 IPC are

concerned. But as noted, the position is different so far as Section 498-A IPC is concerned. Therefore proceedings stand quashed so far as it relates to the offence punishable under Section 498-A IPC."

8. On the other hand, Mr. Aashish Kumar, learned counsel for opposite party no.2 submits that there are direct allegations against the petitioners and the learned court has rightly taken cognizance. There is no illegality in the impugned order.

9. Mrs. Nehala Sharmin, learned counsel for the State submits that there is no illegality in the order taking cognizance.

10. The Court has perused the materials on the record and gone through the contents of the FIR and finds that there are direct allegations against the husband of the opposite party no.2. So far as rest of the accused i.e. petitioner nos. 2 to 7 are concerned, omnibus allegations are there against them. How Section 498A of the Indian Penal Code is being used as weapons rather than shield by disgruntled wives, as has been considered by the Hon'ble Supreme Court in the case of Arnesh Kumar v. State of Bihar and another, reported in (2014) 8 SCC 273. Paragraph 4 of the said judgment is quoted herein below:

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."

11. The cases under Section 498A of the Indian Penal Code are filed in the heat of the moment over trivial issues without proper deliberations when there are dispute between the husband and wife, which was the subject matter before the Hon'ble Supreme Court in the case of Preeti Gupta & another v. State of

Jharkhand & another, reported in (2010) 7 SCC 667. Paragraphs 13 and 14 of the said judgment are quoted herein below:

"13. The main question which falls for consideration in this case is whether the High Court was justified in not exercising its inherent powers under Section 482 of the Code of Criminal Procedure, 1973 in the facts and circumstances of this case?

14. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act *ex debitojustitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent the abuse of process of court; and
- (iii) to otherwise secure the ends of justice."

12. Time and again, the Hon'ble Supreme Court as well as High Courts at numerous instances expressed concern over the misuse of Section 498A of the Indian Penal Code and increased tendency of implicating relatives of the husband in matrimonial disputes without analyzing the long term ramification of trial on the complaints as well as the accused. Even in some of the cases, a person who has nothing with that family is implicated in the case filed under Section 498A of the Indian Penal Code. In that view of the matter, the Court is required to proceed against the relatives and in-laws of the husband with all circumspection. Coming to the fact of the present case and on perusal of the contents of the FIR dated 07.06.2015, it reveals that general allegations are levelled against petitioner nos. 2 to 7. However, there are direct allegations, so far as the husband of opposite party no.2 is concerned.

13. In view of the above facts and looking into the entire materials on the record and relevant circumstances and in absence of any specific role attributed by petitioner nos. 2 to 7, it will be unjust to allow them to go through trauma of the trial.

14. Accordingly, the entire criminal proceeding including the order taking cognizance dated 30.03.2016 in connection with Giridih (T) P.S. Case No.189 of 2015, corresponding to G.R. No.1775 of 2015 so far as petitioner nos. 2 to 7 are concerned, pending in the court of the learned Chief Judicial Magistrate, Giridih is, hereby, quashed.

15. It is made clear that this Court has not interfered so far as the allegation against the husband of opposite party no.2 is concerned and trial against husband of opposite party no.2 (petitioner no.1) will go on.

16. This petition is, therefore, allowed in part and disposed of, in view of the above terms.

17. Interim order dated 23.02.2017 stands vacated.

18. Consequently, I.A. No.7315 of 2022 stands disposed of.