

(2014) 01 RAJ CK 0036

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 943/2009

Sanjiv Kumar Bedi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 468, 482
Penal Code, 1860 (IPC) — Section 406, 498-A

Citation : (2015) 1 WLN 245

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Mahesh Bora, Sr. Advocate and Nishant Bora, Advocates for the Appellant; A.R. Nikub, Public Prosecutor, Advocates for the Respondent

Judgement

Sandeep Mehta, J.—The instant misc. petition has been filed on behalf of the petitioners challenging the order dt. 31.3.2009 passed by the learned Addl. Sessions Judge, No. 2, Jodhpur in revision, whereby, the revision filed by the petitioners against the order dt. 22.8.2008 passed by the learned Judicial Magistrate (First Class), No. 2 Jodhpur taking cognizance against them for the offences under Sections 498-A and 406 I.P.C. was rejected. The petitioner No. 3 Smt. Adarsh Bedi is reported to have expired during the pendency of the misc. petition, as such, the misc. petition is being considered qua the petitioners Nos. 1 and 2 only.

2. Briefly stated the facts necessary for the disposal of this misc. petition are enumerated hereinbelow:-

The respondent complainant No. 2 Smt. Renu Bedi wife of the petitioner No. 1 Sanjiv Kumar Bedi filed a complaint on 16.4.2007 in the Court of the learned Judicial Magistrate, No. 2, Jodhpur. The complainant alleged that she was married to the petitioner No. 1 Sanjiv Kumar Bedi at Jodhpur on 24.8.1994 by performing Hindu rites and ceremonies. Her father gave substantial dowry articles to her in the marriage and her in laws were also gifted a number of

ornaments which were all her "stridhan" articles. A few months after her marriage, Smt. Adarsh Bedi, her mother-in-law started harassing her mentally by making comments about the dowry articles which were given to her by her father in the marriage. She used to pressurize the complainant that cash amount was required for Sanjiv Kumar Bedi to run his business. Sanjiv Kumar Bedi and Smt. Adarsh Bedi started pressurizing and treating the complainant with cruelty in order to pressurize her to bring money from her parents. When the complainant expressed her inability to fetch money and meet the demands made by the accused, then, she was physically tortured. It is further alleged in the complaint that due to the cruel behavior of the petitioners, the complainant fell ill, but, she was not provided any appropriate medical treatment. After about one and a half years of the marriage, the petitioner No. 1 Sanjiv Kumar Bedi assaulted the complainant and pushed her down the stairs. Upon this, the complainant contacted her brother Dr. Anil Arora and informed him about the cruel behavior meted out to her. The complainant's mother and brothers tried to mollify the accused but they did not relent from their cruel behavior with the complainant. The complainant gave birth to a daughter on 31.10.1997. She expected that after the birth of the child, the accused would relent from their cruel behavior but to no avail. The complainant alleged that the accused took the daughter born to the complainant as an additional burden and their misbehaviour with her escalated. The late brother of the petitioner No. 1 Sanjiv Kumar Bedi already had two daughters and, thus, by the birth of the additional female child in the family, the accused intensified their cruel behavior with the complainant. When the child namely Rashmi was about six months old, the accused Sanjiv Kumar Bedi assaulted the complainant brutally and told her that she would be permitted to go her parent's house only after she agreed to bring more money from there. She was threatened that if she attempted to talk to any of her paternal family members, then, she would be turned out from the house. The complainant in order to make herself self sufficient took admission in a computer training course, to which, the accused Sanjiv Kumar Bedi objected and quarreled with the complainant. Smt. Chitra Singh, the married sister-in-law (nanad) of the complainant also added the complainant's agony and instigated her husband to leave the complainant. Ultimately, on 10.6.2000, the accused Sanjiv Kumar Bedi assaulted the complainant and outrightly told her that she would not be kept in the matrimonial home. The complainant and her daughter were left by Sanjiv Kumar Bedi at the maternal home saying that the mother and daughter are burden for him. The complainant alleged that she was willing to overlook all the flaws and misdeeds of her husband and was desirous of continuing the married life with her husband. She tried to contact the accused on number of occasions so that the matrimonial ties could be restored, but, the accused Sanjiv Kumar Bedi repelled all her attempts. Thereafter, on 17.10.2000, on the occasion of "karva-chauth", the complainant along with her "bhabhi" Smt. Manjula, mother and Dr. Pannalal Chouhan went to her matrimonial home. The accused permitted only Dr. Pannalal Chouhan to enter the house, whilst, the others were not permitted even to climb the stairs. Dr. Pannalal Chouhan requested to be

permitted to keep the "pooja articles" in the house, but, the accused abused him and refused the offerings. The complainant sent numerous letters to the accused Sanjiv Kumar Bedi on 24.6.2002, 4.7.2002 and 15.7.2002 and requested him to take her back in the matrimonial home, but, the accused did not pay any heed to the frequent requests made by the complainant and did not respond. The complainant alleged that she being a faithful Hindu wife has tolerated all the harassment and humiliation given to her by the accused and keeping in view her and her daughter's future in mind did not report the matter to the police. Thereafter, on 30.7.2002, the complainant filed an application before the Family Court, Jodhpur for restitution of the conjugal rights, which was decided in her favour on 16.1.2007. The Family Court directed the petitioner No. 1 Sanjiv Kumar Bedi to keep the complainant with him and perform the conjugal duties but to no avail. The complainant thereafter sent registered letters on 3.2.2007 and 17.2.2007 to the petitioner No. 1 Sanjiv Kumar Bedi requesting him to take her and her daughter back to the matrimonial home. One of the letters was received by the accused but the other was returned back in connivance with the post-man. Despite receiving the letters, neither any reply nor any offer to keep the complainant and her daughter back in the matrimonial home was given by the accused. The complainant called the accused Sanjiv Kumar Bedi on phone, but, the accused abused her and told that he had no intention to reside with her for the remainder of his life. The complainant was thereupon convinced that she would not be kept in the matrimonial home. Accordingly, on 14.4.2007, she took her mother Smt. Sudarshan Arora, Yogendra Trivedi and Satpal Sharma and went to her husband's house at 6.30 in the evening. The accused Sanjiv Kumar Bedi was present there. Upon seeing the complainant, he became enraged and started abusing her. He did not open the door of his house. The complainant's companions tried to converse with Sanjiv Kumar and mollify him but he did not respond to their request. As per the complainant, all her "stridhan" articles were in the possession of her husband Sanjiv Kumar Bedi. The complainant requested that all her "stridhan" articles should be returned back to her, but, the accused outrightly refused. On this, the complainant was left with no option and filed the complaint against the accused persons.

3. The complaint thus submitted by Smt. Renu Bedi was forwarded to the police for investigation under Section 156(3) Cr.P.C. During the course of investigation, Smt. Renu Bedi was examined under Section 161 Cr.P.C. on 7.6.2007. In the said statement, she repeated the allegations levelled by her in the complaint. However, a significant omission in the said statement is regarding the entrustment of her "stridhan" articles. She did not state that her "stridhan" articles were entrusted to any of the accused. It was vaguely stated in the last para of the statement that her "stridhan" articles had been misappropriated. The police arrested the accused Sanjiv Kumar Bedi during the course of the investigation and a few house hold articles of daily use and some gold ornaments were seized from his house. Ultimately, upon conclusion of the investigation, the police filed a charge-sheet against the petitioners for the offences under Sections

498-A and 406 I.P.C. The learned trial Court proceeded to take cognizance against the petitioners for the aforesaid offences. The order taking cognizance was challenged in revision and the revisional Court too has affirmed the same. Hence, this misc. petition has been filed on behalf of the petitioners under Section 482 Cr.P.C. seeking quashing of the order taking cognizance and all other subsequent proceedings pending against them in the trial Court.

4. Learned Senior counsel Shri Mahesh Bora vehemently urged that the proceedings of the criminal case against the petitioners are illegal on the face of the record and amount to a gross abuse of the process of the Court. He urged that even if the allegations levelled in the complaint are accepted to be true on their face value, then too, the proceedings of the complaint are time barred. He submitted that the last act of cruelty with the complainant which could possibly be covered under Section 498-A I.P.C. was committed in the year 2000. Thereafter, admittedly, the complainant started residing alone at her father's house because as per her version, the accused has turned her out of the matrimonial home. Learned counsel urged that no interaction of any kind took place between the accused and the complainant after 10.6.2000. He thus urged that the proceedings of the criminal case going on against the petitioners amount to a gross abuse of the process of the Court and are time barred by virtue of Section 468 Cr.P.C. Learned counsel submitted that otherwise also the proceedings prima facie appear to be motivated and mala fide. He thus submitted that as per the admitted case, the complainant was treated with cruelty and was turned out from the matrimonial house in the year 2000. Thereafter, there was no occasion for her to have waited for a long period of seven years before initiating the prosecution. He thus prayed that the proceedings of the criminal case going on against the petitioners are mala fide, belated & illegal and thus are liable to be quashed.

5. Per contra, learned Public Prosecutor and learned counsel Shri Dharmendra Jasmatiya for the respondent-complainant No. 2 vehemently opposed the submissions advanced by learned counsel for the petitioners. Learned counsel for the respondent-complainant No. 2 submitted that as per Para No. 9 of the complaint, there is a specific allegation that the complainant accompanied with her mother and other persons went to her matrimonial home on 14.4.2007. There, the accused abused the complainant and her companions and did not accede to her request for return of her "stridhan" articles. Learned counsel thus submitted that the period of limitation would commence from that date i.e. 14.4.2007. Learned counsel for the respondent-complainant No. 2 whilst placing reliance on the decisions rendered by the Hon'ble Apex Court in the case of Arun Vyas and Another Vs. Anita Vyas, ; Vanka Radhamanohari (Smt) Vs. Vanka Venkata Reddy and Others, ; Hussan Lal Vs. State of Punjab and Another, ; Vijaya Vs. Laxmanrao and Another, ; Sh. Chandra Parkash and others Vs. State and another, and Ramesh & Ors. vs. State of Tamil Nadu, reported in 2005 (2) Criminal Court Cases 440 (SC) submitted that the proceedings of the criminal case going on against the petitioners should not be quashed.

6. Heard and considered the arguments advanced at the bar, perused the orders passed by the learned sub-ordinate Courts as well as the record of the case.

7. It is an undisputed fact from the admitted allegations of the prosecution that the spouses last resided together till 10.6.2000. On that day, the accused allegedly turned the complainant out of the house and left her back at her maternal home. Thereafter, the proceedings for restitution of the conjugal rights were initiated by the complainant, but, the husband Sanjiv Kumar showed no intent or desire to keep the complainant with him. There was no direct interaction between the spouses during the intervening period of 10.6.2000 till the alleged incident of 14.4.2007. In the interregnum, the complainant sought and was granted a decree of restitution of conjugal rights. Despite the decree, the matrimony could not be restored. Even if the allegations of the complainant in Para No. 9 of the complaint are considered to be true on their face value, then also, the highest case as set up by the complainant is regarding abuses being hurled by the accused and nothing beyond that. A mere allegation of hurling abuses cannot be termed to be cruelty within the meaning of Section 498-A I.P.C. The remaining allegation of the complainant is regarding the misappropriation of the "stridhan" articles by the accused. In this regard, the statement of the complainant recorded by the police during the course of investigation was perused by this Court. It is apparent that the complainant did not make any assertion in the statement that any of her "stridhan" articles were entrusted to any of the petitioners. In the absence of an allegation that any "stridhan" articles were entrusted to any of the accused or were illegally retained by them, the very basic requirement of entrustment would be missing and thus Section 406 I.P.C. could not be called into action. That apart, it is inconceivable that when the parties were already undergoing a prolonged litigation in the Family Court, then, what precluded the complainant from making a complaint about the misappropriation of her dowry articles. It is obvious that when the complainant failed to succeed in her endeavour to reenter her husband's home despite a "decree of restitution in her favour, then, she in a state of frustration initiated the instant criminal prosecution against the petitioners at a belated stage. The Hon'ble Apex Court in the case of *Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another*, held that when the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in the failure of justice, then, it may exercise inherent power under Section 482 Cr.P.C. and quash the proceedings of the criminal case holding the same to be belated. Similar is the case at hand. The proceedings of the complaint are highly belated and appear to be instituted because of failure of the complainant in her attempt to reenter her matrimonial home. The proceedings prima facie appear to have been initiated as an attempt to vent the frustration and nothing beyond that. Permitting continuation of the proceedings going on against the petitioners for the offences under Sections 498-A and 406 I.P.C. would be nothing but a gross abuse of the process of the Court in my opinion. Resultantly,

the misc. petition is allowed. The order dt. 31.03.2009 passed by the learned Addl. Sessions Judge, No. 2 Jodhpur as well as the order dt. 22.08.2008 passed by the learned Judicial Magistrate (First Class) No. 2, Jodhpur taking cognizance against the petitioners for the offences under Sections 498-A and 406 I.P.C. and all other subsequent proceedings pursuant thereto are hereby quashed.