
(2020) 11 JH CK 0133

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1872 Of 2020

Shabbir Khan @ Shabir Khan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 02-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 498A
Code Of Criminal Procedure, 1973 — Section 125

Citation : (2020) 11 JH CK 0133

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Dilip Kumar Chakraverty, Azeemuddin

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and the learned A.P.P. for the State through Video Conferencing. The lawyers have no objection with

regard to the proceeding, which has been held through Video Conferencing today at 11.00 a.m. They have no complain in respect to the audio and

video clarity and quality.

2. This case was listed/supposed to be listed before the Lawazima Board for passing an order in respect of the defects, pointed out by the Office.

3. Considering the pandemic situation where the Court has minimized the footfall of the lawyers and their Clerks in the Court, this Court felt proper to

get all the cases listed before this Court so that the defects can be looked into at this stage only. Thus, this case is listed today before this Court

directly.

4. The G.R. Number be corrected to read as G.R. No.101 of 2018. Office to carry out necessary corrections. Rest of the defects are ignored for the

present.

5. Petitioner has challenged the order dated 17.03.2020 passed by the Judicial Magistrate 1st Class, Jamshedpur in G.R. No.101 of 2018 arising out of

Azad Nagar Police Station Case No.3 of 2018, by which cognizance of offence under Section 498A of the Indian Penal Code has been taken and

thereafter this petitioner has been summoned.

6. This petitioner along with other accused persons named in the First Information Report being Azad Nagar Police Station Case No.3 of 2018, had

approached this Court in Cr. M.P. No. 4402 of 2019 challenging the order taking cognizance and the order issuing summons against all the accused

persons named in the First Information Report. This Court, after hearing the counsel for the parties, allowed the said Cr. M.P. No.4402 of 2019 on

23.01.2020, remanding the matter to the Court below, directing the Court below to pass a fresh order in terms of order passed by this Court in the

case of Amresh Kumar Dhiraj and Ors. Versus State of Jharkhand and Ors. reported in 2020(1) JLR 199(Jhr.). In compliance to the aforesaid order

passed by this Court, the Judicial Magistrate, First Class, Jamshedpur passed the order dated 17.03.2020 taking cognizance of the offence under

Section 498A of the Indian Penal Code but, issued summons only to the petitioner. The Court below found no materials to issue summons against the

other named accused persons. Petitioner has challenged the aforesaid order.

7. Counsel for the petitioner submits that there are no materials to issue summon against this petitioner. He submits that the impugned order is

unreasoned one and nothing has been mentioned as to why the petitioner has been summoned. By referring to the order dated 16.07.2019, he submits

that in a proceeding under Section 125 of the Code of Criminal Procedure, the concerned Court found that there is no allegation of torture and the

interim maintenance was not granted to the wife, i.e., the informant, thus, the Court could below could not have taken cognizance of the offence under

Section 498A of the Indian Penal Code and should not have issued summon against this petitioner.

8. After hearing the counsel for the parties, I have gone through the entire records.

9. Earlier, the Court below took cognizance of the offence and issued summons against all the accused persons named in the First Information Report.

After the matter was remanded by this Court, the Court below applied his mind and after going through the records, found that there are materials to issue summon against this petitioner only and against the other accused persons named in the First Information Report, there are no materials. After going through the order dated 17.03.2020, I find that the Court below, after going through the materials on record, has come to the conclusion that the husband had demanded money and assaulted the victim, i.e., the informant. The Court below, thereafter issued summon against this petitioner. So far as the argument of the petitioner that in the proceeding under Section 125 of the Code of Criminal Procedure, the Court concerned found that there are no materials to suggest any torture by the petitioner upon the informant, I am of the opinion that any finding given by a Court in a proceeding under Section 125 of the Code of Criminal Procedure is not binding in a criminal proceeding initiated for offences under Sections 498A of the Indian Penal Code. A proceeding under Section 125 of the Code of Criminal Procedure is limited only to the extent as to whether the applicant is entitled for maintenance or not. So far as this case is concerned, petitioner is relying on an order, which is interim in nature and is not final.

I have gone through the impugned order where the Court below has found material and has taken cognizance of the offence under Section 498A of the Indian Penal Code. I do not find any irregularity or illegality in the impugned order dated 17.03.2020 passed by the Judicial Magistrate First Class, Jamshedpur, which is a speaking order and suggests application of mind. Further there is allegation of torture and demand against the petitioner. Thus, I am not inclined to interfere with the impugned order dated 17.03.2020 passed by the Judicial Magistrate First Class, Jamshedpur in G.R. No.101 of 2018 arising out of Azad Nagar Police Station Case No.3 of 2018.

10. This criminal miscellaneous petition is, accordingly, dismissed.