

(2015) 02 JH CK 0078

In the Jharkhand High Court

Case No : Criminal M.P. No. 1119 of 2002

Shrikant Srivastava and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2015) 02 JH CK 0078

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Sanjay Piperwall, for the Appellant; Rashmi Kumari, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Sanjay Piprawall, learned counsel appearing on behalf of the petitioners and Mrs. Rashmi Kumari, learned counsel appearing on behalf of the State. No. one appears on behalf of the opposite party No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with Dhanbad P.S. Case No. 97 of 2002 corresponding to G.R. No. 448 of 2002 including the order dated 25.07.2002 passed by the learned Chief Judicial Magistrate, Dhanbad by which cognizance has been taken for the offences punishable under Sections 498A/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act.

3. The prosecution story as would appear from the complaint petition initially filed by the informant is that the informant was married with Suraj Prakash Srivastava on 26.02.2001. After solemnization of the marriage, the informant came to know that her husband was suffering from various diseases and when she asked her husband to take medicines, he became furious and threatened the

informant and demanded more dowry. It is further alleged that when she went to her parents' house all the accused persons came there and started demanding dowry and had also assaulted the informant.

4. After the complaint petition was filed the same was referred to the police under Section 156(3) of the Code of Criminal Procedure by the learned Chief Judicial Magistrate, Dhanbad for instituting a case and pursuant thereto Dhanbad P.S. Case No. 97 of 2002 was instituted. After registering the case investigation was conducted and on 17.07.2002 charge-sheet was submitted before the learned court below and, thereafter, vide order dated 25.07.2002, the learned Chief Judicial Magistrate, Dhanbad was pleased to take cognizance for the offences punishable under Sections 498A/34 of the Indian Penal Code as well as under Section 3/4 of the Dowry Prohibition Act.

5. The learned counsel for the petitioners has assailed the impugned order taking cognizance by submitting that the petitioner No. 1 is the uncle-in-law, petitioner No. 2 is the aunt-in-law and the petitioner No. 3 is the maternal-uncle-in-law of the informant. He has also submitted that all the petitioners are residing separately and has no concern with the husband of the informant or his immediate family members.

6. The learned counsel for the petitioners further submitted that the complaint petition itself is vague and has no specific date and no specific offence has been alleged against the petitioners and only with a view to rope in the entire family members of the husband of the informant the original complaint case was instituted. He has further submitted that on the application filed by the informant before the Superintendent of Police, Dhanbad the Officer In-charge, Jharia Police Station had enquired into the matter and as per the enquiry report submitted by the Officer In-charge, Jharia Police Station, the list of articles which were given at the time of marriage were returned to the informant. He has further submitted that the husband of the informant has already died and the informant has re-married with another person. He thus submits that so far as the petitioners are concerned, the entire criminal proceedings are liable to be quashed.

7. In this context, he has also referred to the judgment in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, as well as the judgment delivered by the Hon'ble Supreme Court of India in the case of Chandralekha and Others Vs. State of Rajasthan and Another, .

8. The learned counsel for the State, on the other hand, while relying on the counter affidavit filed on behalf of the State has submitted that the investigation was conducted by the police and after investigation on finding the case to be true charge-sheet had been submitted against the accused persons including the petitioners. She has further submitted that so far as the enquiry report which has been harped upon much by the learned counsel for the petitioners seems to be false and fabricated as no such report has been received in the office of the deponent of the counter affidavit. She further submits that in view of the fact

that sufficient evidence has been collected against the petitioners in course of investigation, accordingly, this present application is liable to be dismissed.

9. After hearing the learned counsel for the parties and upon going through the records, I find that initially a complaint case was instituted by the informant against her husband and in-laws in which allegations have been levelled against the accused persons with respect to the demand of dowry and torture for non-fulfillment of the said demand. After conducting the investigation into the allegations made by the informant charge-sheet had been submitted against all the accused persons including the petitioners in which it had been mentioned that the petitioners were also involved in the demand of dowry from the informant.

10. As regards, the enquiry report submitted by the Officer In-charge, Jharia Police Station and which has been much relied upon by the learned counsel for the petitioners the same seems to be a disputed fact as in the counter affidavit filed by the opposite party No. 1 it has clearly been mentioned that "no such report has ever been received in the office of the answering respondent and due to said reason the same has not been taken into consideration and hence denied."

11. It further appears that so far as the petitioner No. 3 is concerned, he is the maternal-uncle-in-law of the informant and that he resides separately and which fact has also been mentioned in the column of the accused persons in the complaint petition. It is no doubt a fact that no specific allegations have been leveled against any of the accused persons and whatever the allegations are there seems to be general in nature.

12. In the case of Chandralekha and Ors. v. State of Rajasthan and Anr. (Supra) was considering the allegations made against the in-laws in that particular case it was held as follows:-

8. We must, at the outset, state that the High Court's view on jurisdiction meets with our approval and we confirm the view. However, after a careful perusal of the FIR and after taking into consideration the attendant circumstances, we are of the opinion that the FIR lodged by respondent 2 insofar as it relates to appellants 1, 2 and 3 deserves to be quashed. The allegations are extremely general in nature. No specific role is attributed to each of the appellants. Respondent 2 has stated that after the marriage, she resided with her husband at Ahmedabad. It is not clear whether appellants 1, 2 and 3 were residing with them at Ahmedabad. The marriage took place on 9/7/2002 and respondent 2 left her matrimonial home on 15/2/2003 i.e. within a period of seven months. Thereafter, respondent 2 took no steps to file any complaint against the appellants. Six years after she left the house, the present FIR is lodged making extremely vague and general allegations against appellants 1, 2 and 3. It is important to remember that appellant 2 is a married sister-in-law. In our opinion, such extra ordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by respondent 2 against appellants 1, 2 and

3, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, respondent 2 has tried to rope them in this case along with her husband. We are of the confirmed opinion that continuation of the criminal proceedings against appellants 1, 2 and 3 pursuant to this FIR is an abuse of process of law. In the interest of justice, therefore, the FIR deserves to be quashed insofar as it relates to appellants 1, 2 and 3. 13. As has been indicated above, the informant/complainant had instituted a complaint case with a motive to rope in the entire family members of her husband. The petitioner No. 1 and 2 are the uncle-in-law and aunt-in-law whereas the petitioner No. 3 is the maternal-uncle-in-law of the informant and allegations against them are extremely general in nature and no specific role has been attributed to any of them in the complaint petition. No averment has been made in the complaint petition as to whether the petitioner Nos. 1 and 2 were residing separately or with the husband of the informant. So far as the petitioner No. 3 is concerned, admittedly he resides separately as has been indicated in the column of the complaint bearing the name of the accused persons.

14. The entire aspects of the case discussed above all the more points to the fact that the criminal proceedings instituted against the petitioners was with a malicious intent and in such circumstance, the same cannot be allowed to be continued. This case thus squarely falls within clause 7 of the guidelines framed by the Hon''ble Supreme Court in the case of State of Haryana and others v. Ch. Bhajan Lal and others.

15. In view of the discussions made above, I do find merit in this application. This application is, accordingly, allowed and the entire criminal proceedings in connection with Dhanbad P.S. Case No. 97 of 2002 corresponding to G.R. No. 448 of 2002 including the order dated 25.07.2002 passed by the learned Chief Judicial Magistrate, Dhanbad, is, hereby quashed.