

(2012) 07 UK CK 0015

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 253 of 2009

Smt. Anita Singh and Others

APPELLANT

Vs

Vinod Kumar Srivastava

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 210, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 452, 494, 498A, 498A, 506

Citation : (2012) 2 NCC 790

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Advocate : Prabhat Kumar and Mr. S.P. Srivastava, for the Appellant; Anil Kumar Joshi, for the Respondent

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—All the above titled petitions are being disposed of herein, as the same has arisen out of the same order of cognizance dated 12.12.2008, passed by the Judicial Magistrate, Kashipur, Distt. U.S. Nagar, in criminal case no. 1308 of 2008, Vinod Kumar Srivastava Vs. Rohit Chandra & others. 2 Petition no. 253 of 2009 has been filed by Smt. Anita Singh and Smt. Vineeta Saxena, who are the sisters of mother-in-law of Mrs. Anchal (bride). Petition No. 299 of 2009 has been filed by Vijay Bahadur Srivastava (father-in-law, now deceased, as informed by learned counsel) and Smt. Shashi Srivastava (mother-in-law).

2. Petition no. 302 of 2009 has been filed by Rohit Chandra (husband of Mrs. Anchal).

3. Having heard learned counsel for both the parties, it transpires that wedding of Ms. Anchal (daughter of complainant) was solemnized with Rohit Chandra on 18.4.2006 at Lucknow, Uttar Pradesh. She left her parental house to espouse Rohit Chandra at his Lucknow residence. After a couple of months of marriage,

she was allegedly maltreated at the hands of all the petitioners/accused persons, who began to advert their insatiable conduct for demand of additional dowry in sundry ways. They used to tease and torture the victim in various manner, which has been narrated in the complaint. Due to this atrocious attitude, at the hands of all the accused persons, she was constrained to leave her matrimonial house on 11.8.2008. Thereafter, she came to reside at her native place at Bazpur on 12.8.2008 and is living there since then.

4. It was further alleged that on 27.8.2008, all the accused persons, at about 8-9 PM, came and entered forcibly at the native place of complainant Vinod Kumar Srivastava (father of Smt. Anchal) and strived to drag the victim forcibly with them, voraciously demanding cash and car. At that time, the complainant was not present in his house but was at Nainital on account of some official work. While leaving the house, the accused persons threatened to kill the victim in future. Soon thereafter, she went to the P.S. Bazpur to lodge the report but the same could not be lodged. She also sent a report to the S.S.P., U.S. Nagar but all went in vain. Thereafter on 20.10.2008, the respondent Vinod Kumar Srivastava (father of victim) lodged a complaint with the above facts. He examined himself u/s 200 Cr.P.C. whereas his two witnesses, namely, Anchal and a neighbour Tara Dutt Joshi were examined u/s 202 Cr.P.C. Learned Magistrate, having gone through the facts of the complaint, supported by the witnesses in their statements, passed the impugned order of cognizance, asking all the petitioners to stand trial for the offences u/s 498A, 506 and 452 IPC r/w Section 3/4 of Dowry Prohibition Act. Learned counsel for all the petitioners has argued that Smt. Anchal has again lodged a first information report on 28.12.2012 at Women's Police Station, Lucknow for the similar offences, thereby adding Section 494 IPC and the same has been registered under the crime no. 44 of 2012 at the above said police station. The additional allegation, made by Smt. Anchal, is that her husband Rohit Chandra, without having a decree of legal divorce, wedded with another woman, and thus, has committed an offence punishable u/s 494 IPC. She has also averred that she was running from pillar to post in order to get justice against her husband and in-laws but the same could not yield any positive result.

5. Learned counsel for the petitioners has also apprised this Court that since the caveat was filed by Smt. Anchal, so the Lucknow Bench of the Allahabad High Court, while rendering the opportunity to file the counter affidavit to her, stayed the arrest of the petitioners meanwhile on 12.6.2012.

6. Learned counsel has further argued that the complaint has been filed by the father of Anchal, and not by the victim herself. On this sole ground, the complaint cannot be thrown away because undoubtedly the real victim is Smt. Anchal, all the same, her father V.K. Srivastava is no less than a victim since he is impelled to keep his wedded daughter in his house due to the above mentioned conduct of the petitioners.

7. It was further pointed out that in the statement of the complainant, recorded

u/s 200 Cr.P.C. before the trial court, he has not named Rohit Chandra in the alleged incident of 27.8.2008, whereas Smt. Anchal (the victim) even has not named Smt. Anita and Rohit Chandra (husband) u/s 202 Cr.P.C. for the said incident.

8. Learned counsel has cited a number of judgments of Hon"ble Apex Court. This Court has had a look over all the precedents, so cited by the learned counsel, and finds that those all entails slightly different facts and the Court does not feel it necessary to refer all the precedents and make analysis of each and every case in order to dispose of these petitions. However, the Court feels that the incident of 27.8.2008 does not inspire confidence at all because it is not possible for all the accused persons to travel from Lucknow to Bazpur, after covering a distance of more than 400 kilometers, in order to commit the said incident in the house of the respondent. At the same time, it is a well established principle of criminal jurisprudence, as applicable in India, that falsus in uno, falsus in omnibus, i.e. merely on the ground that certain facts have been found false, the rest of facts cannot be placed under distrust only for this reason. It is also true that the atrocious conduct, at the hands of accused persons, and the demand of dowry, if any, was made while she was living at Lucknow. But it is also a settled principle, as laid down by Hon"ble Apex Court that in such cases, the conduct of cruelty, on the part of members of in-laws house and the husband, is a continuing offence even if she is residing at her parents" house. So, for the offences of Section 498-A IPC and one punishable u/s 3/4 of Dowry Prohibition Act, the courts at Kashipur are well within its jurisdiction to adjudicate the matter.

9. Learned counsel has also argued, by citing the various judgments of Hon"ble Apex Court, that to determine the "cruelty" as to constitute the offence u/s 498-A IPC, it should be of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether monetary or physical) of the woman. There is, however, no prima facie allegation in the impugned complaint that the conduct of the accused persons was of such a nature as to bring it under the purview of "Explanation (a)" provided to Section 498-A IPC;, Here at this stage, it is pertinent to read the Explanation "(b)" provided to Section 498-A IPC which is reproduced as below:

498A. Explanation (b) "Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

10. The Hon"ble Apex Court, in a catena of judgments, has not absolved the members of in-laws house if their conduct is of such a nature which is covered under the ambit of Explanation "(b)" of Section 498-A IPC. All the same, the Court feels that the implication of Smt. Anita Singh and Smt. Vineeta Saxena (petitioners in C482 petition no. 253 of 2009) is a far cry allegation and seems to have been made just to exert unjustified pressure upon both these relative ladies. The Court is also not inclined to continue the prosecution against Smt.

Shashi Srivastava (petitioner in 6 C482 petition no. 299/2009) as well, who is the widow and old mother-in-law of Smt. Anchal.

11. The scope of Section 482 Cr.P.C. has been highlighted by Hon"ble Apex Court for a number of times. In this regard, reference may be had to the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, which was further reiterated by Hon"ble Apex Court in the case of "Central Bureau of Investigation Vs. KM. Sharon, reported in 2008 (2) CCSC 815". The Court need not to scrutinize each and every fact scrupulously while considering the propriety of cognizance order. It has to prima facie consider the facts and circumstances of the case. The Court, however feels that the allegations against the petitioner Rohit Chandra (husband) prima facie deserve to be looked into by the trial court.

12. As regards the FIR lodged at Lucknow, the trial court may take into consideration the appropriate provision in this regard, as provided u/s 210 Cr.P.C.

13. So, in view of what has been stated above, C482 petitions no. 253 of 2009 and 299 of 2009 are hereby allowed. Proceedings of impugned complaint case, as also the impugned order, so far as it relates to petitioners Smt. Anita Singh, Smt. Vineeta Saxena and Smt. Shashi Srivastava, are hereby quashed. Needless to mention that petitioner Vijay Bahadur Srivastava (petitioner in petition no. 299/2009) is reported to be dead. However, C482 petition no. 302 of 2009, filed by Rohit Chandra (husband) is hereby partly allowed. The trial court shall proceed against him u/s 498-A IPC r/w Sections 3/4 of Dowry Prohibition Act. The proceedings u/s 506 and 452 IPC, are hereby quashed. Trial court is directed to proceed against him in accordance with law. Inform the court below.