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(2013) 12 MP CK 0115

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. C. No. 7057 of 2013

Smt. Geeta and Another — APPELLANT

Vs

State of Madhya Pradesh and Another — RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0115

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : Prashant Sharma, for the Appellant; Sudha Shrivastava, Panel Lawyer for Respondent No. 1/State and Shri Pradeep Katare, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—The petitioners have filed this petition u/s 482 of the Code of Criminal Procedure 1973, seeking quashment of the First Information Report lodged on the basis of written complaint submitted by the complainant/ respondent No. 2 herein alleging harassment and cruelty by her in-law for raising demand of dowry, which was registered at Crime No. 484/12 for commission of offence punishable under Sections 498A/34 of I.P.C. as well as sections 3 and 4 of the Dowry Prohibition Act. First of all, the ground for assailing the FIR is that the proceedings initiated on its basis are nothing but to abuse the process of law, hence, the FIR is liable to be quashed. The petitioners are mother-in-law and father-in-law of the respondent No. 2, whose marriage took place with their son, namely, Deendayal Pachori on 2/12/09. In the beginning, the relations were cordial but after sometimes, it is alleged that the respondent-wife began to act in a cruel manner towards her husband and sometimes even using physical violence. Her husband tolerated this thing, hoping that her conduct would be normal but when no improvement was seen and there was practically impossible for living with her, he presented the petition praying for divorce against her and in order to implicate her husband and his relations, false complaint has been

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lodged by the respondent No. 2 taking ground of demand of dowry. It is thus contended that the action of I.O. after joining hands with the complainant is per se illegal, arbitrary and unconstitutional which is also not permissible in the eyes of law. It is further argued that looking to the face value of the evidence collected during investigation, there is nothing to establish the offence punishable either u/s 498A/34 of I.P.C. or sections 3 and 4 of the Dowry Prohibition Act. On these premised arguments, it is prayed for quashing the FIR and consequent investigation and court proceedings. To support his submissions, learned counsel placed reliance on the decisions in the cases of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, and Satish Mehra Vs. State of N.C.T. of Delhi and Another, .

2. Heard the learned counsel appearing for the respective parties. Also perused the challan papers coupled with the evidence collected and produced before the trial court, during investigation.

3 The legal principles for quashing the FIR and entire prosecution version u/s 482 of Cr.P.C. are set out in various decisions pronounced by Hon. the Apex Court in the manner:-

4. In Asmathunnisa Vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Another, the Hon. Apex Court held:-

This Court, in a number of cases, has laid down the scope and ambit of the High Court?s power u/s 482 of the Code of Criminal Procedure. Inherent power u/s 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. The authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in the absence of specific provisions in the statute.

The law has been crystallized more than half a century ago in R.P. Kapur v. State of Punjab wherein this Court has summarised some categories of cases where inherent power can and should be exercised to quash the proceedings. This Court summarized the following three broad categories where the High Court would be justified in exercise of its powers u/s 482:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information

report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In Nagawwa v. Veeranna Shivalingappa Konjalg according to the Court, the

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process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

This Court in State of Karnataka v. L. Muniswamy observed that the wholesome power u/s 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the Court observed that the ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other Courts.

5. In Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and Others, , the Apex court held:-

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction u/s 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding u/s 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers u/s 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such

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powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/s 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers u/s 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide Kavita v. State and B.S. Joshi v. State of Haryana). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal.

16. In the landmark case of State of Haryana v. Bhajan Lal this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. In the light of the above principles, on considering whether there are sufficient materials available in the prosecution case, particularly, in the FIR, charge-sheet and statements of witnesses so far as the petitioners herein are concerned, this court finds that there are the allegations contained in the FIR and the complaint discloses commission of some crime. It is evident on perusing the statements of the witnesses on record that the husband and members of his family used to harass the complainant for not fulfilling their illegal demands. The statements of the other witness also supported the allegations about ill-treatment and cruelty meted out to the complainant by her husband and his relations for demand of dowry. However, at this stage, this court is not required to go into the merits and demerits of the allegations simply because the petitioners allege mauls animus against the author of the FIR or the complainant. Nor it can be said that the FIR and entire investigation based on case diary statements of the complainant and other witnesses are malicious and the case is instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge. Above all, it is well settled that the jurisdiction u/s 482 of Cr.P.C. has to be exercised sparingly and only in exceptional cases. Therefore, while deciding a petition filed for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. Keeping in view all the material facts and circumstances of the case, this court does not find a ground sufficient for quashing the criminal proceedings. Resultantly, the petition fails and is dismissed.

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