
(1986) 11 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 296 of 1985

Smt. Lali and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-11-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 164, 482
Penal Code, 1860 (IPC) — Section 363, 365, 366, 476, 484

Citation : (1987) WLN 709

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—This petition u/s 482 Cr. PC is directed against the order of Munsif and Judicial Magistrate Neem ka Thana dated 27-9-1984 taking cognizance and issuing non bailable warrants against the applicants for the offence u/s 363, 494 and 498 IPC.

2. Smt. Lali, Mahavir, Hardan, Laduram, Gyarsya, Jailaram, Ramji Lal and Kundan, all accused petitioners are being prosecuted for the above offences u/s 363, 494 and 498, IPC.

3. On 12-3-1984 non-applicant Surja filed a complaint u/s 363, 365, 366, 476 and 484 and 498 IPC against applicants No. 2 to 7 and Umaraao Ramswaroop and Budharam in the court of the Munsif and Judicial Magistrate Neem ka Thana. This complaint was sent for investigation to the SHO Police Station Patan u/s 156(3) Cr. PC. The police Patan registered First Information Report, but in the mean time at the instance of the complainant S.P , Sikar deputed S.I. Shri Amar Singh of crime branch, for investigation in the matter. Complainant approached to the Home Minister and the matter was handed over to the Circle Officer (Dy. SP Sikar) for investigation who after recording the statement of the witnesses, medical examination of applicant No. 1 Mst. Geeta by the Medical Board and getting her statement recorded before the Munsif and Judicial Magistrate, Sikar,

u/s 164 Cr. PC came to the conclusion that Smt. Geeta was major, she came to her father's house of her own accord and from the report of Medical Board it was found that no sexual intercourse was committed with her. She is major and wants to live with her father.

4. FIR was therefore given before the Judicial Magistrate, Neem-ka-Thana. However the non-applicant No. 2 Khyali filed another protest complaint for the same offence and on the same facts against the same persons including the applicant No. 1 as an additional accused in the court of Munsif Magistrate Neem-ka-Thana. The complainant was examined and there after even though it was established that no case is made out against the accused persons, but the case was registered as mentioned above.

5. Mr. Bardhar learned Counsel for the accused has submitted that no offence is made out and the registration would result in harassment and hardship to the accused persons. According to him the complainant Khyali himself applicant No. 1 came to the house of her father two years back with the willingness of the complainant and has been staying with her parents till then. The police after investigation gave final report which reads as under:

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jhfr fjokt ds vk/kkj og ckjkr ds lkFk gh vius llqjky Q+rsgiqjk xbZ Fkh Anks&,d fnu llqjky es jgus ds ckn fgUnw jhfr fjokt ds vk/kkj ij jkth [kq"kh mls mldk NksVk HkbbZ lkaojk fonk djds vius xkao ys x;k Fkk A vkt ls djhc "kknh ds nks lky ckn xhrk mQZ ykyh vius llqjky fQj xbZ ml le; mldh mez djhc 15 lky Fkh Aog vius ifr [;kyh ds lkFk jkf= es lksbZ Hkh Fkh Arc mls irk pyk fd mldk ifr fgatM+k gS vkSj mldk is"kkc ryh ls fudyrk gS] mldh bfUnz; laHkksx ds ;ksX; ugh gS A xhrk nks rhu fnu jgdj mlds HkbbZ lkaojk vkSj mlds ekek ds yM+ds gtkjh ds lkFk iqu% vius eka cki ds ?kj jkth [kq"kh jhfr&fjokt ds vk/kkj ij fonk gksdj vk;h mls dksbZ tcju ugh yk;k mlus viuh ifr dh detksjh dh ckcr lkjh dgkuh viuh eka dks crk;h ftlus vius ifr gjnku o yM+ds egkohj o vU; dks fLFkfr ls voxr dj;k tkudkj gksus ij igys rks [;kyh dh fpfdRlk IEcU/kh dk;Zokgh dh xbZ Amls dksViqrh o t;iqj Hkh bykt ds fy, ys tk;k x;k] ijUrq [;kyh dk bykt ugh gks ldk vkSj Qrsgiqjk okys O;fDr;ks us xhrk dks Qrsgiqjk Hkstus ds fy, ncko Mkyk A ftl ij rkjh[k 31&3&1983 dks ,d fy[kkoV iapk;r ds iapku yknwjke ;kno nkuMh] euksgjyky cgyiqjk] lqjtkjke] cuokjh yky] uFkqjke] X;kjlhke] NksVwjke eksnh ds lkeus fy[kkoV dh x;h Fkh fd [;kyh tc Bhd gks tk;sxk A rHkh xhrk dks Hkstk tk;sxk A ysfdu Qrsgiqjk okyks us [;kyh dk bykt u djkdj viuh bTtr dk loky cukdj xhrk dks ,d fnu Qrsgiqjk okys xhrk dks ykus ds fy, fu"p; fd;k ,oa Jh uRFkwjke ;kno yywiqjk us bl dk;Z dks iwjk djus ds fy, izkjEHk ls lIEeku xhrk dks cjken djkdj ykus ds fy, nQk 100 dk okj.V U;k;ky; ls izkIr fd;k A ijUrq okj.V ls dke;kch gkfly u gksus ij mDr bLrxkl ds ek;/e ls ;g vfHk;skx ntZ dj fn;k] ftles esjs }kjk fnukad 2&6&1984 dks eqIEekr xhrk dks mlds firk ds ?kj eqEykdck kkl ls cjken fd;k tkdj Jh dY;k.k gkWLFiVy] lhdj es mDr MkDVjh eqvk;uk ds fy, esfMdy cksM+Z ds le{k is"kk fd;k x;k esfMdy cksM+Z us okn ijh{k.k xhrk dh mez 18 lky ds yxHkx gksuk ,oa orZeku es mlds lkFk fdlh izdkj ds IEHkksx u fd;s tkus dh fpUgks ls voxr dj;k okn D;k gsrq is"kk fd;k x;k ,oa lh-ts-,e- ds vkns"kkuqlkj fnukad 4&6&1984 dks xhrk ds c;ku ,-ts-,e-] lhdj ds le{k fjdkMZ dj;k;s x;s ftlus vius llqjky okys }kjk mlds ekjihV djuk] tku dk [krjk gksus dh otg ls llqjky u tkus dh bPNk O;Dr djrs gq, vius ekrk&firk ds ?kj tkus dh bPNk tkfgj dh gS] pwwfd eqIEekr O;Ld gS] tks viuk Hkyk cqjk le>us lkspus dh "kfDr j[krh gS vr% O;Ld gksus ls ,oa vius ekrk firk ds ?kj tkus bPNk tkfgj djus ds dkj.k ls vnkyr }kjk mls vktkn fd;k x;k A ftls mlds HkbbZ egkohj izlkn dks fu;ekuqlkj lKSi fn;k x;k A rrh"kk ls xhrk dks dksbZ Hkh O;fDr xhrk dks Qqlykdj tcju ugh ys x;k u gh mlds lkFk fdlh O;fDr }kjk mldh bPNk ds fo:) tcju IEHkksx fd;k tkuk ik;k x;k Avr% rrh"kk ls ekeyk >wBk ik;k x;k A urhtk rrh"kk tfj;s ,Q-vkbZ-vkj- ua- 11 cflxs vne og izsf"kr dj vuqjks/k gS fd voyksdu Qjekos AeqLrxhl dks tfj;s Mkd urhtk rrh"kk ls voxr dj;k tk jgk gSA

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6. The statement of Khyali and Hardan Geeta daughter of Hardan dated 22-9-1984 and 4 6-1984 have been produced before this court by Mr. Bardhar. According to this, the allegation is that Khyali says that Ramjilal marriage has been conducted. It has also been alleged that Ramjilal has been having sexual

intercourse with Lali. However, contrary to it the Medical Board has clearly stated that no sexual intercourse was conducted with the girl. This version of the Medical Board cannot be easily brushed aside. It is obvious that the statement of the girl earlier recorded before the Magistrate clearly goes to show that she went of her free will to the house of her father. There is no evidence of second marriage on record, therefore cognizance u/s 494, and 498, IPC could not have been taken.

7. It is obvious that after the detailed investigation at a very higher level by the Senior Police Officer, the result of the investigation was that it is a false case. Geeta went to her husband's house at the age of about 14 and 15 and remained with her husband but came to the conclusion that her husband was impotent and therefore came back to the parents and disclosed this unfortunate fact.

8. From the investigation it was revealed that the party of the husband wants to conceal this fact and with that intention they have created this false case.

9. On 2-6-1984, Mst. Geeta was found at the house of her husband and she was immediately sent to Kalyan Hospital Sikar and there was a Medical Board who conducted her examination.

10. She was examined by the CJM on 4-6-1984, the actual statement was recorded by the AMJM at the direction of the CJM, in which she stated that in-laws are mal-treating her and she is under danger from his father in law's family and does not want to go to the father-in-law's family.

11. Bardhar has further pointed out that there has been a divorce case filed by the lady Mst. Geeta against her husband. Mr. Mathur, learned Public Prosecutor who has argued the case on behalf of the State submits that the police investigation of course resulted in the final report but the Magistrate can always take cognizance and there is no bar to it. Technically Mr. Mathur's contention is correct. But Mr. Mathur could not point out that any such evidence came on the record which shows that the police investigation was biased or was lacking exactness, or correctness or that after police investigation some more facts have come in light on account of which any of the offence alleged to have been committed is prima facie proved. In my opinion the statement of the husband cannot improve the situation because so far as the second marriage is concerned, there is no evidence of a person who was present there or who has seen the marriage. So far as the offence of having sexual inter-course is concerned, the Medical Board rules it out. Then there is statement of the girl herself who is now major and who has stated that she wants to live with her father and mother and she has not done anything against her husband. She has shown the apprehension that the life is in danger from the father-in laws and the in-laws family.

12. All these clearly go to show that the registration of the case and taking cognizance is not based on any independent credible reliable evidence. In this view of the matter there would be gross abuse of process of the court that all

these accused persons are dragged in, in a criminal court for these offence when no case is made out.

13. Consequently the application u/s 482 Cr. PC is accepted. The proceedings against all these accused persons are quashed and the order taking cognizance is quashed.