
(2009) 12 CHH CK 0016
In the Chhattisgarh High Court
Case No : M.Cr.C. No. 2252 of 2005

Smt. Megha Hardikar and Others

APPELLANT

Vs

State of C.G. and Another

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2), 482, 483
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2009) 4 CGLJ 136

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : V.G. Tamaskar, for the Appellant; Ashish Gupta, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J.—This is a petition u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code") for quashment of criminal proceedings pending before the Judicial Magistrate First Class, Durg, in Criminal Case No. 209/2005 for the offence punishable u/s 498A/34 of the Indian Penal Code.

2. Quashment is prayed on the ground that without there being any prima facie evidence, the trial Court has taken cognizance on the basis of charge sheet filed by the police and continuance of such proceedings against the Petitioners would amount to abuse of process of the Court.

3. Brief facts necessary for disposal of the petition is that Petitioner No. 4 is husband of Respondent No. 2, Petitioners No. 1 to 3 are relatives of Petitioner No. 4, Petitioner No. 4 married with Respondent No. 2 on 10.7.2000. According to report of the F.I.R. lodged by responded No. 2, just after the marriage her father-in-law Petitioner No. 2 and sister-in-law Petitioner No. 1 demanded ornaments which she refused. After refusal of said demand, their behavior became abnormal. She became pregnant, then Petitioner No. 4 left her to her

maternal house. Uncle-in-law Petitioner No. 3 Arun Joshi threatened her at Mumbai. Her mother-in-law committed suicide then they tried to level claim of commission of suicide by her mother-in-law, on her. On 26.12.2004, Petitioner No. 2 came to Durg in his maternal house and threatened her and thereafter, Respondent No. 2 has lodged the report. On the basis of report lodged by Respondent No. 2, the offence was investigated by Durg police and has filed the charge sheet against the Petitioners for the offence punishable u/s 498A/34 of the Indian Penal code.

4. I have heard learned Counsel for the Petitioners and Respondent No. 1/State and perused the petition and documents appended thereto.

5. Learned Counsel for the Petitioners vehemently argued that Petitioner No. 1 is not residing in India, she is residing abroad and has never committed torture or cruelty upon Respondent No. 2. Even if the allegation made by Respondent No. 2 is admitted in its face value then it may be presumed that present Petitioner No. 1 has demanded ornaments on 10.7.2000 after marriage of Respondent No. 2 which does not constitute cruelty and the prosecution against Petitioner No. 1 which is also time barred in terms of Section 468 of the Code. Learned Counsel further argued that Petitioners No. 2 to 4 have not committed torture and cruelty upon Respondent No. 2 and with a view to implicate falsely, she has lodged the report against the Petitioners. The Petitioners have categorically stated their instances in their petition, especially relating to Petitioner No. 1 that she has never come to Durg and she is residing abroad and casually came at Mumbai. Learned Counsel also argued that the Petitioners have been able to make out exceptional case, for invoking extraordinary inherent jurisdiction in terms of Section 482 of the Code and in appropriate cases, criminal proceedings amounting to abuse of process of the Court should be quashed.

6. Learned Counsel placed reliance in the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, in which the Apex Court has held that in absence of ingredient of the offence in charge sheet, continuance of criminal proceeding would amount to abuse of process of the Court and such proceedings should not be allowed to continue. Learned Counsel further placed reliance in the matter of Ramesh Chandra Sinha and Others Vs. State of Bihar and Others, in which the Apex Court has held that cognizance taken after a period of three years of occurrence is clearly barred u/s 468(2) of the Code and such proceeding is required to be quashed. Learned Counsel also placed reliance in the matter of M/s. Zandu Pharmaceutical Works Ltd. and Ors. v. Md. Sharaful Haque and Ors. AIR 2005 SC 9 in which the Apex Court has held that distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations, the High Court should not assume the role of a trial court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. Learned Counsel further placed reliance in the

matter of Ramesh and Others Vs. State of Tamil Nadu, in which the Apex Court has held that allegations in FIR against sister-in-law only relating to causing insult, making derogatory remarks and behaving rudely against informant and not pertaining to dowry demand or entrustment and misappropriation of property belonging to her. Allegations are not sufficient for taking cognizance for the offence of abetment for commission of suicide punishable under Sections 498A or 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. Learned Counsel also placed reliance in the matter of Vir Prakash Sharma v. Anil Kumar Agarwal and Anr. (2007) 7 SCC 373 in which the Apex Court has held that where allegations contained in complaint petition even if given face value and taken to be correct in its entirety do not disclose an offence, the complaint can be quashed. Learned Counsel further placed reliance in the matter of Sonti Rama Krishna Vs. Sonti Shanti Sree and Another, in which the Apex Court has held that in absence of prima facie material for taking cognizance, criminal proceedings may be quashed. Learned Counsel also placed reliance in the matter of Dhariwal Tobacco Products Limited and Ors. v. State of Maharashtra and Anr. (2009) 2 SCC 370 in which the Apex Court has held that alternative remedy of filing revision could not be a ground to dismiss the application u/s 482 of the Code and in appropriate cases proceedings may be quashed. The High Court can be exercised the power not only in terms of Section 482 of the Code but also u/s 483 of the Code.

7. On the other hand, learned State counsel argued that charge sheet discloses prima facie commission of the offence punishable u/s 498A/34 of the Indian Penal Code, therefore, at the time of taking cognizance of the offence, the Magistrate is required to see that if the allegations made in the complaint or charge sheet is admitted in its face value in entirety, the same would be sufficient for conviction of the accused and the same would sufficient for conviction, then it cannot be said that charge or continuance of criminal proceeding would be groundless. Learned Counsel further argued that in the present case, if the allegation made in the change sheet is admitted by the Petitioners, the same would be sufficient for conviction of the Petitioners for the offence Punishable u/s 498A/34 of the Indian Penal Code.

8. This is a petition u/s 482 of the Code for quashment of criminal proceedings pending against the Petitioners. While decline with exercise of power u/s 482 of the Code in the matter of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , the Apex Court has held thus,

8. Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay

down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In the light of the aforesaid proposition of the law, on examination of the charge sheet and allegation made in the charge sheet it reveals that Respondent No. 2 has specifically made allegation that on 10th July, 2000, Petitioner No. 1 Smt. Megha Hardikar and Petitioner No. 2 Krishn Paithankar demanded ornaments which she refused and afterwards Petitioners No. 2 to 4 committed torture and cruelty upon her and lastly on 26.12.2004, Petitioner No. 2 committed cruelty.

10. The Petitioners have specifically claimed that Petitioner No. 1 married to Dhananjay Hardikar on 29.4.2000 and after her marriage she used to reside abroad and casually she came to India and used to reside at Mumbai. Petitioner No. 1 has given a detail relating to her stay at abroad and India.

11. On close scrutiny of the copy of charge sheet, especially the written complaint made by Respondent No. 2, it reveals that on or about 10th July, 2000, Petitioner No. 1 and 2 demanded ornaments from Respondent No. 2 which she refused and afterwards Petitioners No. 2 to 4 committed torture and cruelty

upon her. At the time of taking cognizance, the Court is required to consider the allegations made in the complaint in its face value in entirety. If the allegation made in the charge sheet is taken into consideration in its face value, as true, then conviction would be possible or not. It is clear that on or about 10th July, 2000, Petitioner No. 1 and 2 demanded ornaments from Respondent No. 2 which she refused, thereafter Petitioners No. 2 to 4 committed cruelty and torture upon her. Allegation relating to Petitioner No. 1 who has specifically claimed that she is not residing in India and residing at abroad is separable from the allegation against other Petitioners and if the allegation against Petitioner No. 1 is accepted as a gospel truth, only the fact that she demanded ornaments from Respondent No. 2 which Respondent No. 2 refused, would be proved. Demand of ornaments and refusal by Respondent No. 2 does not constitute torture or cruelty or any act in connection with demand of dowry. If the said allegation is admitted by Petitioner No. 1 it would not be sufficient for conviction u/s 498A of the Indian Penal Code. Rest allegations are not against Petitioner No. 1.

12. In the matter of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, , the Apex Court has held that considering the circumstances that the Petitioners used the words "to go and die" and there was also evidence on record that the deceased always indulged in drinking and was not doing any work is not sufficient for drawing inference that the Petitioners have aided or instigated the commission of suicide. In the present case, according to the documents, different Petitioners have played different role. Even at the time of pregnancy by Respondent No. 2, they have committed torture and used to threaten her. The case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, is distinguishable on the facts of the present case.

13. In the matter of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , the Apex Court has held that in absence of ingredient of the offence of mala fide, frivolous or vexatious, criminal proceeding be quashed. In the present case, at this stage it is difficult to hold that the allegation made in the charge sheet is mala fide, frivolous or vexatious. The case of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, is distinguishable on the facts of the present case.

14. In the matter of Vir (2007) 7 SCC 373 (supra), the Apex Court has held that in absence of ingredient of the offence, criminal proceeding be quashed. In the present case, charge sheet reveals ingredient of the offence. The case of Vir (2007) 7 SCC 373 (supra) is distinguishable on the facts of the present case.

15. In the matter of Dhariwal (2009) 2 SCC 370 (supra), the Apex Court has held that the High Court can be exercised the power not only in terms of Section 482 of the Code but also u/s 483 of the Code.

16. On close scrutiny of the allegations made in the charge sheet, the alleged act attributed to Petitioner No. 1 is distinguishable to that of Petitioners No. 2 to 4 and does not constitute the offence punishable u/s 498A of the Indian Penal

Code, as such, continuance of any criminal proceeding against Petitioner No. 1 would only amount to abuse of the process of the Court. However, the allegations made in the charge sheet are sufficient for taking cognizance against Petitioners No. 2 to 4 and continuance of such criminal proceedings against Petitioners No. 2 to 4 would not amount to abuse of the process of the Court.

17. For the foregoing reasons, the petition is partly allowed. Criminal proceedings in Criminal Case No. 209/2005 pending before the Judicial Magistrate First Class, Durg as it relates to Petitioner No. 1 Smt. Megha Hardikar is hereby quashed.