
(2012) 03 AHC CK 0028
In the Allahabad High Court
Case No : Criminal R. No. 5993 of 2010

Smt. Sakeena Bano and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 227, 323, 498A, 504

Citation : (2012) 03 AHC CK 0028

Hon'ble Judges : V.K. Mathur, J

Bench : Single Bench

Advocate : Rakesh Dubey, Rajiv Gupta and Dilip Kumar, for the Appellant; Qazi Vakil Ahmad, Shiv Nath Singh, Satyam Singh and A.G.A., for the Respondent

Judgement

V.K. Mathur, J.—The instant criminal revision has been preferred by the accused-revisionists against the order dated 3.12.2010, passed by the Chief Metropolitan Magistrate, Kanpur Nagar in Criminal Case No. 22000 of 2009 relating to Case Crime No. 267 of 2009. State v. Sakeena and others, under Sections 498A, 323 and 504, I.P.C. P.S. Rail Bazar, district Kanpur Nagar. Vide impugned order the learned Chief Metropolitan Magistrate. Kanpur Nagar has rejected the application of the accused-revisionist for discharge. The brief facts leading to the filing of the instant revision are that on 25.6.2009 an F.I.R. was lodged by Smt. Daraksha Bano in police station. Rail Bazar, district Kanpur Nagar with the allegations that her marriage was solemnised with co-accused Syed Gaffar Ali on 2.11.2006. Her in-laws were not satisfied with -the dowry given in the marriage. She made the allegations against her mother-in-law Smt. Shakeela @ Juhi. J.K. AJad. bother-in-law (Jeth) and Smt. Shahida, sister-in-law (Jethani) also for demanding additional dowry and subjecting her to physical and mental cruelty. Allegations for physically assaulting her by kicks and fists and also giving her blows with belt were also made. On the basis of the Tahrir a case at Crime No. 267 of 2009. under Sections 323, 504, 498A. I.P.C. and 3/4. D.P. Act was registered. After investigation charge-sheet was submitted against all the named accused

persons. An application was moved on behalf of the revisionists praying that on the basis of facts of the matter and evidence collected by the police and on the basis of statement of the witnesses recorded in the case diary the applicants be discharged. Vide impugned order learned C.M.M., Kanpur Nagar has rejected the application.

2. Aggrieved from the order the present revision has been preferred on the ground that the impugned order is against the material available on record and is not sustainable and that the court below has passed the impugned order in a routine and mechanical manner and without application of judicial mind and the same is absolutely illegal and perverse, It has also been stated that no finding has been recorded as to who amongst the revisionists committed cruelty with respondent No. 2. therefore, no specific allegations against the revisionists could be found and the allegations levelled against them are general and vague. No injury report has been filed to substantiate the allegation, therefore, no offence under Sections 323 and 504. I.P.C. was made out. Further It has been contended that if the prosecution story, as stated in the F.I.R., is taken to be true on its face value even then no offence whatsoever is made out against the revisionists u/s 498A because no specific allegation of harassment for coercing the informant to meet any unlawful demand of dowry or any willful conduct on the part of the revisionists of such nature as is likely to drive the lady to commit suicide or to cause grave injury etc. is made out. Despite the fact that no prima facie case against the revisionist could be found the C.M.M. arbitrarily and illegally and against the settled proposition of law has passed the impugned order which is liable to be quashed.

3. I have heard learned counsel for the revisionists, learned A.G.A. learned counsel for respondent No, 2 and have perused the record.

4. Learned counsel for the revisionist has submitted that the Hon"ble Supreme Court in Rukmini Narvekar v. Vijaya Satardekar, JT 2008 (11) SC 32; 2008 (3) ACR 3384 (SC), has held that there cannot be an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of charges and the Court has further held that accused may be discharged in criminal proceedings even if a prima facie offence was made out. The order for discharge of an accused has to be passed taking all the facts and circumstances of the case into consideration. Learned counsel has further submitted that on the basis of strong suspicion alone it cannot be concluded that the prosecution will succeed in proving the case against him and suspicion cannot take place of proof of the guilt. Now the Courts are not bound to follow the old practice of looking into the evidence proposed to be adduced by prosecution alone and not taking into account any defence evidence at all at the stage of framing of charge. Further, submission of learned counsel for the revisionist is that no specific allegation has been made against the revisionist in the case against them. Their implication has been made simply to harass and humiliate them. Further revisionist No. 1 is an aged lady and prosecuting her on

the basis of vague allegations would amount to abuse of process of law. Reliance has been placed in support of the argument upon *Preeti Gupta and another v. State of Jharkhand and another*. (2010) 3 SCC (Cri) 473 : 2010 (3) ACR 3065 (SC) : *Neelu Chopra and another v. Bharti* (2010) 1 SCC (Cri) 286 : 2009 (3) ACR 3512 (SC) and *P. Vijayan v. State of Kerala and another*, (2010) 1 SCC (Cri) 1488 : 2010 (1) ACR 879 (SC).

Learned A.G.A. has defended the impugned order.

5. Learned counsel for respondent No. 2 while defending the impugned order has submitted that the settled legal position on the matter is that the Court while considering the discharge of an accused has to look into the evidence which is available on record and for this purpose the evidence collected by the Investigating Officer in case diary can also be looked into. The only requirement is that the Magistrate must be satisfied on the basis of availability of proposed evidence that a prima facie case is made out on behalf of the prosecution. It is not the requirement that on the basis of the available evidence the possibility or likelihood of conviction should also be examined by the Magistrate. Learned counsel has further submitted that at the time of framing of charge the evidence, if any, produced by the defence cannot be looked into and the subjective satisfaction of the Court for framing the charge has to be arrived at on the basis of the prosecution evidence alone which is available up to that stage. Learned counsel has placed reliance in support of his arguments upon *Union of India (UOI) Vs. State of U.P. and Another*, ; *Mahfooz v. State of U.P.* 2007 (2) ACC 951 and *Virendra Mishra v. State of U.P.* 2007 (2) ACC 720.

6. It is true that in *Rukmini Narvekar v. Vijaya Satardekar*. JT 2008 (11) SC 32, the Hon''ble Supreme Court has observed that there cannot be an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges. However, the Court has further observed that this should be done in very rare cases. It has further clarified that where the defence produces some material which convincingly demonstrates that whole prosecution case is totally absurd or totally concocted then such material produced by the defence may be looked into. Therefore, in view of the above observation of the Hon''ble Apex Court it cannot be said that in each and every case the material produced has to be evaluated. Such material can be taken on account in exceptional cases and the material in the light of the observations of the Hon''ble Supreme Court should be such as would convincingly establish that the whole prosecution version is totally absurd, preposterous or concocted. In the instant case, from the perusal of the impugned order it is evident that in the court below it was pleaded on behalf of the revisionists that revisionist No. 1 had severed her relations with the husband of the informant because of the behaviour and conduct of the informant towards her in-laws. It has also come in the impugned order that an application was moved to the District Magistrate and also a news was published in *Aaj''* newspaper. Certain allegations were also made for transfer of the investigation to

other police station as the informant had influence over the police of P.S. Rail Bazar.

7. The learned C.M.M. in the impugned order has observed that at the time of framing of charge as per law the Court has to see only that whether a prima facie case is made out against the offenders or not and for this purpose only case diary has to be seen and the evidence has not to be evaluated. Therefore, papers and documents filed alongwith the discharge application cannot be looked into. He has further observed that in the case diary the complainant/informant and the other witnesses in their statements have supported the prosecution case. therefore, he has found prima Jade evidence against the revisionist and on this basis he has rejected their application and has directed for framing of charge against the revisionists.

8. I am of the view that in the impugned order learned C.M.M. has not acted arbitrarily. Even in the light of the finding of the Hon''ble Supreme Court, had the Magistrate taken Into account the papers and documents then also on their basis, as per contention of the accused apart from the fact that a letter complaining the behaviour and conduct of the informant was sent to District Magistrate and others and that a notice of break up of relationship by respondent No. 1 was published in the newspaper could be proved but on the basis of the conduct of the informant and severance of relationship, there was no likelihood that the defence'' could succeed in convincingly proving that such material establishes that the whole prosecution version was totally absurd, preposterous or concocted. Therefore, the revisionists are not entitled to get benefit of the Rukmini Narvekar's case.

9. It is true that in Preeti Gupta and another v. State of Jharkhand and another (supra) the Hon''ble Supreme Court has held that in a criminal complaint specific allegations have to be made and where the allegations were found prima facie false and incorrect the implication in the complaint of certain accused persons was treated to be in order to harass and humiliate them. Therefore, the Court observed that permitting the complainant to pursue the complaint would be an abuse of process of law. In the instant case, since it is not the case that the revisionists were living in some other city, therefore, it cannot be said that the prosecution allegations are of such nature that they should be out rightly discarded.

10. In P. Vijayan v. State of Kerala and another, the Hon''ble Apex Court has observed that at the stage of Section 227 the object Is merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against accused and if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged In the cross-examination or rebutted, by defence evidence, cannot show that the accused committed the offence then there will be no sufficient ground for proceeding with the trial.

11. I am of the view, that the facts and circumstances of the case law referred are not applicable in the instant case because the evidence which the prosecutor proposes to adduce has been considered by the learned C.M.M. and he has categorically recorded that prima facie on its basis further proceedings are required and In this view he has ordered for framing of charge.

12. In the case laws referred by learned counsel for respondent No. 2 the settled position that prosecution has to make out only prima facie case on the basis of material produced before the Court by the prosecution which includes case diary and the evidence which the defence produces in the Court at that stage should not ordinarily be considered unless the material is of such a nature that it convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. This proposition as a general rule is applicable and should be followed.

In this view of the matter, the revision is devoid of merits and as such is liable to be dismissed.

Revision is dismissed. The impugned order dated 3.12.2010, passed by the Chief Metropolitan Magistrate, Kanpur Nagar is affirmed. Stay order, if any is vacated.

No order as to costs.