
(2011) 08 UK CK 0163
In the Uttarakhand High Court
Case No : Criminal Appeal No. 215 of 2006

Smt. Shalini Sharma

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 244, 246
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2011) 3 DMC 616

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—By way of this criminal appeal, the judgment and order dated 18.10.1995 passed by the Additional CJM-III, Dehradun is under challenge. The said judgment was rendered by the learned Magistrate in complaint case No. 1123 of 1994, Smt. Shalini Sharma v. Avdhesh Sharma & seven others.

2. It appears that Smt. Shalini Sharma was wedded with Avdhesh Sharma on 29.4.1986 as per Hindu rituals at Prem Nagar, Dehradun but soon after the marriage, the differences cropped up between the two families. Appellant came to her father's house many a times and at last, she was expelled from her in-laws house on 5.4.1989. Thereafter, she filed a complaint for the offence of Sections 406/498-A Indian Penal Code and 3/4 Dowry Prohibition Act. After recording the statements u/s 200 and 202 Code of Criminal Procedure, the Magistrate took cognizance and tried the complaint. After adducing the evidence by the complainant u/s 244 Code of Criminal Procedure, the charge was levelled against all the seven accused persons for the offences, as stated above, and after recording the remaining evidence u/s 246 Code of Criminal Procedure and hearing the arguments, the learned Magistrate passed the impugned judgment.

3. The complainant, being aggrieved, preferred the appeal in the High Court of Allahabad in 1995, where the old number assigned to it by the Allahabad High Court was 107/1995. After carving out of this State, the matter was transferred to this Court for adjudication.

4. Sri Lokendra Dobhal, Advocate is present on behalf of the Appellant. Notices were sent upon the private Respondent Nos. 2 to 8. As stated above, Respondent No. 2-Avdhesh Sharma is the husband of Appellant, No. 3-Khem Chand Sharma is the father in law (reported to be died), No. 4 Smt. Krishna Devi is the mother in law (served personally), No. 5 Mahesh Bhardwaj (also served personally) and other Respondents are also the brother in law of the Appellant. Thus, they all are the members of the same family and the service upon one will be deemed to be service sufficient upon rest of the others.

5. Having heard the learned Counsel on behalf of the Appellant and learned brief holder for the State and after perusal of the grounds of appeal, it appears that neither of the grounds, as stated in the memo of appeal, have any potentiality to challenge the order of acquittal in substance, inasmuch as, all of them are just stereotyped. The first ground taken by the Appellant is that the judgment and order of the lower court is against the evidence on record and provision of law, but it fails to indicate as to in what manner, the impugned judgment is against the evidence on record and what provision of law has not been complied with while passing the impugned judgment.

6. The second ground states that the judgment and order passed by the court below is based on conjectures and surmises, but, the learned Counsel of the Appellant could not indicate any inconsistency or embellishment in the evidence, which he read before this Court, in order to show any conjecture or surmise on the part of the learned trial court while passing the said judgment. The learned Magistrate has analyzed the evidence adduced by the complainant and her witnesses and has found that the complaint has been filed on account of the vengeance nurtured by Appellant Smt. Shalini Sharma against her husband Avdhesh Sharma and his family members. Even the child of 12 years age, named Ajay Kumar, has not been spared. He has been made accused in the complaint and thus, he was forced to face the entire trial before the Magistrate. As a result, he passed through an ordeal of making his surrender and getting him bailed out from the lower court. The learned Magistrate has rightly opined that on the basis of the evidence, as adduced by the complainant and her witnesses, No. case is made out for the offences of Sections 406/498-A Indian Penal Code or for Section 3/4 of Dowry Prohibition Act. The Appellant failed to show from her evidence that dowry was demanded, either before the marriage or at the time of solemnization of marriage or even thereafter.

7. As regards Stridhan, the learned Magistrate has rightly expressed his view that the gift items, which were presented by her father to the family of Avdhesh Sharma, cannot be said to be a Stridhan. So, he rightly found that the offence of Section 406 Indian Penal Code is also not made out against the applicants. The

impugned judgment discloses that a suit of restitution of conjugal rights was decreed against the Appellant Smt. Shalini Sharma, but she did not return to her in-laws house in compliance of that decree passed by the court.

8. In view of the above, this Court does not find any illegality in the judgment passed by the learned trial court. It has been rendered on the basis of the evidence, which has been rightly assessed and appreciated by the court below.

9. In the above circumstances, the appeal is devoid of merits and liable to be dismissed. Appeal is, accordingly, dismissed.

10. Lower court record be sent back.