

**(2010) 05 MP CK 0042**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Cr. Case No. 9469 of 2004**

Smt. Surekha Parmar and Another

APPELLANT

Vs

Dr. S.M. Mansuri and Others

RESPONDENT

**Date of Decision : 17-05-2010**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 179, 180, 181, 197, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 147, 294, 323, 34, 342

**Citation : (2010) 4 MPHT 373**

**Hon'ble Judges : Rakesh Chandra Mishra, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

## **Judgement**

R.C. Mishra, J.—These petitions, u/s 482 of the Code of Criminal Procedure (for short "the Code") are interrelated as arising from of the same case pending as Criminal Case No. 75/2005 before Chief Judicial Magistrate, Anuppur. In that case, which was initially registered as Criminal Case No. 232/2004 in the Court of JMFC Anuppur, cognizance of the offences punishable under Sections 147, 323, 504, 506-B and 342 of the IPC was taken upon a complaint made by the respondent No. 1 namely Dr. S.M. Mansuri (hereinafter referred to as "R1") against the petitioners in respect of the offences punishable under Sections 451, 323, 294, 506-B, 382, 395 and 504 of the IPC.

2. For the sake of convenience, the petitioners shall be referred to by their respective names only.

3. Background facts may be summarized thus:

(i) Marriage of petitioner Mehjabi Anjum was solemnized with Mushtaq Mansuri, son of R1 and resident of Anuppur, on 26-2-1997.

(ii) On 18-1-2000, Mehjabi submitted a written report containing allegations to the effect that her husband and his relatives had persistently subjected her to

cruelty and harassment due to non-fulfillment of demand for dowry and, therefore, she was compelled to reside with her parents at Jabalpur. Accordingly, a case under Sections 498-A and 506 read with Section 34 of the IPC and Section 3 read with Section 4 of the Dowry Prohibition Act, 1961, was registered as Crime No. 4/2000 against her husband Mushtaq Mansuri, his father R1, mother Sugratan Bi, brothers Mohd. Rasheed, Mohd. Latif and sister Nazma at Mahila Police Thana, Jabalpur.

(iii) On 6-7-2000, a police party led by petitioner Smt. Laxmi Kushwaha, the then SHO of Mahila Thana, Jabalpur and comprising of petitioners ASI Smt. Surekha Parmar, Head Constable Rohini Prasad, Constable Mohd. Aqeel Khan, Constable Pramod Sharma, Constable Meena Gusai, Constable Lakhan Singh and Constable Smt. Usha Gupta proceeded to Anuppur to arrest all the accused persons.

(iv) On 26-7-2000, R1 filed complaint against all the petitioners for the offences punishable under Sections 451, 323, 294, 506-B, 382 and 594 of the IPC. It contained the following averments:

(a) On 7-7-2000 at about 5.30 a.m., all the petitioners suddenly entered into his house located at Anuppur without any authority and petitioners, viz., Laxmi Kushwaha and Surekha Parmar started abusing and beating him with kicks and fists after dragging him out of his room by holding hair. In the meanwhile, the remaining petitioners also trespassed into other rooms and petitioners Rohini Prasad, Mohd. Shakeel and Pramod Sharma, forcibly brought Mohd. Mushtaq to his room and started beating him with kicks, fists and dandas. Sustaining injuries, Mushtaq fell down. At this point of time only, a gold chain, weighing 1 1/2 tola worn by Mushtaq, was snatched by Surekha Parmar. Petitioners Usha, Meena and Lakhan forcibly took Mohd. Rasheed and Mohd. Lateef, the younger brothers of Mohd. Mushtaq, out of the respective rooms, wherein they were sleeping wearing underwears and vests only, and brought both of them to his room and in doing so, the police personnel uttered filthy abuses and assaulted them. In a similar fashion, Laxmi and Surekha dragged Sugratan Bee and Nazma by holding their choties (hair interwoven in plaits) to his room. Thereafter, threatening to kill him by showing a pistol, Surekha and Laxmi had taken out a cash amount of Rs. 15,000/- and following Ornaments from his almirah:

(i) two gold necklaces weighing 3 tolas.

(ii) A pair of jhala

(iii) A gold chain weighing 2 tola

(iv) A silver kardhan (waistband) weighing 500 gms.

(b) Hurling filthy abuses and threats to kill petitioners Mehjabi Anjum, Firoz, Sadique, Waheed and Riyaz trespassed into room of Mohd. Mushtaq and had taken out a colour television. The ornaments were also handed over to them by Surekha who further asked them to leave the spot. Accordingly, they fled away with the stolen articles.

(c) At this point of time, Israel and Raju Tailor, members of the crowd that had gathered affront the house, asked the police officials to show authority to arrest R1 and his family members. In turn, Surekha Parmar threatened that the person asking for warrant would be shot dead. It was at her instance only that petitioners Rohini Prasad, Meena and Usha handcuffed R1 and his family members and made them to walk upto Police Station at Anuppur where they were detained in the lockup.

(d) Informing that all the arrested persons would be taken to Jabalpur, Surekha assured that they would not be beaten and services of a lawyer would be made available to them at Jabalpur in case a sum of Rs. 30,000/- was paid to her.

(e) By this time, local residents had arrived at the Police Station. Out of them, Radheshyam Agrawal, Bijendra Soni and Shashidhar Agrawal inquired about R1 and his family members. Surekha, in turn, also told them that if they could persuade R1 to give Rs. 30,000/- to her, she would not subject the arrested persons to torture otherwise she would get them implicated in other cases. In response, R1 disclosed that Surekha had already taken an amount of Rs. 15,000/- from his Almirah and he was left with no money. Being enraged, Surekha again took R1 and Mohd. Mushtaq out of the lockup and after handcuffing them, brought them back to their house where she asked Mohd. Mushtaq to hand over money along with all articles gifted to him in marriage. Upon his refusal, all the police officials again beat both of them with kicks and fists and made them march to Anuppur Police Station through the market.

(f) On the same night, all the petitioners brought R1 and his family members to Jabalpur where Subratan Bee and Nazma were detained at Mahila Police Station and other members of the family were locked up at Civil Lines Police Station.

(g) On 8-7-2000 at about 8 a.m., R1 and his sons were brought to Mahila Police Station and were beaten by Surekha and Laxmi by kicks, fists and stick. Surekha and Laxmi along with other police personnel of Jabalpur also threatened to shoot them dead. During custody, they were deprived of food, water and necessary amenities and were deliberately produced at 4.30 p.m. before the Court wherefrom they were remanded to Jail.

4. According to the petitioners, the criminal proceedings initiated against them are not only mala fide, but are also an abuse of the process of the Court. In order to substantiate the contention, they have invited attention to the following facts:

(i) Firoz Ahmad (petitioner No. 2 in M.Cr.C. No. 10147/09) is the real brother of Mehjabi Anjum and petitioner Nos. 3 and 5 namely Mohd. Sadique and Mohd. Riyaz are their cousin whereas petitioner No. 4 Abdul Waheed is one of her neighbours.

(ii) After obtaining permission of Additional S.P. (City) police force was deployed for arrest of the accused persons at Anuppur. Accordingly, under the leadership

of SHO, Laxmi Kushwaha, a team of police personnel comprising the other officials petitioners proceeded to Anuppur. However, at the time when they were effecting arrest, R1 and other in-laws of Mehjabi Anjum were able to gather a crowd for creating undue pressure for their immediate release and upon refusal to do so, the accused persons further instigated the mob to prevent the police personnel from arresting them. In such a situation, Surekha was left with no other option except to inform local police. Accordingly, a case under Sections 294, 506 and 353 read with Section 34 of the IPC was registered against the RI and his family members as Crime No. 206/2000 at P.S. Anuppur.

(iii) Against this background, the complaint was filed by R1 as a counter blast to registration of the abovementioned case against him and his family members. Mushtaq Mansuri, also filed a writ petition before this Court that was registered as W.P. No. 4478/01 wherein vide order dated 21-1-2002, direction was given to the department concerned to get inquiry conducted into the allegations made against Laxmi impleaded as respondent No. 4 in the writ petition.

(iv) Accordingly, an inquiry was conducted by Sanjeev Kumar Singh, DIG. In the inquiry report dated 26-12-2002 none of the allegations made against the police officials was found to be true. It was also observed that the accusations made by R1 regarding demand for illegal gratification for not putting handcuffs was also false in view of the fact that the police force had gone to Anuppur without taking handcuffs.

(v) R1 also made a complaint to M.P. Human Right Commission and the Commission called for report from S.P., Shahdol and S.P. Jabalpur. However, after being apprised of the order of the High Court directing inquiry by a high ranking official, no further action was taken by the commission.

(vi) The offence u/s 342, IPC would not be made out as R1 and his family members were arrested lawfully whereas cognizance of the offences punishable under Sections 323, 504 and 506 of the IPC is also based on false allegations apparently made with ulterior motive and malafide intention to wreak personal vengeance.

(vii) Cognizance of the offences could not be taken against the police officers and their companion officials in absence of sanction u/s 197 of the Code.

5. To buttress the contention that prosecution of the police officials -petitioners is not sustainable due to lack of sanction u/s 197 of the Code, learned Counsel for the petitioners has placed reliance on following decisions:

- (i) Rakesh Kumar Mishra Vs. The State of Bihar and Others,
- (ii) Anjani Kumar Vs. State of Bihar and Another,
- (iii) Surdarshan Kumar and Others Vs. Gangacharan Dubey and Another, and
- (iv) Raghav Chandra v. Tarvinder Kaur 2003 (5) MPLJ 229.

6. However, none of these cases relates to exercise of discretion beyond the territorial jurisdiction of the authority conferred on a public servant. In Rakesh Kumar Mishra (supra), it was pointed out that when the search of residential premises of the respondents was conducted by a police team on the basis of report received as to commission of dacoity, the provisions of Section 197 of the Code were applicable but apparently, it was a case of exercise of discretion to search a house located within the territorial jurisdiction of the police station. Further, in Anjani Kumar (supra), the complaint was filed against the Government official as a counter blast to action taken by him in his official capacity whereas in Surdarshan's case (supra), it was held that prosecution of police officers who had tied the body of a dangerous criminal with rope to a tower to prevent development of ugly law and order situation was not permissible in absence of sanction u/s 197 of the Code as the act in question was done under colour of discharge of duty and prosecution of Raghav Chandra (supra), was interfered with in view of the fact that he had ordered registration of criminal case against the husband of the respondent in the official capacity of Additional Collector and Executive Magistrate.

7. Apparently, the bar contained in Section 197 of the Code would not be attracted to the aforesaid facts and circumstances of the present case simply because the police officers had exceeded their authority in proceeding to arrest the accused persons at Anuppur which was not within the territorial jurisdiction of the Mahila Police Station of Jabalpur. They ought to have contacted the local police; apprised the local police officials of the matter and solicited their assistance in effecting arrest of the accused persons. For this, reference may be made to the following guidelines, as laid down in the Police Regulations:

M.P. Police Regulations:

717. Investigation outside jurisdiction.-

Even if the offence was undoubtedly committed within the area attached to another police station, the officer in-charge of the station to which the report is made can investigate the matter:

(a) if the alleged offence is dacoity, thugy or escape from custody, and the person charged is within the area of the police station at which information is given (Section 181, Criminal Procedure Code);

(b) if the alleged offence is theft, or any offence which includes theft or the possession of stolen property, and the thief or receiver has or had the property within the area of the police station at which the report was made (Section 181, Criminal Procedure Code);

(c) if the offender committed the alleged offence while on a journey, and he or the person or thing in respect of whom he committed it has travelled into or through the area of the station at which the report is made (Section 183, Criminal Procedure Code);

(d) under the circumstances detailed in Sections 179, 180 and the second clause of Section 181, Criminal Procedure Code.

719. Offence outside jurisdiction.- If information or other intelligence is received by an officer in charge of a police station of the commission of a cognizable offence which he manifestly has not jurisdiction to investigate, he shall record such information in the manner described in Section I of this Chapter, and shall:

(a) if the police station in which the offence may lawfully be investigated is in the same district, send a copy of the information to the officer in charge of the said police station; or

(b) if the police station in which the offence may lawfully be investigated is in another district, send a copy of the information to the Superintendent to whom he is subordinate for transmission to the officer in charge of the Police Station aforesaid.

Meanwhile, the officer in charge of the police station to whom such information or other intelligence was first given shall take, or cause to be taken, such lawful measures as may seem necessary to him for the detection of the offence and the arrest of the offender.

8. Although, in absence of the FIR leading to registration of Crime No. 4/2000 at Mahila P.S. Jabalpur and other documents forming part of the charge-sheet, even consideration on the point as to whether any part of cause of action had arisen at Jabalpur is not possible yet, it is well settled that arrest is an essential step for investigation. (See : H.N. Rishbud and Inder Singh Vs. The State of Delhi,

9. It is, therefore, evident that while granting permission to Surekha and Laxmi for effecting arrest of R1 and other accused persons at Anuppur, the Additional Superintendent of Police completely lost sight of the abovementioned guidelines. The exculpatory report of DIG also reflects complete ignorance of the relevant regulations as quoted above. Further, even if the requisite permission of a superior police official was obtained to investigate into the matter at Anuppur, the local police officers ought to have been taken into confidence before going to arrest the R1 and his family members. It is relevant to note that none of the police officials posted Anuppur has been arraigned as an accused in the complaint.

10. This apart, as explained by the Supreme Court in Prakash Singh Badal v. State of Punjab AIR 2007 SCC 1274, the question as to necessity of the sanction u/s 197 of the Code need not be considered as soon as the charge- sheet/ complaint is filed.

11. For these reasons, it is not possible to conclude that the allegations made in the complaint even if taken at their face value and accepted in their entirety, would not constitute any offence against the petitioners. Moreover, the conclusion that Section 197 is a bar to the prosecution of the petitioners police officers would be a premature conclusion.

12. The ambit and scope of this Court's jurisdiction in quashing a complaint is confined to examination of the allegations made therein and the documents referred to without going into merits of the allegations made therein. The acid test is whether any offence would be made out against the petitioner if the allegations are taken at their face value and accepted in its entirety. For this, reference may be made to the guidelines laid down by the Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, . Further, the inherent powers, u/s 482 of the Code, are to be exercised ex debito justitiae to prevent abuse of the process of Court but not to stifle a legitimate prosecution, when the issue involved, whether factual or legal, cannot be decided without sufficient material [ Minu Kumari and Another Vs. The State of Bihar and Others, referred to].

13. To conclude, no case for interference under inherent powers is made out.

14. Consequently, all the petitions are hereby dismissed. However, nothing contained herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the petitioners to raise all such pleas as are available under law.

15. Copy of this order be retained in the connected M.Cr.Cs.