

(2007) 03 JH CK 0013
In the Jharkhand High Court

Sujeet Nishad and Another	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 202, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2007) 2 JCR 273

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The petitioner in this application has prayed for quashing the order of cognizance dated 11.2.2005 passed in CP Case No. 1495 of 2004 for offences under Sections 498A, IPC read with Section 4 of the Dowry Prohibition Act, passed by the learned Sub-divisional Judicial Magistrate, Dhanbad, and also for quashing the entire proceedings in respect of the above mentioned case.

2. The facts of the case, briefly stated, is that Manisha Devi, opposite party No. 3/ complainant, had filed a complaint before the CJM, Dhanbad which was registered as CP No. 1495 of 2004. The petitioner No. 1 happens to be the husband of the opposite party No. 3 whereas petitioner No. 2 happens to be a niece of the petitioner No. 1. It is alleged in the complaint that her marriage with the petitioner No, 1 was solemnized on 21.5.2004 according to Hindu rites and customs and a sum of Rs. 1,05,000/- was given besides gold ornaments, utensils and clothes was given by her parents at the time of marriage. After marriage, the complainant went to her matrimonial house, but soon thereafter a demand of rupees forty thousand was made by the husband and other family members by way of further demand for dowry. The demand not being fulfilled, the petitioners inflicted ill treatment torture and neglect at the hands of the husband and inlaws. The complainant informed her parents narrating her woes. Her parents visited her matrimonial house to plead with the co-accused, but instead, they insisted on payment of the sum demanded for the purpose of development of their

business. It is further alleged the husband of the complainant i.e. petitioner No. 1 had developed extra marital relationship with accused No. 5 namely petitioner No. 2 and they were also found in objectionable condition by the complainant and when objected to, the accused persons had inflicted further physical tortures on her.

3. The case on being transferred by the CJM to the Court of the SDJM, Dhanbad, an inquiry u/s 202, Cr PC was conducted by the transferee Court in course of which the statement of the complainant on solemn affirmation was recorded and by the order impugned, the transferee Court recorded its finding that a prima facie case for an offence u/s 498A of the Indian Penal Code, and Section 4 of the Dowry Prohibition Act is made out from the allegations and the statement of the witnesses and therefore, It directed to issue summons directing accused persons to appear and face trial.

4. The petitioners have assailed the impugned order contending that the same is an order taking cognizance and has been passed without application of Judicial mind and without considering the fact that the allegations are wild, vague and totally unbelievable. Cognizance of offence u/s 4 of the Dowry Prohibition Act has been assailed on the ground that no previous sanction for prosecution was obtained and therefore the cognizance of the aforesaid offence was bad in law.

5. Elaborating his arguments, learned Counsel submits that even according to the complainant no money was ever demanded by way of dowry, since alleged demand of rupees forty thousand was not a consideration for the marriage of the petitioner No. 1 with the complainant. Rather, it was for the propose of financing the business of the petitioner No. 1.

6. Learned Counsel further adds that the alleged payment of rupees one lakh and five thousand was made voluntarily by the complainant's father admittedly for a happy and prosperous conjugal life of the complainant with her husband and as such, it is apparent that the accused persons had never made any such demand for money by way of dowry either from the complainant or from her father.

7. As regards allegation of extra marital relationship between the petitioner Nos. 1 and 2, learned Counsel submits that the allegation, even as conceived by the complainant, is preposterous and unbelievable as the petitioner No. 2 is the own niece of petitioner No. 1 and the relation being sacred and pious between them, it cannot be believed that any incestuous relationship existed between them. Learned Counsel adds further that the complainant has suppressed the fact that the petitioner No. 2 was married and living at her own matrimonial house much prior to the date of the marriage of the complainant with the petitioner No. 1. Learned Counsel argues further that the allegation in the complaint petition amply demonstrates that it was filed with mala fide intention and with an ulterior motive for wreaking vengeance for private and personal grudge. Invoking the inherent jurisdiction of this Court u/s 482, Cr PC, learned Counsel submits that the powers needs to be exercised to prevent abuse of the process of the Court.

Learned Counsel relies in support of his contention on the judgment of this Court in the case of R.S. Raghunath Vs. State of Karnataka and another, , and also in the case of Tilak Bedia v. State of Bihar 2003 (3) JLJR 245. Learned Counsel further argues that the allegations are totally vague and unspecific, since no particular date in respect of the alleged act of cruelty on which the accused indulged in the act of cruelty has been stated. Learned Counsel further submits that the alleged date of occurrence, 22/23.4.2004, in respect of the offence u/s 498A is also absurd since admittedly, the date of marriage of the petitioner No. 1 is 21.5.2004 and there is no allegation that the complainant was subjected to ill treatment or cruelty even prior to the date of her marriage.

8. Learned Counsel for the opposite party No. 3 as also for the respondent State submit that the instant application is totally misconceived and in fact the order dated 11.2.2005 cannot be said to be order of cognizance since cognizance was already taken by the Chief Judicial Magistrate at the time when the case was transferred u/s 192, Cr PC to the Court of SDJM for inquiry and disposal. Learned Counsel explains that the order dated 11.2.2005 is a formal order containing satisfaction of the trial Court that on the basis of the allegation in the complaint petition as also the statement of the witnesses recorded on solemn affirmation, a prima facie case has been made out for proceeding against the accused petitioners. Learned Counsel for the opposite party No. 3 explains that undisputedly the co-accused persons had received Rs. 1.05 lakhs in cash and such payment was made by the complainant's father as consideration for marriage prior to the actual date of marriage. Learned Counsel adds that even if the demand for additional sum of rupees forty thousand was made for the purpose of business. Yet, the conduct of the accused persons by which they had mentally and physically inflicted cruelty on the complainant, is of relevance and this aspect has been, considered and it has been considered by the Court below to proceed against the accused persons for offence u/s 498A, IPC, Learned Counsel however concedes that no prior sanction was obtained for prosecution of the accused persons for the offence u/s 4 of the Dowry Prohibition Act, though the issue can be considered by the trial Court at a subsequent stage and not necessarily at the time of taking cognizance. On the basis of the above submissions, learned Counsel contends that there is no illegality or impropriety in the order dated 11.2.2005 passed by the trial Court and neither is there any illegality in the initial order of cognizance taken by the CJM and therefore there is no valid and reasonable ground, for invoking the inherent jurisdiction of this Court for the purpose of quashing the entire proceedings pending against the petitioners.

9. On the question of maintainability of the application, learned Counsel for the petitioners submits that even if the order impugned does not conform strictly to the definition of cognizance but the fact remains that the cognizance of offence both u/s 498A, IPC and Section 4 of the Dowry Prohibition Act was taken by the Court below and pursuant to the said order, proceeding was initiated and the petitioners are sought to be prosecuted by issuance of summons against them

and that the order of cognizance as well as issuance of summons being opposed to the principles of law, the inherent jurisdiction of this Court u/s 482, Cr PC can very well be exercised.

10. It is a settled principle of law that Section 482, Cr PC is intended basically to prevent abuse of process of the Court and to otherwise secure ends of justice and depending upon the facts of the case, the criminal proceedings can definitely be quashed.

11. In the case of R.P. Kapur Vs. The State of Punjab, , the Apex Court had summarized three categories of cases where inherent power can be and should be exercised to quash the proceedings ;

(i) Where it manifestly appears that there is legal bar against institution or continuation for want of sanction.

(ii) Where allegations in the FIR or complaint taken at face value and accepted in entirety do not constitute offence alleged;

(iii) Where the allegation constitute offence but there is no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge;

12. In the case of Haryana v. Bhajanlal (supra), the Apex Court had formulated some more categories which includes the following:

(a) Where allegations made in the FIR or complaint are so absurd and inherently improper on the basis of which no prudent person can over-ride a just conclusion that there is sufficient ground for proceeding against the accused;

(b) Where the criminal proceeding is manifestly tainted with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge;

13. Applying the aforesaid guidelines to the case in hand, it appears from the allegations in the complaint which finds support from the complainant's statement recorded on solemn affirmation and support from the statement of her witnesses that within a few months after marriage, the complainant began to suffer ill treatment, neglect and cruelty at the hands of her husband (petitioner No. 1} and other members of the matrimonial family. Such ill treatment was on account of non-fulfilment of their demand for a sum of rupees forty thousand.

14. The complainant has asserted that several acts of cruelty used to be inflicted upon her, both mentally and physically and persistently during the period of her sojourn at her matrimonial house. The allegation of extra marital relation of the petitioner No. 1 with petitioner No. 2 has been brought to notice apparently to indicate that the complainant by such act of her husband was subjected to mental cruelty.

15. As to whether the demand for rupees forty thousand or receipt of sum of

rupees one lakh and five thousand from the complainant was by way of dowry or not, is not strictly relevant for the purpose of considering as to the existence of prima facie case for offence u/s 498A, IPC.

Section 498A IPC reads as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty : Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation : For the purpose of this Section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

16. The explanation to the aforesaid section defines cruelty which means any harassment of a woman with a view to coercing her or any person related to her to meet any unlawful demand for property or valuable security or is on account of failure by her or any person to meet such demand which includes any wilful conduct which is of such a nature as to cause grave injury or danger to life, limb or health (mental and physical) of the woman.

17. As regards probability and credibility of the allegation of an incestuous relation levelled by the complainant against the petitioners, it is a matter of finding to be recorded by the Trial Court.

18. From the order impugned as also from the initial order by which cognizance of offence was taken by the Court below against the petitioners and the co-accused persons, it appears that the order is elaborate, qualified by reasons and the Court below having expressed its satisfaction that prima facie exists for proceeding against the accused persons. It is not a case where the allegation when taken in its entirety do not constitute any offence at all.

19. As regards propriety of the order of cognizance of offence u/s 4 of the Dowry Prohibition Act in absence of sanction for prosecution the same may be agitated at the appropriate stage subsequently, and even if the order of cognizance is subsequently found bad, the proceeding can still be continued in view of the fact that cognizance of offence u/s 498A, IPC was also taken.

20. However, on reading the allegations in the complaint and the statement of the complainant it is apparent that the allegations of cruelty levelled are entirely against the petitioner No. 1, namely the husband of the complainant and not against petitioner No. 2, who has been referred merely as the person with whom

the petitioner No. 1 was allegedly maintaining extra marital relations. The learned Magistrate while directing issuance of summons upon the accused persons has not adverted to this aspect of the case and has wrongly proceeded against petitioner No. 2, In absence of any material to proceed against her, subjecting the petitioner No. 2 to face the rigors of a criminal trial would amount to perpetrating injustice to her. As such, the proceeding against petitioner No. 2, Pinki Devi vide C.P. Case No. 1495 of 2004 pending in the Court of the Sub-divisional Judicial Magistrate, Dhanbad, is hereby quashed. The proceeding as against petitioner No. 1 namely Sujeet Nishad shall however continue.

21. The grounds advanced by the petitioner do not merit any interference with the impugned order for quashing the criminal proceedings initiated against the petitioner No. 1.

22. This application is disposed of accordingly. Appeal disposed of.