(2009) 02 DEL CK 0307

In the Delhi High Court

Case No : Criminal M.C. 1808 of 2008 and Criminal M.A. 6587 and 6589 of 2008

Sumati — APPELLANT

Vs

Sarla Puri — RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 380, 406, 420, 498A

Citation : (2009) 02 DEL CK 0307

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Pawan Kumar, for the Appellant; G.D. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—This is a petition u/s 482 of the Code of Criminal Procedure 1973 (''CrPC'') seeking the setting aside of an order dated 29th June 2007 passed by the learned Additional Sessions Judge (''ASJ''), Delhi in Criminal (R) No. 2 of 2006 whereby the order dated 4th July 2007 passed by the learned Metropolitan Magistrate (''MM''), Delhi dismissing the criminal complaint of the respondent was reversed.

2. The facts leading of the filing of the present petition are that the marriage between the Petitioner and son of the Respondent was solemnized on 11th March 1999. Consequent upon disputes between the parties that arose soon thereafter, the father of the Petitioner filed a complaint against the Respondent and her family members on 24th Jun 1999 in the Crime Against Women (''CAW'') Cell Nanakpura. Ultimately an FIR No. 518 of 2000 under Sections 498-A/406/34 IPC came to be registered at Police Station Shalimar Bagh against the Respondent and her family members.

3. It is stated by learned Counsel for the Petitioner that as a counterblast to the filing of the aforementioned criminal proceeding, the Respondent filed a criminal

complaint under Sections 380/420/34 IPC on 7th October 2005 against the Petitioner, wherein she alleged that the Petitioner on 1st April 1999, while leaving her matrimonial home, had taken the jewellery given to her in the dowry and ''wari'' to her parental house. It was further alleged by the Respondent that the Petitioner also took away a box containing the jewellery of the respondent and certain jewellery of her son which were gifted to him by his grand mother. In para 7 of the complaint it was alleged that the Respondent''s son Rajeev Puri had a dialogue with the mother of the Petitioner in which she is alleged to have admitted that the Petitioner had taken away the box containing the jewellery of the Respondent. It is stated that the Petitioner had kept the matter lingering by promising that the jewellery would be returned. Thereafter the respondent was constrained to file the aforementioned complaint.

4. By an order dated 2nd March 2006 the learned MM, after going through the complaint as well as the pre-summoning evidence adduced by the Respondent, concluded that ingredients of Section 380/420 IPC were not even prima facie made out and accordingly dismissed the complaint.

5. Aggrieved by the dismissal of the complaint the Respondent filed Criminal (R) No. 2 of 2006 to the court of the learned ASJ. By the impugned order dated 29th June 2007 the learned ASJ reversed the order dated 2nd March 2006 passed by the learned MM with a direction to the learned MM to issue summons to the Petitioner to face trial u/s 380 IPC and proceed further with the complaint in accordance with law.

6. Learned Counsel for the Petitioner submits that the impugned order is unsustainable in law because when the complaint is read as a whole not even a prima facie case u/s 380 IPC is made out against the Petitioner. He submits that DD No. 9A dated 2nd July 1999 recorded by the police at the instance of the husband of the petitioner with the Police Station Model Town, Delhi only mentions that the Petitioner left the matrimonial home. It does not allege that the petitioner committed theft of the jewellery of the Respondent. No such allegation has been made in the divorce petition filed subsequently by the petitioner''s husband. Likewise, no such allegation was made in the application for anticipatory bail filed by the Respondent accused. It is submitted that the filing of the aforementioned criminal complaint six and a half years after the Petitioner left the matrimonial home was malafide and purely as a counterblast to the criminal proceedings instituted by the Petitioner against the Respondent and her family members.

7. On behalf of the Respondent it is contended that in the complaint there was an explanation for the delay in filing the complaint to the effect that the parties were expecting an amicable settlement of all the disputes and therefore, the complaint could not be filed earlier. Counsel for the Respondent submits that the pre-summoning evidence would show that there were taped conversations between the parties which would support the allegations in the complaint. Reliance is also placed upon the judgments of the Gujarat High Court in Arvind

Mills Limited v. State of Gujarat 2003 (2) AI CriLR 88 to urge that the mere delay in filing the complaint cannot be a ground for its quashing.

8. Having considered the respective submissions of learned Counsel for the parties, this Court is of the view that the Petitioner should succeed. It is not in dispute that the Petitioner and the son of the Respondent hardly lived together for 20 days after the marriage which took place on 11th March 1999. It is also seen that prior to the filing of the criminal complaint in question on 7th October 2005 (which appears to have been presented in the Court on 15th October 2005 and made over to the learned MM on 22nd October 2005 at 2.00 pm), there was no such allegation made in any of the proceedings between the parties.

9. In the entire complaint the only explanation for the delay is in para 12 where it is stated as under:

12. That the accused persons further kept on lingering on the matter by flowery promises and assurances that the ornaments/jewellery taken away by the accused No. 1 would be returned and sometime saying that they were lying in safe custody in the bank locker meaning thereby that they were lying intact and would be returned and thus kept on the complainant in illusion of an amicable settlement but the later conduct of the accused persons clearly showed that it was simply a time gaining device and the accused had no intention to settle the matter but were looking for an opportune time to involve and implicate the complainant and her family members like a cat set in the cage of pigeons and it is unfortunate that premonitions over took the complainant and her family members and they had to undergo unnecessary harassment and humiliation for their simplicity. It was because of the legal jockeying played by the accused persons that necessary legal action could not be taken by the complainant then and there and a long rope had been given to the accused little knowing that the accused would steel a march by way of registration of a false case later on.

10. In the considered view of this Court the aforementioned explanation for not filing the complaint for as long as six and half years after the parties began living separately is unacceptable and unconvincing. Entertaining the complaint of theft by the daughter-in-law six and half years after she has left the matrimonial home would in the circumstances constitute an abuse process of law.

11. The learned ASJ has, while reversing the order dated 2nd March 2006 of the learned MM dismissing the complaint, observed as under:

From the perusal of the trial court record, it is reflected that the complainant in support of her complaint have got examined herself as CW-1 and her son Rajeev Puri as CW-2 during the course of pre-summoning evidence. From the perusal of the same and the relevant material as available on the trial court record and taking the cue from the aforesaid judgment, I am of the considered view that the complainant has been successful in bringing on record prima facie material for offence punishable u/s 380 IPC only against Smt. Sumti, who has been arrayed as accused No. 1 in the original complaint and no material for any offence for summoning accused No. 2 Smt. Karuna Sethi and accused No. 3 Subhash Chander Sethi are found available on the case record.

12. In the considered view of this Court the aforementioned reasoning of the learned ASJ is unconvincing. The pre-summoning evidence which is placed on record does not offer a valid explanation for the inordinate delay of six and half years after the alleged date of theft in filing the complaint. The complaint was, in the circumstances, an abuse of the process of law. There is also merit in the contention that the complaint was in retaliation to the FIR registered against the respondent and her family members at the instance of the petitioner. These factors appear to have not been appreciated by the learned ASJ.

13. Learned Counsel for the respondent referred the various portions of the transcript of the alleged taped conversations between the mother of the Petitioner and the son of the Respondent in which allegedly she has admitted that the Petitioner has taken away the jewellery. Even this does not appear to be correct. From the transcript of one of these conversations it appears that the mother of the Petitioner has asserted that the jewellery items belong to the Petitioner. In the background of the case, as noticed hereinbefore, not even a prima facie case can be said to be made out in the complaint for summoning the petitioner u/s 380 IPC. It is held that the learned ASJ erred in concluding to the contrary.

14. The impugned order dated 29th June 2007 passed by the learned ASJ in Criminal (R) No. 2 of 2006 is accordingly set aside and the order dated 2nd March 2006 passed by the learned MM dismissing Complaint Case No. 870/1/05 is restored.

15. The petition is accordingly allowed with no order as to costs. The pending applications are disposed of.