

(2015) 07 JH CK 0067

In the Jharkhand High Court

Case No : Criminal M.P. No. 2255 of 2001

Surendra Mohan Prasad and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 227, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 34

Citation : (2015) 3 JLJR 324

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Abhay Kumar Chaturvedi, for the Appellant; Pankaj Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J—Heard Mr. Abhay Kumar Chaturvedi, learned counsel for the petitioners and Mr. Pankaj Kumar, learned counsel for the State. No one appears on behalf of O.P. No. 2. In this application, the petitioners have prayed for quashing the entire criminal proceedings in connection with Complaint Case No. C-210/2000 including the order dated 3.10.2000, passed by Shri Mahendra Pratap Singh, learned Chief Judicial Magistrate, Chatra, by which cognizance has been taken for the offence under Sections 147, 148, 149, 323, 379, 451, 452 and 504 of the Indian Penal Code.

2. The prosecution story, as would appear from the complaint petition instituted by the complainant-opposite party No. 2 herein, is that the complainant was married with Anita Kumari (petitioner No. 3), on 11.5.1999. It is alleged that on 23.5.1999, the accused Nos. 1 and 3 along with some unknown persons forcibly took away accused No. 4 without taking permission of the complainant and they had also taken away ornaments, cloths and other articles, worth Rs. 40,000/-. It is alleged that the complainant on several occasion tried to get the Bidai of his

wife but she disagreed and since the accused persons had threatened the complainant, a Sanha was lodged by the complainant. It has also been alleged that on 2.9.2000, the accused persons along with some other persons came to the house of the complainant and directed him to withdraw the Sanha and when he refused, the complainant and his father were assaulted and threatened on the point of pistol.

3. After conducting enquiry under Section 202 Cr.P.C. and after examining the complainant on solemn affirmation and his witnesses, cognizance was taken for the offence under Sections 147, 148, 149, 323, 379, 451, 452 and 504 of the Indian Penal Code vide order dated 3.10.2000.

4. Learned counsel for the petitioners has submitted that petitioner No. 1 is the father-in-law of the complainant, petitioner No. 2 is the brother-in-law of the complainant, the petitioner No. 3 is the wife of the complainant and petitioner No. 4 is the mother-in-law of the complainant and only with a view to harass and humiliate his in-laws, the complainant had filed the complaint case making bald allegations against his in-laws. He has further submitted that the complaint petition does not reveal any criminal offence as against the petitioners. He has also submitted that the petitioner No. 3, who is the wife of the complainant, had lodged a case under Sections 498-A, 323/34, 452 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act and that the complainant-opposite party No. 2 herein was convicted, which was also affirmed in appeal. He has further submitted that to create a defence in the case under Section 498-A of the Indian Penal Code, the opposite party No. 2 being the husband of petitioner No. 3, has lodged this present case.

5. Learned counsel for the State, on the other hand, has submitted that the complaint case instituted by the opposite party No. 2 was prior to the case instituted by the petitioner No. 3 against the complainant and her in-laws and, therefore, it cannot said to be a case instituted for wreaking vengeance upon the accused persons.

6. After hearing learned counsel for the parties and after going through the records, I find that immediately after solemnization of marriage on 11.5.1999, the present complaint case has been instituted within a year and half i.e. on 4.9.2000. The contents of the complaint petition reveals that all the in-laws of the complainant including his wife have been made accused and the strained relationship which the complainant was sharing with the petitioner No. 3 is evident from the fact that the petitioner No. 3 had also lodged a criminal case under various provisions of Indian Penal Code including Section 498-A as also the provisions under the Dowry Prohibition Act, in which the complainant-O.P. No. 2 was convicted, which was subsequently affirmed in appeal. The animosity and sour relationship of both the sides are evident by the case and counter case lodged by either of the sides. In the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , one

of the guidelines which enumerated, when inherent power under Section 482 Cr.P.C. can be invoked, is quoted hereunder:--

"Where a criminal proceeding is manifestly attended 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."

7. In the case of State of Karnataka Vs. L. Muniswamy and Others, AIR 1977 SC 1489 : (1977) CriLJ 1125 : (1977) 2 SCC 699 : (1977) 3 SCR 113 , observations were made with respect to the powers of the High Court under Section 482 of Cr.P.C., which is as follows:--

"7. The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:--

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

This section is contained in Chapter 18 called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:--

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

In the exercise of this wholesome power, the High Court is entitled to quash a

proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

8. In the case of *Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others*, AIR 2008 SC 251 : (2007) 5 CTC 614 : (2007) 11 JT 499 : (2007) 12 SCALE 15 : (2007) 10 SCR 847 : (2007) AIRSCW 6659 , it was observed that the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

9. The allegations levelled against the petitioners clearly arise out of the animosity, which were prevalent between both sides leading to marital discord and apparently the complainant-opposite party No. 2 with an ulterior motive had initiated the prosecution, which in the facts and circumstances of the case can be treated to be a malicious prosecution with a view to wreak vengeance upon his in-laws. Even otherwise, the conviction of the complainant-opposite party No. 2 under Section 498-A of the Indian Penal Code and under Section 3/4 of Dowry Prohibition Act and its subsequent confirmation in appeal leads credence to the fact that it was the complainant-opposite party No. 2, who had tortured his wife (petitioner No. 3) on account of non-fulfillment of dowry and considering the scenario, as enumerated by the complainant-opposite party No. 2 in his complaint petition in the backdrop of his conviction would ultimately lead the Court to conclude that the same is apparently a case of malicious prosecution to harass and prosecute the petitioners and continuation of the same against the petitioners would be an abuse of the process of the court. In view of the discussions made, hereinabove. I do find merit in this application. This application is, accordingly, allowed. The entire criminal proceedings in connection with Complaint Case No. C-210/2000 including the order dated 3.10.2000, passed by Shri Mahendra Pratap Singh, learned Chief Judicial Magistrate, Chatra, by which cognizance has been taken for the offence under Sections 147, 148, 149, 323, 379, 451, 452 and 504 of the Indian Penal Code, are hereby quashed.