
(2003) 04 JH CK 0056
In the Jharkhand High Court
Case No : Criminal Revision No. 70 of 2003

Sushil Kumar Dubey and Others	Vs	APPELLANT
The State of Jharkhand and Another		RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 34, 498A

Citation : (2003) 2 BLJR 1243 : (2003) 2 DMC 706

Hon'ble Judges : Deoki Nandan Prasad, J

Bench : Single Bench

Advocate : Krishna Murari, for the Appellant; Additional Public Prosecutor and H.K. Jha, for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This Criminal Revision application is directed against the order dated 4-1-2003 passed by the Sub-Divisional Judicial Magistrate, Dhanabad by which the learned Magistrate rejected the application filed by the petitioners u/s 239 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for discharge in connection with Sindri P.S. Case No. 44 of 2001 corresponding to G.R. No. 1890 of 2001 registered under Sections 498A, 323/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

2. The brief facts of the prosecution case as stated that the marriage of petitioner No. 1 (Sushil Kumar Dubey) was solemnized with opposite party No. 2 (Kiran Dubey) on 25-1-1998 and after marriage, opposite party No. 2 went to her Sasural and stayed therefore one month. Thereafter, the accused persons started torturing her because of non-fulfilment of demand of dowry as they were demanding more money and also they were demanding one Computer and Motorcycle which could not be fulfilled and, therefore, they were torturing her. Later on they were also demanding the price money of Computer and

Motorcycle. The accused-persons put a condition that unless the said money is paid, opposite party No. 2 complainant would not be kept in the house. It is further alleged that on 6-6-1998, the father of opposite party No. 2 complainant paid a sum of Rs. 40,000/- and thereafter, she remained peacefully for sometime. But again they started demanding a sum of Rs. 50,000/- which could not be paid and the accused-persons again started torturing and assaulting her. Accordingly, a written report was submitted to the police resulting registration of a case under Sections 323, 498A and 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. The police investigated into the case and submitted charge-sheet against the accused-persons petitioners.

3. The accused-persons appeared in the Court below and filed a petition u/s 239 of the Code for discharge. After hearing both sides, the learned Court below rejected the petition filed by the accused-persons by order impugned, hence this revision application.

4. Mr. Krishna Murari, learned Counsel appearing on behalf of the petitioners submitted that the learned Court below committed error in rejecting the prayer of discharge as no case as alleged in made out. It is further submitted that actually petitioner No. 1 had already filed a divorce suit against opposite party No. 2. However, the said Title (Matrimonial) Suit No. 54 of 2001 was withdrawn when both the parties entered into a compromise by order dated 10-9-2001 as both the parties have filed a compromise petition before the Court below which will be evident from Annexure-4. It is further argued that petitioner No. 1 later on filed a Title (Matrimonial) Suit No. 255 of 2001 for restitution of conjugal rights when opposite party No. 2 complainant failed to live with petitioner No. 1 and started imposing several conditions for coming to her Sasural which will be apparent from the written statement filed by Kiran Dubey (Opposite Party No. 2) vide Annexure 7/2 and actually opposite party No. 2 complainant desires that petitioner No. 1 may live in her house as Ghar Damad. Learned Counsel relied upon a case of Dilawar Balu Kurane Vs. State of Maharashtra, It is argued further that while considering the question of framing charge, the Court has to weigh the evidence for finding whether or not a prima facie case against the accused has been made out but the Court below failed to weigh the evidence collected in the instant case and so, there is no material for framing charge against the petitioners.

5. On the other hand, Mr. H.K. Jha, learned Counsel appearing on behalf of opposite party No. 2 contended before me that there is no illegality in the order impugned as the Court below rightly passed the order and rejected the prayer of discharge. It is further submitted that there is sufficient evidence collected during investigation against the petitioners for framing charge and Annexure-A to the counter-affidavit filed by opposite party No. 2 being a personal bond executed by petitioner No. 1 husband will clearly prove allegations as made out in the complaint case as petitioner No. 1 (Sushil Kumar Dubey) about the admission of the offences being committed by him and the said bond was filed by the

petitioners at the time of granting bail. He unequivocally admitted to have committed the offences alongwith others and the allegations as set out in the case registered under Sections 498A, 323/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act are true.

6. On perusal of the impugned order, it is apparent that the Court below considered all the materials available on the records. It is also an admitted position that both the parties are disputing from before there is specific and direct allegation made in the Indian Penal Code about the demand of dowry and also torturing at different point of times. The bond which is an admitted document executed by the husband/petitioner No. 1 (Sushil Kumar Dubey) goes to prove the admission of offences committed by him. Thus, at this stage, there appears sufficient materials against the accused persons for framing charge. It is well settled that charge can even be framed on the material on record capable of inferring strong suspicion about the commission of the offence. Prima facie case has already been made out for framing charge.

7. In this view of the matter, I find that the Court below has rightly passed the order, which does not require for interference.

8. In the result, this application is dismissed.