

(2019) 10 J&K CK 0039

In the Jammu And Kashmir High Court

Case No : CRM (M) No. 566 Of 2019, CrIM No. 1345 Of 2019

Tamandeep Singh And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Another

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 323, 498A, 504, 506
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2019) 10 J&K CK 0039

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Mandeep Reen, Supreet Singh Johal, Karman Singh Johal

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. The petitioner by way of present Criminal Miscellaneous Petition filed under Section 561-A of Cr.P.C seeks for setting aside the order dated 28.08.2019 passed by Learned Additional Sessions Judge, Jammu in Case No. 79/921/2019 titled "Harneet Kour v. S. Tamandeep Singh and Ors" whereby the order dated 29.01.2019, passed by learned Judicial Magistrate First Class (Munsiff) Jammu discharging the petitioners herein from the offences mentioned in the Challan against them by the prosecution was set aside.

2. Heard and considered the rival contentions of learned counsel on respective side. I have carefully gone through the record called from the court of Munsiff (JMIF), Jammu and also perused the file.

3. It has been averred by learned counsel for the petitioners that the petitioners are innocent persons and have been falsely implicated in the FIR by private respondent to satisfy her own vendetta. She contends that the material collected

by the prosecution during investigation does not support the prosecution case in framing of charges under Sections 498-A, 323, 504, 506, 109 R.P.C. She further submits that the order impugned has been passed by the revision court without appreciating even the fact that the petitioners No. 3 and 4 are not related to the husband of the private respondent to constitute the offence under Section 498-A R.P.C.

4. Per contra, learned counsel for the private respondent has defended the order passed by the revision court. He has contended that learned Trial Magistrate could not have sifted the evidence placed before it or appreciated the evidence intrinsically at the stage of framing of charge, which was to be considered finally. He further submits that allegations in FIR and statements recorded under Section 161 of Cr.P.C prima facie established the offences with which the petitioners are challaned and were required to be put on trial by framing the charge against them. He further contends that order of learned Magistrate shows non application of mind as it has observed that offence under Section 498-A cannot be made out unless the cruelty meted out to the victim by husband or his relatives is in connection with dowry and not otherwise.

5. In order to appreciate the rival contentions it would be necessary to advert to the facts leading to filing of the FIR. The allegations leveled by the private respondent in FIR against the petitioners are that after a few time of marriage between the private respondent and petitioner no.1, the petitioner no. 1 after taking excessive liquor started committing physical assaults and other cruel treatment on complainant for bringing less dowry as per his expectations. The private respondent in this regard also filed an application for registration of FIR before Police Post, Beli Charana, Jammu, however, same was not pursued further as the petitioner no. 1 undertook that he will not commit any cruelty in future. However, the behavior of the petitioner no. 1 towards private respondent was not changed and he again started hurling the filthy abuses and taunting her for not bringing sufficient dowry and started pressuring her to give him divorce. On 04.09.2018, all the petitioners are alleged to have beaten the private respondent with fist, kick and blow and have taken forcibly the custody of her minor daughter. On the same day, all the petitioners criminally trespassed into the matrimonial house of the private respondent and defamed, assaulted and beat the complainant with fist and blows when she was standing in her house which caused injuries on her body. It is also alleged that petitioners outraged the modesty of the private respondent by tearing her wearing shirt and attempted to intrude upon the privacy of the complainant. Upon receiving the aforesaid written allegations, the FIR No. 148/2018 under Sections 498-A/504/109/323/506 RPC came to be registered against the petitioners-accused in Police Station, Satwari, Jammu.

6. Perusal of challan filed after the completion investigation shows that statements of nine witnesses have been recorded under Section 161 Cr.P.C corroborates the allegations leveled against the petitioners in FIR.

7. From the perusal of record of trial Magistrate, it appears that learned Magistrate has appreciated the evidence including medical report of injuries sustained by the private respondent as if she was considering the case either to convict or acquit the accused. The learned Magistrate has observed that petitioner no. 3 and 4 are not related to the husband of the private respondent, therefore, the offence under Section 498-A R.P.C is not made out against them, which was required to be proved/disproved by leading evidence and not a mere prima facie, more so, when the private respondent has specifically mentioned the petitioner No. 3 to be the cousin of her husband petitioner No. 4 his wife. The learned Magistrate further has discharged the petitioner from all the offences without even discussing the ingredients of sections other than 498A like 323/504/506 R.P.C to satisfy itself whether the prosecution has prima facie case for proceeding with the trial or not. The learned Magistrate has not even discussed or appreciated all the statements of witnesses recorded under section 161 Cr.P.C which corroborates the allegations leveled by the private respondent and has only attempted to find loopholes and contradictions in medical report that the scars and injuries were old and not fresh, whereas, the incident of 04.08.2018 appears to be corroborated by witnesses.

8. At the time of framing charge, the court has to consider the final investigation report, statement of witnesses under Section 161 Cr.P.C, documents and other evidence adduced by the prosecution and if he sees that allegations are groundless and no case has been made out against the accused, that is, if unrebutted it would not warrant a conviction, he will discharge the accused, however, if he finds there are even probable chances of commission of offence by accused persons he would frame the charge. All this has to be done by prima facie appreciation of material on record and not by roving enquiry by scanning and evaluating the evidence as if court has to find whether the accused has committed the offence or not. For framing the charge, evidence beyond reasonable doubt is not required but only prima facie evidence. For this limited purpose of prima facie satisfaction the court may sift the evidence produced by prosecution to find out whether the ingredients of offences are satisfied or not. In such proceedings the Court is not supposed to hold a mini trial by marshalling the evidence on record. (See:- Union of India v. Prafulla Kumar Samal & Ors. 1979 (3) SCC4, Sajjan Kumar v. CBI 2010 (9) SCC 368 and Vikram Johar v. State of Uttar Pradesh 2019 (6) SCALE 794).

9. Viewed thus, the finding of revisional court is well reasoned and I don't find any illegality or impropriety having any tendency to abuse the process of law warranting any interference from this Court, thus, same is upheld. As a sequel thereto, this petition is dismissed.

10. Registry to send down the record forthwith.