
(2017) 04 MP CK 0070
In the Madhya Pradesh High Court
Case No : 2739 of 2016

Umesh Sharma S/o Khubchand Sharma	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#) - Acts do

Citation : (2017) 04 MP CK 0070

Hon'ble Judges : Ashok Kumar Joshi

Bench : Single Bench

Advocate : S.P.Mishra, Shobhna Sharma, Anurag Sahu

Judgement

1. Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure for quashment of the charge-sheet filed by respondent No.1 in relation to Crime No.9/2016 registered at police station Damoh Dehat, District Damoh against the present petitioners.

2. Undisputedly, present respondent No.2 Smt. Rashmi Sahu was married to present petitioner No.1 Virendra Sahu on 7.12.2009. Present petitioner No.2 Mahesh and petitioner No.3 Anita are father and mother of petitioner no.1 Virendra and present petitioner No.4 Kalpana is aunty of petitioner No.1 Virendra.

3. On written application of Rashmi, a F.I.R. from police outpost Jabalpur Naka Damoh, was received at police station Damoh Dehat on 5.1.2016 at 6:30 P.M and on that basis, F.I.R was registered of Crime No.9/2016 for offences punishable under Section 498-A/34 of the IPC and section 3/4 of the Dowry Prohibition Act on 5.1.2016 at 21:30 (9:30 P.M) against present petitioners Virendra, Mahesh, Anita and Kalpana. It was mentioned in the F.I.R that respondent No.2 Rashmi was married to petitioner No.1 Virendra on 7.12.2009 according to Hindu rites and Rashmi's father Mahendra had given in the marriage Rs.2,00,000/- in cash,

gold chain, gold ring, motorcycle, T.V, sofa, bed, dressing table, almirah and other household materials in dowry to her in-laws. When Rashmi after marriage reached to her in-laws" house, from the first day her father-in-law, mother-in-law and aunty-in-law Kalpana commented that dowry is less and the material is not of good quality. Thereafter, Rashmi was being harassed by above-mentioned persons. On that occasion, Rashmi continuously stayed for twenty days in her in-laws" house. In that period, her husband Virendra was started demanding Rs.5,00,000/- as dowry on instigation of his father and mother and started harassing Rashmi. After going to her parents" house, when Rashmi reached back to her in-laws" house about six days later, above-mentioned persons started demanding of Rs.5,00,000/- in dowry and on this issue, they did not permit Rashmi to go back to her parents" house and Rashmi was continuously harassed by all the four persons. Her husband Virendra stayed near her for much less period and mostly lived in company of Kalpana Sahu (Petitioner no.4). Respondent No.2 was being beaten also and she intimated to her parents and brother Mukesh about above-mentioned harassment. Above-mentioned persons are not giving her son Saras to her. After completing the formal investigation, charge-sheet was filed in the Court of relating JMFC.

4. Present petitioners have averred in their petition filed under Section 482 of the Cr.P.C that allegations levelled against them by respondent No.2 are completely false and frivolous and actually Rashmi herself does not want to stay with her husband. Rashmi had resided with her husband only for two years and thereafter without any reasonable cause, she is residing with her parents from 29.10.2015. Actually petitioner no.1 Virendra had lodged a complaint on 29.10.2015 before Superintendent of Police, Damoh against his wife much prior to the registration of above-mentioned F.I.R. Copy of Virendra"s complaint is filed as Annexure-A/2 with this petition. Above-mentioned complaint was referred to Mahila Paramarsh Kendra, where during proceedings, statement of Rashmi was also recorded, but in that statement Rashmi had not spoken any word relating to dowry demand. Copy of the proceedings of Mahila Paramarsh Kendra is filed as Annexure-A/3 with the petition. Thereafter, petitioner no.1 Virendra had sent a notice to his wife for restitution of his conjugal rights through counsel, whose copy is filed as Annexure-A/4. A copy of the petition under Section 9 of the Hindu Marriage Act filed by petitioner no.1 Virendra in the Family Court, Damoh for restitution of conjugal rights is filed as Annexure- A/5. It has been submitted that after starting of proceedings of Family Court, respondent No.2 Rashmi suddenly lodged a false complaint against the petitioners and without conducting any preliminary enquiry, F.I.R has been registered at Police Station, Damoh Dehat. Petitioners have not committed any offence and they have not made any dowry demand and have not physically or mentally harassed Rashmi. An affidavit of petitioner No.1 Virendra has also been filed.

5. Photocopies of the charge-sheet and its annexed documents have been filed before this Court, which have been minutely perused.

6. On the other hand, learned counsel for the respondents have contended that after due investigation, charge-sheet has been filed and they have prayed for dismissal of the petition filed by the petitioners.

7. With charge-sheet, M.L.C. of respondent no.2 Rashmi dated 6.1.2016 has been filed. In the application dated 6.1.2016 sent by the police authority for medical examination of Rashmi, it is recorded that she was complaining of pain in her right ear and the relating doctor in her MLC report of the same date has recorded that no any external injury was found on the body of examined Rashmi.

8. On Annexure A/2, which is photocopy of written typed complaint presented by petitioner no.1 Virendra before the Superintendent of Police, Damoh on 28.10.2015, in margin of first page, the seal of the complaint branch of Superintendent of Police, Damoh's office is apparent and above it, there appears signature of receiving of complaint of petitioner No.1 (Annexure A/2) on the date 29.10.2015. It has been mentioned by petitioner No.1 Virendra in the complaint (Annexure A/2) that at that time, six years were completed after his marriage, but in that period, his wife Rashmi had lived with him properly only for two years and as her parents were also residing in Damoh, Rashmi without taking permission from husband and his parents often goes to her parents' home and on being asked, creates situation of dispute and about four years ago, a son named Saras was born to her, but that minor son was left by Rashmi and she had gone to her parents' home and she also threatened for divorce and as Rashmi was not desirous to live with his parents, he had lived for one year separately from his parents, but about six months ago, Rashmi was taken by her brother to her parent's home on pretext that Rashmi's mother is ill. Thereafter, on many occasions, his family members had gone to bring Rashmi, but she had clearly denied to come back to his house and Rashmi's father gives filthy abuses. He is desirous to keep his wife with him and he is keeping their son Saras with him and Rashmi's father is a political figure, who always threatens them on the basis of his political influence.

9. With report (Annexure A/3) sent by the Dy.Superintendent of Police, Mahila Cell, Damoh to the Superintendent of Police, Damoh dated 3.9.2015, copy of statement of Rashmi is also annexed, in which there is no reference of any dowry demand. In her statement recorded on 30.12.2015, Rashmi had deposed that her husband used to beat her after drinking liquor and she is having two sons and her delivery expenses were not paid by her in-laws" and her husband is having relations with her aunty-in-law Kalpana (petitioner No.4) and she would clear in one or two days what she wants to do.

10. Copy of the notice sent by the petitioner no.1 Virendra to Rashmi through advocate dated 30.12.2015 is filed as Annexure A/4. Copy of the petition filed under Section 9 of the Hindu Marriage Act is filed as Annexure A/5. It appears from record that Rashmi's one son is living with her and her elder son is living with his father.

11. As there is no any averment relating to dowry demand or harassment due to dowry demand in this statement, it appears that after receiving the notice sent by registered post, respondent No.2 Rashmi had lodged above mentioned F.I.R. as a counterblast only. Looking to all above mentioned facts and circumstances, where there is no any explanation that why and how she has been separated with her elder son, the report relating to dowry demand appears to be afterthought. Notice by registered post through advocate was sent on 2.1.2016. It is clear from the photocopies of certified copies of notice obtained from the Family Court, Damoh that after receiving the notice sent by the husband's counsel, Rashmi had lodged a report on 5.1.2016, whereas her marriage was solemnised on 7.12.2009.

12. Similarly, it is not mentioned in application given by the respondent No.2 Rashmi to police authority that petitioner No.4 Kalpana is residing in the same house with other petitioners. As petitioner No.4 Kalpana is aunty-in-law of the respondent No.2, the allegations against her in relation to harassment and dowry demand prima facie appear to be false and frivolous to implicate the petitioners in a criminal case. It appears that the dispute was relating to expenses of second delivery of respondent No.2 Rashmi. There is no clarification that in what circumstances, respondent No.2 Rashmi has been separated with her elder son. After receiving the sent notice prior to filing of the Hindu Marriage Act litigation by the husband, the lodging of the delayed report itself is clearly indicative of the attempt of respondent No.2 for creating a defence in relating Hindu Marriage Act case only. It is also clear that respondent No.2 Rashmi is desirous of misusing of process of Court in prosecuting the petitioners, which could not be permitted. In above mentioned facts and circumstances, the inherent power of this Court vested under Section 482 of the Cr.P.C. should be invoked. Thus, the petition filed by the petitioners appears to be worthy of acceptance.

13. In the result, the petition filed by the petitioners under Section 482 of the Code of Criminal Procedure is allowed and the relating charge-sheet and arisen criminal proceedings against the present petitioners are quashed. No order as to the costs.