
(2010) 11 JH CK 0044

In the Jharkhand High Court

Case No : Criminal Revision No. 649 of 2010

Uttam Chand Gupta, Mithu Gupta, Ved Prakash Gupta and
Rajmunni Devi

APPELLANT

Vs

The State of Jharkhand and Rajni Jaisawal

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 498A

Citation : (2011) 2 Crimes 99 : (2011) 1 JCR 392 : (2011) 7 RCR(Criminal)
748 : (2011) 1 JLJR 225

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : A.K. Sahani and N.K. Sahani, for the Appellant; R.S. Singh, Assistant Public Prosecutor for State, M.S. Chabra and B.K. Sinha for O.P. No. 2, for the Respondent

Judgement

Prashant Kumar, J.—This application has been filed against the order dated, 22.05.2010 passed by Judicial Magistrate, Bokaro in connection with Jaridih P.S. Case No. 34 of 2008 corresponding to G.P. No. 198 of 2008, whereby and whereunder, he dismissed the application filed by the Petitioners for discharge.

2. It is submitted by Sri A.K. Sahani, learned Counsel for the Petitioners that apart from the allegations made in the complaint petition, which become the basis for lodging of present F.I.R., there is absolutely no other materials in the case diary to show that Petitioner No. 1, 3 and 4 had committed any crime. It is further submitted that independent witnesses as well as brother-in-law and sister of complainant had not stated anything against these Petitioners. It is submitted that so far Petitioner No. 2 Mithu Gupta is concerned, absolutely mere is no allegation against him either in the complaint petition, or in the Statement of any witness. Accordingly, Sri Sahani submits that court below without going into the aforesaid materials available on record, in mechanical manner, passed impugned order, which cannot be sustained in this application.

3. On the other hand, Sri M.S. Chhabra, learned Counsel appearing on behalf of opposite party No. 2 submits that in the complaint petition, as well as in the statement before the police, complainant had specifically stated that she was tortured by Petitioner Nos. 1, 3 and 4, which prima-facie made out a case u/s 498A of the Indian Penal Code. It is submitted that statement of other witnesses, who supported the case of defence, cannot be seen at the time of framing of charge. Law requires that, if from the materials available on record, prima-facie offence is made out, then it is the duty of the court to frame charge and ask the accused persons to face trial. However Sri Chhabra fairly stated that in the complaint petition, as well as in the statement before the police, complainant had not alleged anything against Petitioner No. 2 namely Mithu Gupta.

4. Having heard the submissions, I have gone through the record of case and the portions of case diary (produced by Sri A K. Sahani, which Petitioner received as police paper). In the complaint petition, at paragraph No. 4, complainant has categorically stated that Petitioner No. 4 had tortured her and thereafter complainant's husband demanded dowry. It is further alleged at paragraph No. 5 that Petitioner Nos. 1 and 3 in connivance with complainant's husband tried to took signature of complainant on blank paper and when she refused to do so, she was assaulted and locked in a room, The aforesaid two Statements finds support from the statement of complainant before the police because at the end of paragraph No. 4, while recording the statement of complainant, I.O. has categorically staked that the, stated and supported her earlier statement made in the complaint petition. Thus other statement found in the case diary i.e. of independent witnesses, as also of brother-in-law and sister of complainant, which appears to be defence of Petitioner, thus cannot be looked into at the stage of framing of charge. Hence the said statements are not very much relevant for decision at this stage. Learned Counsel for the Petitioner placed strong reliance on the decision of Their Lordships of Supreme Court in the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, . In my view, aforesaid judgment have no application in the facts and circumstances of this case. In the aforesaid case Petitioners were residing at Bombay and Bangalore, whereas in the present case, all the Petitioners are residing in the same place and in the same house.

5. Thus in view of allegations made in F.I.R. and statement of informant 1 find prima-facie that Petitioner Nos. 1, 3 and 4 committed an offence u/s 498A of the Indian Penal Code. Hence I find no illegality in the impugned order, so far these Petitioners are concerned. Accordingly, Revision application filed by Petitioners No. 1 (Uttam Chand Gupta), No. 3 (Ved Prakash Gupta) and No. 4 (Rajmunni Devi) is hereby dismissed.

6. So far Petitioner No. 2 namely Mithu Gupta is concerned, I find that there is absolutely no allegation of torture and/or demand of dowry against him, either in the complaint petition or in the statement of witnesses u/s 161 of the Code of Criminal Procedure. Under the said circumstance, I find that there is absolutely

no evidence to support the charge against Petitioner No. 2. Hence impugned order passed against Petitioner No. 2 is not sustainable. Accordingly Revision application filed by Petitioner No. 2 namely Mithu Gupta is hereby allowed and the impugned order so far he is concerned, is set aside.