

(2020) 01 UK CK 0070

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 214 Of 2020

Vijaykant Singh And Another

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 29-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 304B
Dowry Prohibition Act, 1961 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 UK CK 0070

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Aditya Singh, J.S. Virk, Rakesh Kumar Joshi, D.C.S. Rawat

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. Heard Mr. Aditya Singh, learned Advocate for the petitioners, Mr. J.S. Virk, learned AGA assisted by Mr. Rakesh Kumar Joshi, learned Brief

Holder for the State of Uttarakhand/respondent Nos.1 & 2 and Mr. D.C.S. Rawat, learned Advocate for respondent No.3.

2. This criminal writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari for quashing the impugned FIR No.0026

dated 20.01.2020, Police Station Rishikesh, District Dehradun for offence under Section 304-B IPC and offence under Section 3/4 of the Dowry

Prohibition Act, 1961; and, a writ for direction to the respondent Nos.1 and 2 not to take any coercive action against the petitioner in pursuance to the

impugned FIR.

3. The respondent No.3, father of deceased lodged an FIR on 20.01.2020 that the marriage of his daughter Smt. Kajal alias Chhoti was solemnized with the co-accused Dr. Piyush Singh on 07.03.2018. After having married, she was subjected to cruelty for demand of dowry by the petitioners and the co-accused in tune of `20 Lacs and also for a four wheeler big Car and, lastly, the petitioners and co-accused murdered his daughter on 19.01.2020.

4. The learned counsel for the petitioners submits that the co-accused Dr. Piyush Singh, nephew of the petitioners, was married on 07.03.2018 with the deceased; the petitioners used to live in a common accommodation with the husband of the deceased, yet, there had their own separate life having no concern whatsoever with either income or finances of the husband of the deceased; being a part of same shared household, the petitioners can state that deceased was married on 07.03.2018, had a happy matrimonial life with the nephew of the petitioners, however, due to the fact that after marriage she had to shift from Gonda in U.P. to Rishikesh i.e. her matrimonial house; she used to remain under depression for which she was undergoing continuous medical treatment from Dr. Bhardwaj in Rishikesh; although, the prescriptions of the deceased and strips of medicines consumed by her were available in the house of the petitioners, yet, the same could not be brought on record for the reasons that the room in which the deceased had committed suicide by hanging herself from a ceiling fan had been sealed by the police after registration of the FIR; at the time when the husband of the deceased was arrested in connection with this FIR, no one else had been taken into custody by the police, although all the co-accused named in the FIR were available in the house; after the deceased had committed suicide on 19.01.2020, the parents of the deceased had been promptly informed and in the presence of the parents of the deceased including the informant, the post-mortem of the deceased had been carried out on 20.01.2020; the allegations of the FIR in question are nothing but a figment of imagination of the informant as firstly there had been no demand of dowry by either of the petitioners as the husband of the deceased was not their son while further they had no concern whatsoever with the life of the husband of the deceased or his deceased wife; on the eve of their first marriage anniversary both, the deceased and her husband, had gone on a

holiday to Andaman & Nicobar Island; and on the eve of this new year both, deceased and her husband, had gone on excursion with their friends at a

popular camping site in Rishikesh; the informant has roped in all major members sharing the household with the deceased as accused in the FIR purely

with an intention to create pressure upon the petitioners; there is no allegation in the FIR of any previous incident against the petitioners; there was no

occasion for the petitioners to call for dowry; except the ligature mark on the neck of the deceased, there were no injuries on her body; at the time of

the incident, the petitioner No.1 was not even at his residence. The learned counsel for the petitioners submits that arrest should not be mechanical.

5. The learned counsel for the respondents rebutted the contentions of the learned counsel for the petitioners and submit that after the marriage of the

deceased, petitioners and co-accused harassed her mentally and physically and the deceased was subjected to cruelty for demand of dowry.

6. The learned counsel for the petitioners submits that there is no ingredient of Section 304-B of IPC in the FIR and therefore, the FIR is liable to be

quashed. In support of his submissions, the learned counsel relied upon the judgment in Mahesh Kumar Vs. State of Haryana (2019)8 SCC 128. In the

said matter, the judgment on merit was passed by the High Court and an appeal was preferred before the Honâ??ble Apex Court.

7. The learned counsel for the petitioners submits that the relatives of the husband should not be roped in on the basis of omnibus allegations unless

specific instances of their involvement in the crime are made out. In support of his submission, the learned counsel relied upon the judgment of the

Supreme Court in the case of K. Subba Rao and others Vs. State of Telangana, represented by its Secretary, Department of Home and others

(2018)14 SCC 452. This judgment also cannot help the petitioners since specific allegations are in the FIR against the petitioners.

8. The learned counsel appearing for the petitioners, submits that the FIR and the allegations of the respondents are factual incorrect.

9. It is wholly impermissible for this Court to enter into the factual arena to adjudge the correctness of the allegations in the FIR. The Court would not

also examine the genuineness of the allegations made in the FIR during the course of investigation, since the Court does not function as a Court of

Appeal or Revision; and the Court cannot act like an Investigating Agency while exercising its extraordinary jurisdiction under Article 226 of the

Constitution of India.

10. In this matter, the FIR discloses the commission of a cognizable offence and it cannot be said that there are no allegations against the petitioners

which, prima facie, constitute the ingredients of the offence of dowry death.

11. It is true, that arrest should not be mechanical. The exercise of power of arrest requires reasonable belief about a person's complicity, and

also about the need to effect arrest. Arrest may be justified if there is credible information or reasonable suspicion, and arrest is necessary to prevent

further offence or for proper investigation or to check interference with the evidence. In Criminal Appeal No.1340 of 2019 P. Chidambaram Vs

Directorate of Enforcement, the Hon'ble Apex Court on 05.09.2019 has held that, ordinarily, arrest is a part of the procedure of the investigation

to secure not only the presence of the accused but for several other purposes also.

12. In Pepsi Food Limited Vs. Special Judicial Magistrate and others, 1998(36) ACC 2,0 the Hon'ble Apex Court has observed that the power

conferred on the High Court under Article 226 and 227 of the Constitution of India, and under Section 482 of the Code have no limits, but more the

power more due care and caution is to be exercised in invoking these powers.

13. In Adri Dharan Das Vs. State of West Bengal, AIR 2005 SC 105,7 the Hon'ble Apex Court has held that the powers and functions of the

police and the Courts is clearly demarcated, and the Court will not ordinarily intervene with the investigation of a crime or with the arrest of the

accused in a cognizable case, which is the province of the police.

14. In P. Chidambaram (Supra), the Hon'ble Apex Court observed that there is a well-defined and demarcated function in the field of

investigation, and its subsequent adjudication; it is not the function of the Court to monitor the investigation process; so long as the investigation does

not violate any provision of law, it must be left to the discretion of the investigating agency to decide the course of investigation; if the Court were to

interfere at each and every stage of the investigation, and the interrogation of the accused, it would affect the normal course of investigation; and it

must be left to the investigating agency to proceed in its own manner in interrogation of the accused, the nature of questions put to him and the manner

of interrogation of the accused.

15. The case in hand is also not covered under any of the categories referred to in paragraph 102 of the judgment of the Honâ??ble Apex Court in

State of Haryana and others Vs. Bhajan Lal and others (1992) Supplementary (1) SCC 335.

16. In State of Haryana and others Vs. Bhajan Lal (Supra), the Honâ??ble Apex Court examined the extraordinary power under Article 226 of the

Constitution of India and also the inherent powers under Section 482 of the Code. Para 102 of the judgment of Honâ??ble Apex Court reads as

follows:-

â??In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by

this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the

code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be

exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any

precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases

wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted

by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.

17. In view of the above detailed discussion, the writ petition is dismissed. No order as to costs.

18. Let a certified copy of this order be furnished to the learned counsel for the parties, on payment of prescribed charges, by 30.01.2020.