

(2005) 01 AHC CK 0033

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 6979 of 2003

Vijendra Sharma alias Vijendra Kumar Sharma, Krishn Hari
Sharma and Smt. Ganga Sharma

APPELLANT

Vs

State of U.P., Smt. Vimlesh

RESPONDENT

Date of Decision : 12-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 200, 202, 320, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 498A

Citation : (2005) CriLJ 2743

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Vinay Saran, for the Appellant; D.S. Tiwari and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Ravindra Singh, J.—Heard Sri Vinay Saran learned counsel for the petitioners, learned A.G.A. and Sri D.S. Tiwari learned counsel for the respondent no. 2.

2. This petition has been filed against the order dated 28.6.2002 passed by the learned Judicial Magistrate, 1st class, Chhata, Mathura in Criminal Case No. 27 of 2000, whereby cognizance was taken by the learned Magistrate and the petitioners were summoned to face the trial for the offences punishable u/s 498A I.P.C and 3/4 Dowry Prohibition Act and the judgment and order dated 21.10.2003 passed by the learned Additional Sessions Judge, Court No. 4, Mathura in Criminal Revision No. 214 of 2002 whereby the revision filed by the petitioners was dismissed.

3. It is contended by the learned counsel for the petitioners that one Rameshwar the father of Smt. Vimlesh the respondent no. 2 lodged an F.I.R. against the petitioners on 7.12.1999 in case crime No. 301 of 1999 under Sections 498A and

Section 3/4 Dowry Prohibition Act, P.S. Chhata district Mathura, which was investigated by the police, thereafter, the I.O. came to conclusion that the petitioners were falsely implicated in the case, therefore final report was submitted by the I.O. in the court in favour of the petitioners. Against that final report Rameshwar the father of the respondent no. 2 filed protest petition dated 17.5.2000. That protest petition was treated as complaint by the learned Magistrate on 12.2.2002 and Rameshwar the father of the respondent no. 2 was directed to appear before the court for recording his statement u/s 200 Cr. P. C. The statements of Rameshwar and the witnesses namely Smt. Vimlesh respondent no. 2, Deen Dayal and Tej Ram were recorded u/s 200 and 202 Cr. P. C. After recording the statements of the Rameshwar and above named witnesses the learned Judicial Magistrate took the cognizance and summoned the petitioners on 28.6.2002 to face the trial for the offences punishable u/s 498A I.P.C. and Section 3/4 Dowry prohibition Act. Against this order the petitioners have filed Criminal Revision No. 214 of 2002, which was dismissed by the learned Additional Sessions Judge, Court No. 4, Mathura on 21.10.2003.

4. It is contended by the learned counsel for the petitioners that Rameshwar lodged the F.I.R. against the petitioners in which final report was submitted by the I.O. The learned Magistrate issued notice to the first informant Rameshwar, who filed the protest petition dated 17.5.2000 in the court of learned Judicial Magistrate. Rameshwar has not prayed therein that the protest petition may be treated as complaint. Even then without considering the police report the learned Judicial Magistrate considered the averments made by Rameshwar in the protest petition and passed the order dated 12.2.2002 treating the protest petition as complaint and Rameshwar was directed to appear before the court for recording his statement u/s 200 Cr. P. C., it is illegal order.

5. It is contended that the learned Magistrate took the cognizance and summoned the petitioners on 28.6.2002 on the basis of the statement of the complainant and the witnesses recorded u/s 200 and 202 Cr. P. C. to face the trial for the offences punishable u/s 498A I.P.C. and 3/4 Dowry Prohibition Act. The impugned order dated 28.6.2002 is also illegal order because the learned Magistrate has not considered police report at all and has not passed any order in respect of the police report.

6. It is further contended by the learned counsel for the petitioners that Rameshwar the father of the respondent no. 2, who lodged the F.I.R. and filed the protest petition, has died in an accident on 15.7.2003 during the pendency of the revision in the court of learned Additional Sessions Judge, Court No. 4, Mathura, so the petitioners have made necessary respondent no. 2 Smt. Vimlesh (main aggrieved person) the daughter of the Rameshwar and the wife of the petitioner no. 1. Her statement was recorded by the learned Magistrate u/s 202 Cr. P. C. Smt. Vimlesh respondent no. 2 has filed Criminal Case No. 12 of 2000 (new number 11/XI of 2002) u/s 125 Cr. P. C. against the petitioner no. 1 and the petitioner no. 1 filed Matrimonial Case No. 157 of 1997 u/s 13 of the Hindu

Marriage Act against the respondent no. 2, but the petitioner no. 1 and respondent no. 2 Smt. Vimlesh have settled all the dispute amicably and have arrived in a compromise by forgiving all the differences arose between them and they have filed compromise application in above mentioned cases. The case no. 11/8/2002 u/s 125 Cr. P. C. pending in the court of the learned Judicial Magistrate, 1st class, Chhata, district Mathura, which has been decided on 23.8.2004 in the light of the terms and conditions of compromise filed in the court and the Matrimonial Case no. 157 of 1997 filed by the petitioner no. 1 u/s 13 of the Hindu Marriage Act has also been decided on 26.9.2004 in the light of terms and conditions of the compromise filed by the parties. The respondent no. 2 herself has filed supplementary affidavit mentioning therein that she has settled all the dispute with the petitioner no. 1 and there is no differences between them, so the criminal proceedings of the present case pending in the court of learned Judicial Magistrate, 1st class, Chhata, Mathura may be quashed. In such circumstances the criminal proceeding pending against the petitioners may be quashed. In support of his submissions the learned counsel for the petitioners has placed reliance on the Apex court decision of the case B.S. Joshi and Others Vs. State of Haryana and Another, in which it was held by Hon"ble the Supreme Court that it becomes the duty of the court to encourage genuine settlements of matrimonial disputes and the High Court in exercise of its inherent powers can quash the criminal proceedings or F.I.R. or complaint and the provisions of Section 320 Cr. P. C. does not limit or affect the powers u/s 482 of the Code. Learned Counsel for the petitioners has also placed reliance on the case decided by a single judge of this court (Hon"ble C.P. Misra, J) i.e. Jayabrata Bhattacharjee v. State of U.P. Anr. decided on 22.11.2004 in Criminal Misc. Application No. 6168 of 2004, in which the criminal proceedings on the basis of compromise were quashed by holding that no useful purpose is likely to be served by allowing a criminal prosecution to continue and further chances of ultimate conviction are bleak as there is no chance of opposite party no. 2 further supporting the case in this regard against the accused. The learned counsel for the petitioners has cited another decision of single judge of this Court (Hon"ble Ravindra Singh, J) BACFO Pharmaceutical (India) Limited and Anr. v. State of U.P. and Anr. in Criminal Misc. Writ Petition No. 7950 of 2004 decided on 6.10.2004 in which on the basis of the compromise the proceeding of a criminal complaint were quashed.

7. It is further contended by the learned counsel for the petitioners that the revisional court has not considered this aspect properly. The learned revisional court has also committed the mistake by not considering the errors committed by the learned Magistrate and passed the order without applying his judicial mind, so the order dated 21.10.2000;] passed by the revisional court is also illegal order.

8. Sri U.S. Tiwari learned counsel for the respondent no. 2 filed supplementary affidavit on behalf of Smt. Vimlesh respondent no. 2 in which she has clearly mentioned that she has no objection if the present writ petition is allowed and

prosecution of the petitioners is quashed. In support of the supplementary affidavit she has filed certified copy of the order-dated 23.8.2004 (Annexure no. SA-1) passed by the learned Judicial Magistrate, 1st class, Chhata, Mathura and the order dated 26.9.2004 (Annexure no. SA-2) passed by the learned Civil Judge (S.D.), Hathras in Matrimonial Case No. 157 of 1997 u/s 13 of the Hindu Marriage Act.

9. Sri D.S. Tiwari learned counsel for the respondent no. 2 submitted that she has no objection if the criminal proceedings pending in the court of Judicial Magistrate, 1st Class, Chhata against the petitioners are quashed because both the parties have come into compromise.

10. In view of the facts and circumstances of the case and submissions made by the learned counsel for the petitioners, A.G.A. and the learned counsel for the respondent no. 2 it is clear that the F.I.R. was lodged by one Rameshwar against the petitioners u/s 498A I.P.C. and Section 3/4 Dowry Prohibition Act, in which investigation was done by the I.O., who came to the conclusion that the petitioners were falsely implicated so he submitted final report in favour of the petitioners. Rameshwar (the first informant) filed protest petition, which was treated as a complaint by the learned Magistrate, 1st class, Chhata, Mathura on 12.2.2002 and the first informant was directed to appear before the Court for recording his statement u/s 200 Cr. P. C. From the perusal of the order dated 12.2.2002 it appears that the learned Magistrate has not considered the police report at all, even there was no allegation made by the first informant against the I.O. that statement of the witnesses were not recorded or not recorded correctly and the first informant has not prayed at all to treat his protest petition as a complaint. The learned Judicial Magistrate is under obligation to consider the police report (final report) containing the evidence collected by the I.O., if he is satisfied that during investigation the statements of the witnesses are not recorded or not recorded correctly or fair investigation is not done by the I.O. then he can direct for reinvestigation or the protest petition filed by the first informant may be treated as complaint. The learned Magistrate is under obligation to record his finding on the final report because to consider the final report the notice is issued to the first informant. In the present case the learned Magistrate has not considered the final report and no finding has been recorded in respect of final report, so the order dated 12.2.2002 is illegal.

11. To consider the next contention of the learned counsel for the petitioners the perusal and consideration of the order dated 28.6.2002 passed by the learned Judicial Magistrate, 1st class, Chhata taking the cognizance against the petitioners and summoning them to face the trial for the offences punishable u/s 498A I.P.C. and Section 3/4 Dowry Prohibition Act, is necessarily required, from its perusal it appears that he has not considered the police report at the time of taking cognizance and no order has been passed on the police report. The learned Magistrate is under obligation to pass the order on the police report but in the present case the learned Magistrate has not considered the police report

and no order was passed at the time when the protest petition was treated as complaint, even at the stage of taking cognizance against the petitioners also no order on police report (Final Report) was passed, therefore, the order dated 28.6.2002 is also illegal.

12. In respect of last contention of the counsel for the petitioner, the perusal of the records shows that the supplementary affidavit filed by the respondent no. 2 clearly shows that both the parties have come into compromise and the matter has been settled outside the court. The compromise application has been filed in a case filed by the respondent No. 2 u/s 125 Cr. P. C. which has been decided in the terms and condition of the compromise on 23.8.2004 and the Matrimonial Case No. 157 of 1997 filed by the petitioner no. 1 against the respondent no. 2 u/s 13 of the Hindu Marriage Act, has also been decided in the terms and conditions of the compromise on 26.9.2004 by the learned Civil Judge (S.D.), Hathras. The respondent no. 2 has clearly mentioned in supplementary affidavit that the parties have settled their entire dispute and they have arrived into compromise, so she has no objection if the present petition is allowed and the prosecution of the petitioners is quashed. In such circumstances it will not be proper to remit this matter to the court of learned Magistrate concern to pass a fresh order after considering the final report, in accordance with the provisions of law and to direct the parties to file compromise in the court of learned Judicial Magistrate Chhata, Mathura for passing appropriate orders because it will be a futile exercise and abuse of the process of law.

13. After considering the facts and circumstances of the present case as discussed above and the views taken by the Apex Court and the High Court in the cases, as mentioned above, the criminal proceedings against the petitioners in Criminal Case No. 27 of 2000 pending in the Court of the learned Judicial Magistrate, 1st class, Chhata, Mathura u/s 498A, I.P.C. and 3/4, Dowry Prohibition Act, are quashed and the impugned orders dated 12.2.2002 & 28.6.2002 passed by learned Judicial Magistrate, 1st Class, Chhata and the order dated 21.10.2003 passed by the learned Additional Sessions Judge, Court No. 4, Mathura in Criminal Revision No. 214 of 2002 are set aside.

14. Accordingly, the petition is allowed.