

(2019) 09 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 196 Of 2018

Vinay Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh & Another

RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 177, 178, 179, 397, 401
Indian Penal Code, 1860 — Section 34, 498A, 506

Citation : (2019) 09 SHI CK 0100

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Sanjeev K. Suri, Desh Raj Thakur, R.P. Singh, Nitin Thakur

Final Decision : Dismissed

Judgement

Vivek Singh Thakur J

1. Present Revision Petition has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure against order dated 21.4.2018 passed by learned Judicial Magistrate, whereby charges have been framed against the petitioners under Sections 498-A, 506 read with Section 34 of Indian Penal Code (herein after referred to as IPC for short), in criminal proceedings arising out of FIR No. 43 of 2015 dated 29.1.2015 registered in Police Station, Dhalli, District Shimla, H.P.

2. Petitioner No. 1 Vinay Kumar is husband of complainant/respondent No. 2 Priti. Petitioner No. 2 Veena Rani and petitioner No. 3 Krishan Lal Lohat are parents of petitioner No. 1, whereas petitioner No. 4 Rajat Lohat is brother of petitioner No.1.

3. I have heard Mr.Sanjay Suri, learned counsel for the petitioners and Learned Additional Advocate General, for the State of H.P. and have also gone through the record.

4. On 27.1.2015, respondent No. 2/complainant Priti had submitted an application to Superintendent of Police, Shimla, which was marked to Police Station, Dhalli for necessary action, whereupon FIR No. 43 of 2015 was registered against the petitioners in the said Police Station and investigation was carried on. On completion of investigation challan was presented in the Court against the petitioners. Taking cognizance thereupon, learned Magistrate had issued process against the petitioners and after considering the material placed before him, has framed charges against petitioners under Sections 498-A, 506 read with Section 34 IPC vide impugned order dated 21.4.2018.

5. Present petition has been preferred mainly on the ground that allegations made in the application against the petitioners, more particularly petitioners No. 2 to 4, are vague and unspecific in nature and there was no material before the Magistrate to frame charges against the petitioners. It is further submitted that even if it is considered that there is specific allegation against petitioner No. 1 Vinay Kumar (Husband), there is no such allegation either in complaint or in FIR or in the statements of witnesses placed on record, recorded under Section 161 Cr.P.C. It is also canvassed that ingredients necessary for framing charge under Section 498-A as well as 506 IPC are missing in the FIR as well as in statements of witnesses, as there is nothing on record to establish that petitioner No. 1 (husband) and his family members (petitioners No. 2 to 4) have subjected complainant/respondent No. 2 Priti to cruelty, as defined in explanation to Section 498-A IPC, as there is no allegation of any willful conduct of such a nature as is likely to drive complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant or harassment of complainant with a view to coercing her or any person related to her to make any unlawful demand for any property/valuable security or for failure by her or any person related to her to meet such demand. Referring the contents of FIR as well as statements of witnesses recorded under Section 161 Cr.P.C, it is also contended that case of complainant is that on pressurizing by petitioner No. 1, father of complainant had paid Rs. 20,000/- to him, whereas to the contrary witness Manoj Kumar, cousin of complainant has stated that father of complainant had paid Rs. 15,000/- in cash in his presence and Rs. 5,000/- were paid for arranging taxi to Ambala. To substantiate his claim, learned counsel for the petitioners has placed reliance on the judgments passed by the Apex Court in Bhaskar Lal Sharma and another Vs. Monica, (2009) 10 SCC 604; Preeti Gupta and Another Vs. State of Jharkhand and another, (2010) 7 SCC 667; Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another, (2012) 10 SCC 741 and Amarendu Jyoti and others Vs. State of Chhattisgarh and others, (2014) 12 SCC 362.

6. Another ground for quashing impugned order and criminal proceedings pending before the Magistrate is that occurrences of alleged incidents have been claimed to have taken place at Ambala, whereas FIR has been lodged in Police Station Dhalli and the criminal proceedings have been initiated in the Court of Judicial Magistrate at Shimla, which does not have territorial jurisdiction to

adjudicate the case. Referring the provisions of Sections 177, 178 and 179 of Cr.P.C. it is canvassed that offence in question is to be inquired into and tried by Court within whose jurisdiction it was committed and as all alleged incidents had taken place at Ambala, the courts at Ambala are having the jurisdiction to inquire into and try the offences, as the alleged offences as per complainant have been committed in Ambala and alleged consequence thereto has also ensued in Ambala. Learned counsel for the petitioners has also placed reliance on pronouncements of the Apex Court in *Ramesh and others Vs. State of T.N.* (2005) 3 SCC 507; *Bhura Ram and others Vs. State of Rajasthan and Another*, (2008) 11 SCC 103; *Bhaskar Lal Sharma*, (2009) 10 SCC 604 and *Amarendu Jyoti*, (2014) 12 SCC 362 (supra).

7. Learned Additional Advocate General has contested the Revision Petition, justifying framing of charges against the petitioners, by referring the contents of FIR, statements of witnesses recorded under Section 161 Cr.P.C. and also the compromise arrived at between the parties in the year 2014 and has stated that even after amicable settlement arrived at between the parties in the year 2014, petitioners did not mend their ways and continued to subjecting the complainant to cruelty and he has also stated that allegations made in the complaint as well as in statements of witnesses, are specific in nature and further that at the time of framing of charges, evidence is not to be evaluated on merits and the inherent jurisdiction for quashing the charges is to be exercised in rarest of rare cases, wherein casual allegations are leveled or there is no evidence at all to frame the charges, which is not the case in present matter.

8. Referring recent pronouncement of the Apex Court in *Rupali Devi Vs. State of Uttar Pradesh and others*, (2019) 5 SCC 384, it is contended that registration of FIR, inquiry therein and trial thereof is maintainable within the jurisdiction of Shimla, where parental home of complainant is situated and where she is residing on account of cruelty on the part of petitioners.

9. So far as the ratio of law laid down in the case law referred by learned Counsel for the petitioners with respect to first ground is concerned, there is no dispute about it. However, for the facts and circumstances of the present case, these judgments are of no help to the petitioners, except petitioner No.3, for the materials on record against them and scope of the trial Court to assess the evidence at the stage of framing of charge as discussed hereinafter.

10. Second ground, canvassed on behalf of petitioner is not tenable in view of law laid down by the Apex Court in *Rupali Devi's* case wherein, in unequivocal terms, it has been held that Courts at the place where wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by husband or his relatives, would, depending upon factual circumstances, also have jurisdiction to entertain a complaint alleging commission of offence under Section 498-A of IPC. In present case parental home of complainant is situated in Shimla. She has been married in a family residing at Ambala. As claimed in the complaint she was left in her parental

house when she was in family way and she was not taken back for a long considerable period even after delivery of a female child and thereafter on the basis of compromise arrived at between the parties, with intervention of women cell of Police, she was taken back to Ambala, but again subjected to cruelty, whereupon she was forced to live with her parents at Sanjauli in Shimla. There is sufficient material for entertaining the challan by Judicial Magistrate at Shimla, presented by the Police on the basis of complaint/FIR lodged by complainant. Therefore, particularly in view of judgment of Apex Court, plea of petitioners for allowing the petition on the ground of jurisdiction of Court, is rejected.

11. Legal position with regard to parameters to be taken into consideration by the trial Court at the time of framing of charge is well settled. As reiterated by the Apex Court in *Sonu Gupta Vs. Deepak Gupta and others*, (2015) 3 SCC 424, (paras 9 and 10) an accused may seek discharge, if he is able to show that materials are absolutely insufficient for framing charges against him. However, the sufficiency of material for the purpose of conviction is not the requirement at this stage and a prayer for discharge can be allowed only if the Court finds that materials are wholly insufficient for the purpose of trial and it is also a settled exposition of law that even when there are materials indicating strong suspicion against an accused, the court will be justified in rejecting the prayer for discharging and for granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law, so that case of both sides may be considered properly on conclusion of trial.

12. It is also settled law of law, as observed in *Satpal Vs. State of Haryana*, reported in (2018) 6 SCC 610 and *Ramesh Maruti Patil Vs. State of Maharashtra*, AIR 1994 SC 28, an FIR is not to be read as an encyclopedia of the prosecution case requiring every minute detail of the occurrence to be mentioned therein.

13. In the complaint/FIR lodged in present case, at the instance of complainant, the gist of omission and commission of petitioners committing the offence under Section 498-A and 506 read with Section 34 IPC has been narrated, which has been elaborated in her statement recorded under Section 161 Cr.P.C., wherein she has narrated the behavior of each and every petitioner, by referring them by name, except her father-in-law Krishan Lal (petitioner No. 3) against whom there is no utterance of his involvement even in a single instance narrated in FIR and statements of complainant as well as other witnesses recorded under Section 161 Cr.P.C. She has referred his name along with others in a casual manner by stating that after 3-4 months of marriage her husband, father-in-law, mother-in-law and brother-in-law, had started harassing her for dowry and in the last portion of her statement recorded under Section 161 Cr.P.C. she has stated that her husband Vinay Kumar, mother-in-law Veena Rani, father-in-law Krishan Lal and brother-in-law Rajat @ Rishi have harassed her mentally and physically by beating her and have extended threats to kill her. There is no specific allegation against father-in-law Krishan Lal, whereas there are specific allegations against mother-in-law Veena Rani, brother-in-law Rajat and husband Vinay Kumar,

wherein she has given the details of the acts and conduct of her husband (petitioner No. 1), mother-in-law (petitioner No. 2) and brother-in-law (petitioner No. 4). She has given the details of conduct of her husband indicating that he has subjected her to cruelty even after amicable settlement arrived at between them with the help of women cell of Shimla Police. Prosecution, in support of complaint, has also relied upon statements of other witnesses i.e. her father Gulshan Kumar, mother Saroj Bala, cousins Ponam and Manoj Kumar and also one independent witness Ram Kumar, who is resident of Ambala.

14. In view of statements of aforesaid witnesses and also compromise deed placed on record with the petition, it cannot be said that *ex facie* no case for framing charges is made out against the petitioners, except petitioner No. 3 Krishan Lal, whose name has been mentioned in the complaint in casual manner, whereas against all other petitioners there are specific allegations. It is true that merits of evidence is not to be appreciated at this stage, but in the evidence relied, there is no sufficient material to frame the charges against petitioner No. 3 Krishan Lal. So far other petitioners are concerned, it is not a case where allegations in the FIR do not constitute a cognizable offence or the complaint and the evidence collected in support of the same, do not disclose the commission of any offence to make out a case against them or the allegations made in FIR and 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 proceedings against them or allegations made in the challan even if, they are taken at its face value and accepted in their entirety do not, *prima facie*, constitute any offence or make out a case against them.

15. In the aforesaid facts and circumstances and law laid down by the Apex Court, I find that impugned order dated 21.4.2018 and criminal proceedings pending qua petitioner No. 3 are liable to be quashed, whereas no interference in the impugned order and criminal proceedings pending against other petitioners i.e. petitioners No. 1, 2 and 4 is warranted. Accordingly, petition qua petitioner No. 3 Krishan Lal is allowed and charges framed against him are quashed and consequently criminal proceedings against him are also quashed.

Petition qua other petitioners i.e. petitioners No. 1, 2 and 4 is dismissed being devoid of merit.