
(2010) 06 JH CK 0052
In the Jharkhand High Court

Vivekanand Jha and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 25-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34, 341, 379

Citation : (2010) 06 JH CK 0052

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—As per the case of the petitioner, Sangita Jha, daughter of the petitioner No. 1 got married to opposite party No. 2, Rajesh Jha in the year 2003. Soon after the marriage, when Sangita Jha came to her in-laws" place, her husband (opposite party No. 2) and other family members started subjecting her to torture. It persisted for quite a long time. Ultimately, she informed her father and mother (petitioner Nos. 1 and 2) all about it through a letter. Petitioner no.1 came to his daughter"s place and asked for Bedai but the husband of his daughter and other family members did not allow her to go with her father. Thereafter members of the in-laws" family started treating her more cruelly and therefore, an Informatory Petition was filed before the Sub-Divisional Officer, Chas, Bokaro on 4.10.2006. Apart from that, higher police officials were also informed and only with the help of police officials, petitioners No. 1 and 2 could succeed to take the daughter from her in-laws" place to their place. After some days, opposite party no.2 along with some others came to the place of petitioner No. 1 and assaulted petitioners 1 and 2, when they put resistance to opposite party No. 2 in taking away a minor boy. On 17.11.2006, Sangita Jha filed a complaint case, bearing Complaint" Case No. 548 of 2006 against opposite party No. 2 as well as other members of her in-laws" family u/s 498A of the Indian Penal Code. After some days, a case of maintenance was also filed. In course of enquiry of the said complaint, petitioner Nos. 5 and 6, were also examined and therefore, they were threatened by opposite party no.2 for serious consequences

for which, a Sanha was lodged but before that, cognizance of the offence u/s 498A of the Indian Penal Code had been taken on 12.4.2007 against opposite party No. 2 and other members.

2. Further case is that being annoyed with the said order taking cognizance and also with the fact that the maintenance case has been filed, opposite party No. 2 lodged a complaint case, bearing CP. No. 613 of 2007 under Sections 341, 323, 324, 379, 506/34 of the Indian Penal Code on the allegations which are totally false that on 15.4.2007, while the opposite party No. 2 was sitting along with his other friends, petitioners came to his house and by abusing opposite party No. 2, petitioners No. 1 told to opposite party No. 2 as to why he has not been staying at Bokaro with her daughter but when the opposite party No. 2 replied that she can stay very well with him, the petitioners No. 1 to 3 being father-in-law, mother-in-law and brother-in-law and also petitioners No. 4 to 6 examined as witnesses in a complaint case by abusing assaulted him with iron rod and stick and then petitioners 1 and 2 took away one bag containing jewellery and similarly, petitioners No. 3, 4 and 5 also took away jewellery from the room of the mother of opposite party No. 2 and when opposite party No. 2 intervened, he was also assaulted.

3. After holding enquiry, the cognizance of the offences was taken by the Judicial Magistrate, Dhanbad, against the petitioners vide its order 22.9.2007. The said order is under challenge before this Court.

4. Learned counsel appearing for the petitioners submits that from the fact stated above, it is evidently clear that the instant prosecution has been initiated by opposite party No. 2 as he was carrying grudge for being prosecuted u/s 498A of the Indian Penal Code and also on account of the fact that a maintenance case has been lodged against him and as such, instant prosecution being tainted with malice is fit to be quashed, in view the ratio laid down in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others,

5. On the other hand, Mr. Atanu Banerjee, learned Counsel appearing for the opposite party No. 2 submits that the court having found allegation to be true has taken cognizance of the offence and as such it never warrants to be interfered with by this Court.

6. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that before the complaint case giving rise to this application was filed by the opposite party No. 2 against the petitioners, it was daughter of petitioners 1 and 2 who had lodged a complaint case against opposite party No. 2 u/s 498A of the Indian Penal Code on the allegation that she is being subjected to cruelty by her husband (opposite party No. 2) and also by other family members. At the stage of enquiry of that case, petitioners 4 to 6 were examined as witnesses in support of the case of the complainant. It further appears that when cognizance of the offence was taken, opposite party No. 2, as per the allegation made in the petition, threatened petitioners 4 to 6 of dire

consequences for which Informatory Petition is said to have been filed and before that, when the opposite party No. 2 and other family members did not allow Sangita Jha to come along with her parents (petitioners 1 and 2), rather went on subjecting her to cruelty, an Informatory Petition had also been filed before the Sub-Divisional Officer, Chas, Bokaro.

7. All these facts coupled with the fact that the petitioners 4 to 6 who were examined as witnesses in support of the case of complaint during enquiry were made accused by opposite party No. 2 in the complaint and not those persons who were not examined, though cited in the complaint clearly go to show that the instant application is malicious one and therefore, keeping in view the ratio laid down in the case of State of Haryana and Ors. v. Bhajan Lal and Ors. (supra), the order dated 22.9.2007 taking cognizance of the offence passed in Complaint "Case No. 613 of 2007 is fit to be quashed and accordingly, it is hereby set aside.

8. In the result, this application is allowed.