

(2013) 02 JH CK 0106

In the Jharkhand High Court

Case No : Criminal M.P. No. 1431 of 2012

Yogesh Khandelwal, Smt. Shakuntala Devi @ Shakuntala,
Vishnu Khandelwal and Chandra Prakash Khandelwal @
Chandu

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 4
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 498A

Citation : (2013) 2 AJR 681

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

Bench : Single Bench

Advocate : A.R. Choudhary, for the Appellant; P.K. Sinha, Advocate for the O.P. No. 2, for the Respondent

Judgement

R.R. Prasad, J.—Both the cases since arising out of the same complaint were heard together and are being disposed of by this common order. These two applications have been filed for quashing of the entire criminal proceeding of Complaint Case No. 445 of 2011 (T.R. No. 1261 of 2012), including the order dated 23.4.2012, whereby and whereunder cognizance of the offences punishable u/s 498A of Indian Penal Code and also u/s 4 of Dowry Prohibition Act has been taken against these petitioners.

2. Before advertng to the submissions advanced on behalf of the parties, the case of the complainant needs to be taken notice of.

3. It is the case of the complainant that the complainant had married Yogesh Khandelwal (petitioner no. 1 in Cr. M.P. No. 1431 of 2012) on 19.5.2009 according to Hindu Rites and Rituals. At the time of marriage, jewelries as well as several house hold articles were given. Just after 15 to 20 days of the marriage, husband-Yogesh Khandelwal started torturing the complainant by putting blame

on her that she is having extra marital affairs with someone. Whenever she objected to it, she was badly abused by her husband who subsequently started pressurizing her to bring car, T.V., washing machine as well as cash. In the above act, the husband was assisted and encouraged by his mother - Smt. Shakuntala Devi @ Shakuntala (petitioner no. 2 in Cr. M.P. No. 1431 of 2012) and his elder brothers namely, Vishnu Khandelwal and Chandra Prakash Khandelwal @ Chandu (petitioner nos. 3 and 4 in Cr. M.P. No. 1431 of 2012) and their wives namely, Ranjana Khandelwal @ Ranjana, Venus Khandelwal (petitioner nos. 1 and 2 in Cr.M.P. No. 1519 of 2012) as well as by Radha Khandelwal @ Radha, another sister-in-law (Jethani) as also by Nanad namely, Rani Khandelwal @ Rani Gupta (petitioner no. 3 in Cr. M.P. No. 1519 of 2012).

4. Further case is that the mother-in-law used to instigate her sons to traumatize the complainant mentally in one manner or the other and the complainant was being put to hard work throughout the day without providing meal as a result of which she became sick. When the complainant conceived, blame was put on her by her husband that she has been carrying pregnancy of some other person. On account of such behaviour, when it became intolerable, her parents came to Gwalior and requested the accused persons earnestly to change their behaviour towards her daughter but it remain unheeded. Ultimately, the complainant was kicked out of the house and then she came to her parent's house where she gave birth of a female child. On the occasion of New Year, when the complainant and her father gave new years greetings on phone, they were badly abused and the complainant was told to bring Rs. 5 lakhs or else she would remain in her Maik through out her life. When a Panchayati was convened, all the accused persons came to Hazaribagh and participated in the Panchayati where also the accused persons put forth demand of Rs. 5 lakhs and, therefore, there was no way out to the complainant but to lodge complaint against the accused persons.

5. On such allegation, a complaint bearing Complaint Case No. 445 of 2011 was registered in which when cognizance of the offences punishable u/s 498A of Indian Penal Code and u/s 4 of Dowry Prohibition Act was taken against the petitioners vide order dated 23.4.2012. The said order has been challenged in both the applications by the petitioners of the respective cases.

6. Mrs. A.R. Choudhary, learned counsel appearing for the petitioners, submits that whatever allegations have been levelled against the petitioners, all are false and as a matter of fact, the complainant having resided only for seven months in her in-laws place left the house without any reasonable cause and started living at her parents house. Several efforts were taken to bring her to matrimonial home but all went in vain. In such situation, a matrimonial suit was lodged u/s 9 of the Hindu Marriage Act for restitution of conjugal rights which was decreed ex parte. In spite of that, she did not come to her in-law place. Petitioner-Yogesh Khandelwal having found no way out filed a divorce case in which the complainant-opposite party no. 2 never cared to appear in spite of notice being published in the newspapers. Thus it was submitted that the circumstances as

stated above are clearly indicative of the fact that the complaint case has been lodged to harass the petitioners and thereby it can be said to be a case of malicious prosecution.

7. Further, it was submitted that so far as sisters-in-law (Jethanis) as well as married Nanad-Rani Khandelwal @ Rani Gupta as also all the brothers-in-law namely, Vishnu Khandelwal and Chandra Prakash Khandelwal @ Chandu as well as mother-in-law namely, Smt. Shakuntala Devi @ Shakuntala, are concerned, they have not been alleged specifically either to have put forth any demand or subjected the complainant to torture and as such, on account of this fact alone, the order taking cognizance is fit to be quashed in view of the decisions rendered in the cases of Geeta Mehrotra and Another Vs. State of U.P. and Another, as well as Preeti Gupta and Another Vs. State of Jharkhand and Another, .

8. As against this, Mr. P.K. Sinha, learned counsel appearing for the complainant-opposite party no. 2, submits that the court having found the allegation prima facie true against all the accused persons constituting offences u/s 498A of Indian Penal Code and also u/s 4 of Dowry Prohibition Act has taken cognizance and as such the order taking cognizance never warrants to be quashed, as it is well settled principle of law that whenever a case is made out from the allegation made in the complaint or the FIR, it never warrants to be quashed and, therefore, both the applications are fit to be dismissed.

9. Before coming to the facts of the instant case, it be recorded that the Hon''ble Supreme Court in number of cases has been pleased to lay down the scope and ambit of the Courts'' powers u/s 482 Cr.P.C. holding therein that every High Court has inherent power to do ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. Inherent power u/s 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of the process of Court, and
- (iii) to otherwise secure the ends of justice.

10. The Hon''ble Supreme Court has consistently taken the view that the High Court must use this extraordinary power to prevent injustice and secure the ends of justice. In this regard, I may refer to a case of State of Karnataka Vs. L. Muniswamy and Others, , wherein it has been observed that the wholesome power u/s 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. Further, it has been observed that the Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. Further, it has been observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature.

11. Further, it be recorded that there has been an outburst of matrimonial dispute in recent times and tendency has grown to involve the entire family members, even if little matrimonial skirmishes take place in between the wife and husband. The Hon''ble Supreme Court being quite aware of the situation quashed the complaint arising out of matrimonial dispute wherein all the family members had been roped into a matrimonial litigation in a case of G.V. Rao Vs. L.H.V. Prasad and Others, wherein it was observed as follows:-

there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different Courts.

12. Subsequently, the Hon''ble Supreme Court in a case of Preeti Gupta & Anr. (supra) having regard to the situation that there has been tendency of implicating the husband and all his immediate relations was pleased to hold that it would be unfair to compel the person to undergo rigor of criminal trial against whom no specific allegations are there and particularly against the person who never lived with the complainant and never visited the alleged place. Again such matter came up for consideration in a case of Geeta Mehrotra & Anr. (supra) wherein the Hon''ble Supreme Court having taken into account the situation that there has been tendency to involve the entire family members in matrimonial dispute was pleased to hold that mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of the experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding. In that case also the allegation against the persons with respect to whom order taking cognizance was quashed was that on the instigation of those persons main accused used to beat the complainant.

13. Now coming to the fact of the case, it is apparent from the reading of the complaint as well as statement made under solemn affirmation as also the statements made by the witnesses that the specific allegation relating to overt act constituting offence is there against the husband and to some extent against the mother-in-law namely, Smt. Shakuntala Devi @ Shakuntala, who has been alleged to have put the complainant to hard work. So far as the brothers-in-law

namely, Vishnu Khandelwal and Chandra Prakash Khandelwal @ Chandu (petitioner nos. 3 and 4 in Cr.M.P. No. 1431 of 2012) and sisters-in-law (Jethanis) namely, Ranjana Khandelwal @ Ranjana and Venus Khandelwal as well as married Nanad - Rani Khandelwal @ Rani Gupta as also another Jethani-Radha Khandelwal @ Radha, all petitioners in Cr. M.P. No. 1519 of 2012, are concerned, they have been alleged to have instigated the husband to put forth demand and to subject the complainant to torture. They have never been alleged to have committed any overt act towards commission of offence either u/s 498A of Indian Penal Code or u/s 4 of Dowry Prohibition Act though they have been alleged to have come to Hazaribagh and joined the Panchayati, convened by the father of the complainant, where they put forth demand but that allegation does not seem to be specific against the aforesaid persons. Moreover Nanad-Rani Khandelwal @ Rani Gupta has been residing in her in-laws place which has been admitted even by one of the witnesses.

14. Accordingly, the entire criminal proceeding of Complaint Case No. 445 of 2011 (T.R. No. 1261 of 2012), including the order dated 23.4.2012 taking cognizance of the offences punishable u/s 498A of Indian Penal Code and u/s 4 of Dowry Prohibition Act against the petitioners namely, Ranjana Khandelwal @ Ranjana, Venus Khandelwal, Rani Khandelwal @ Rani Gupta and Radha Khandelwal @ Radha (all petitioners in Cr. M.P. No. 1519 of 2012) as also against Vishnu Khandelwal and Chandra Prakash Khandelwal @ Chandu (petitioners in Cr. M.P. No. 1431 of 2012), is hereby quashed.

15. So far petitioners namely, Yogesh Khandelwal and Smt. Shakuntala Devi @ Shakuntala, are concerned, the court keeping in view the allegation levelled against them seems to be justified in taking cognizance of the offences as aforesaid and hence it never warrants to be quashed. In the result, both the applications stand partly allowed.