

Raj Kumar Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Feb-21-2014

Appellant : Raj Kumar

Respondent : State and ors

Judgement :

1 S.B.Criminal Revision Petition No.860/1999 Raj Kumar V/s State of Rajasthan & ORS.21.2.2014 Hon'ble the Chief Justice Mr.Amitava Roy Mr.S.S.Dhillon for the petitioner.

Mr.J.P.S.Choudhary, Public Prosector Mr.M.K.Garg) Mr.R.S.Gill)-for the respondents no.2 to 5.

The revisional jurisdiction of this Court under section 397/401 of the Code of Criminal Procedure (for short, hereafter referred to as Cr.P.C.

.) has been sought to be invoked seeking interference with the judgment and order dated 12.10.1999 passed by the learned Additional District and Sessions Judge No.2, Hanumangarh in criminal appeal no.67/98 (90/96) acquitting the respondents no.2 to 5 of the charge under section 498A IPC by reversing the judgment and order rendered by the learned Judicial Magistrate, FiRs.Class, Tibbi in criminal case no.3/95.

I have heard Mr.S.S.Dhillon, learned counsel for the petitioner, Mr.J.P.S.Choudhary, learned Public Prosector, Rajasthan and Mr.M.K.Garg &

Mr.R.S.Gill, learned counsel for the respondents no.2 to 5.

A written report was lodged by one Rajkumar with the Police Station Tibbi alleging that his sister Harpreet Kaur @ Nirmala, who 2 had been given in marriage to respondent no.2 Raj Singh about 5 years back, had been subjected to dowry demands since after one and half months therefrom and had eventually been turned out of the matrimonial home following the assaults.

It was elaborated that though at the time of marriage, the bride's family had given sufficient dowry by way of ornaments, wearing apparels and household articles, the respondents had been demanding motor cycle, cooler and cash amount of Rs.20,000/- and that on the failure to provide the same, Harpreet @ Nirmala was being humiliated and ill-treated.

The written report disclosed that in view of the persistent demands, an amount of Rs.2000/- for the cooler had been paid for which though Harpreet Kaur @ Nirmala was taken back for a few days, she was again assaulted and externed from the nuptial house.

That the informant as he tried to intervene, was also assaulted, was alleged.

On this written report, a case under sections 498A and 406 IPC was registered against the respondents no.2 to 5 and on completion of the investigation, a charge-sheet was also laid against them under the said provisions of the law.

They denied the charges and trial followed.

The prosecution examined six witnesses including the complainant, his sister Harpreet Kaur @ Nirmala and otheRs.The accused persons in couRs.of their statement under section 313 Cr.P.C.stood by their denial.

The respondent no.2 in particular has stated that they had been falsely implicated to 3 pressurize them to part with their land to be registered in the name of the bride as a deal to allow her to return to her matrimonial home.

The learned trial court, on a consideration of the evidence available on record, acquitted the respondents no.2 to 5 of the charge under section 406 IPC, but

convicted them for the offence under section 498A IPC and sentenced to suffer one year simple imprisonment and to pay a fine of Rs.200/-, in default to further undergo four days SI.

Being aggrieved, the respondents no.2 to 5 preferred an appeal in which by the impugned judgment and order, they have been acquitted of the charge under section 498A IPC as well.

Whereas Mr.Dhillon has emphatically argued that the impugned judgment and order suffers from patent omission to consider the materials on record and thus, is perverse warranting interference therewith, it has been urged on behalf of the private respondents that not only the prosecution has totally failed to prove the charge, the case has been instituted as a weapon of oppression and a measure of intimidation to coerce the respondents no.2 to 5 to submission and convey their family land in favour of the alleged victim.

As against the plea raised on behalf of the petitioner that the learned lower appellate court had totally over-looked the evidence of the witnesses, who had attended the Panchayat on the issue, it has been insisted to the contrary on behalf of the private respondents.

Having regard to the fact that this Court in the instant proceeding is called upon to exercise its revisional jurisdiction qua an order of acquittal, the impugned judgment and order would necessarily have to be tested to ascertain whether it suffers from any error on any fundamental principle of law or absurdity or perversity in approach resulting in gross injustice.

As the materials on record would disclose, though the imputation against the respondents no.2 to 5 is that they had resorted to dowry demands after one and half months of the marriage, which was solemnized in the year 1989, the written report to that effect was lodged on 1.8.1994 after a lapse of about five years. No convincing explanation for this delay is forthcoming.

The evidence on record further demonstrates that in between Harpreet Kaur @ Nirmala had been blessed with two children.

That prior to the written report at any point of time, any such information has been lodged with the police, has not been stated by any of the prosecution witnesses.

Further, the informant i.e. Rajkumar, PW2, the brother of Harpreet Kaur @ Nirmala in his cross-examination did admit that a few days before the written report had been lodged, he had requested the respondents no.2 to 5 to register their land in the name of his sister and that if it is so done, she would be allowed to return to her matrimonial home.

Incidentally, the respondent no.2 mentioned about this fact in his statement under section 313 Cr.P.C. The learned lower appellate court, on a consideration of these aspects borne out from the evidence on record, doubted the veracity of the prosecution case.

Though the finding to the effect that none of the prosecution witnesses, who had attended the Panchayat held on this issue, had been examined, has been assertively controverted on behalf of the petitioner, PW4 Jamir Singh, who was one of such witness as claimed by the prosecution, even failed to identify the place where the sitting of the Panchayat had been held.

A perusal of the impugned judgment and order makes it apparent that the learned lower appellate court did weigh the evidence on record in full and being of the view, on a cumulative consideration thereof that the case of the prosecution did lack in credence, acquitted the respondents no.2 to 5 of the charge under section 498A IPC.

Noticeably, the petitioner had not challenged the finding of the learned trial court acquitting these respondents of the charge under section 406 IPC.

Bearing in mind the factual backdrop in which the prosecution has been launched against the accused persons and the conceptual co-relation between the two alleged offences, the acquittal of the respondents no.2 to 5 of the charge under section 406 IPC is also a factor that cannot be lightly disregarded while adjudging the challenge to the decision of the learned lower appellate court recording their acquittal of the charge under section 498A IPC.

In the exercise of the revisional jurisdiction of this Court, no cogent and convincing reason is discernible warranting interference with the impugned judgment and order.

The revision petition thus fails and is rejected.

(Amitava Roy)CJ Parmar

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