

Ashish Vs. State of M.P. and Another

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Court : Madhya Pradesh

Decided On : Dec-04-2014

Judge : Sushil Kumar Gupta

Appeal No. : Misc. Criminal Case No. 1508 of 2014

Appellant : Ashish

Respondent : State of M.P. and Another

Judgement :

1. Petitioner has filed this petition under Section 482 of Cr.P.C. for invoking the inherent powers of this Court for quashing the FIR and further proceedings of Criminal Case No.15963/2013 pending in the Court of JMFC, Gwalior, in connection with Crime No.581/2013 registered under Sections 498-A, 506/34 of IPC at police Station, Kampoo, Distt. Gwalior.

2. The brief facts of the case are that on 8.11.13 the complainant/respondent No.2 has lodged a report against the petitioner and his family members at police Station, Kampoo, Distt. Gwalior, alleging that her marriage got solemnized with the petitioner on 19.2.2007 in which her father gave jewellery and other items total worth Rs. three lacs and one motorcycle in dowry. It is further alleged that petitioner and her parents used to demand Rs.80,000/- more and five Beegha of land and also used to harass her physically and mentally on account of not fulfilling the demand of dowry. It is further alleged that petitioner and his family

members beat her on 3.11.13, 5.11.13 and 7.11.13. Thereafter, she lodged the report on 8.11.13. On this report, the police registered the offence under Sections 498-A, 506/34 of IPC at Crime No.581/13 against the petitioner, his parents, brother and sister and after completion of the investigation submitted the charge-sheet against them and the case is pending before the learned trial Court.

3. Learned counsel for the petitioner submitted that complainant/respondent No.2 lodged a false report against the petitioner mentioning wrong facts and suppressing the original facts. He further submitted that earlier also complainant/respondent No.2 had lodged an FIR (Annexure A/2) against petitioner and his parents which was registered under Section 498-A, 506 read with Section 34 of IPC and Section 4 of the Dowry Prohibition Act at Crime No.33/12 at police Station, Mahila Thana Padav, Distt. Gwalior. In that case, police Station Mahila Thana Padav submitted the charge-sheet against petitioner and their parents before the trial Court. The learned trial Court, after trial, acquitted all the accused persons including the petitioner vide judgment dated 31.12.12 passed in Criminal Case No.4125/12. It is also submitted that complainant/respondent No.2 has suppressed these facts of the earlier FIR in the present report. It is also submitted that petitioner had filed a suit under Section 13 of the Hindu Marriage Act on 21.5.2010 against respondent No.2 which is still pending in the Family Court as Case No.30-A/2010 HMA and after filing of that petition respondent No.2 has lodged this false report against the petitioner and his family members. It is also submitted that allegations in both the FIRs are same and as per Section 300 of Cr.P.C. no person can be prosecuted more than once for the same offence and the law does not permit further prosecution of the accused on the same facts. In support of the submissions, learned counsel placed reliance on the decision of Rafiq Khan and another v. Smt. Jamila Bee and another, 1999 (1) JLJ 388. In view of the aforesaid, learned counsel prays for quashing of the FIR as well as further proceedings of Criminal Case No.15963/13 pending in Court of JMFC, Gwalior.

4. Per contra, learned counsel for complainant/respondent No.2 submitted that facts of both the FIRs are different. He has also submitted that FIR (Annexure A/1) was lodged before the appearance of respondent No.2/complainant before the Family Court in the proceedings under Section 13 of the Hindu Marriage Act. He

also submitted that petitioner and his parents were acquitted by the JMFC on 31.12.12 only on the ground that complainant/respondent No.2 and her father did not depose against the accused and prays for dismissal of the petition.

5. Learned counsel for respondent No.1/State also controverted the submissions made on behalf of the petitioner and prays for dismissal of the petition.

6. The only question arises for consideration in this petition is as to whether the petitioner can be prosecuted on the basis of FIR (Annexure A/1) lodged by respondent No.2/complainant while he was acquitted in criminal Case No.4125/12 vide judgment dated 31.12.12 arising out of FIR (Annexure A/2) lodged on the same allegation.

7. It is not disputed that complainant/respondent No.2 has lodged the FIR (Annexure A/2) on dated 15.4.12 against the petitioner as well as his parents which was registered under Section 498-A, 506/34 of IPC. It is also not in dispute that on the basis of this FIR, charge-sheet was submitted before the JMFC and after trial petitioner and his parents were acquitted of the charges under Section 498-A and 506/34 of IPC. It is also not in dispute that petitioner has filed a petition under Section 13 of the Hindu Marriage Act before the Principal Judge, Family Court, Gwalior, on dated 21.5.10 and alleged FIR (Annexure A/1) has been lodged by respondent No.2/complainant on dated 8.11.13 under Sections 498-A and 506/34 of IPC.

8. After perusal of both the FIRs, it appears that allegations of demand of Rs.80,000/- and five Beegha of land and harassment due to not fulfilling the demand are present in both the FIRs. It is also apparent from the judgment dated 31.12.12 that petitioner and his parents were acquitted of the charges under Section 498-A and 506/34 of IPC and the said order of acquittal became final.

9. In the case of Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao and another, (2011) 1 SCC (Cri) 882, the Apex Court has observed and explained the scope of Article 20(2) of the Constitution of India and Section 300(1) of Cr.P.C. in para 4 and 5 as under:-

4. It may be noticed that there is a difference between the language used in Article 20(2) of the Constitution of India and Section 300(1) Cr.P.C. Article 20(2) states:

20.(2) No person shall be prosecuted and punished for the same offence more than once.

On the other hand, Section 300(1) Cr.P.C. states:

300. Person once convicted or acquitted not to be tried for same offence.-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof .

5. Thus, it can be seen that Section 300(1) Cr.P.C. is wider than Article 20(2) of the Constitution. While Article 20(2) of the Constitution only states that no person shall be prosecuted and punished for the same offence more than once , Section 300(1) Cr.P.C. states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

10. Thus, Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. The rule against double jeopardy is stated in the maxim *Nemo Debet Bis Vexari Pro Una Et Eadem Causa* . It is significant basic rule of criminal law that no man shall be put in jeopardy twice for one and the same offence. The rule provides foundation for the pleas of *autrefois acquite* and *autrefois convict* . The manifestation of this rule is to be found contained in Section 300 of Cr.P.C.

11. In view of the facts and circumstances of the case in hand and the law applicable, in my considered opinion when the petitioner in a case instituted on an FIR (annexure A/2) has been tried for the offence under Section 498-A and 506/34 of IPC and acquitted in Criminal Case No.4125/12 vide judgment dated 31.12.12 and the said order of acquittal became final and still remained in force, in such

state of affairs on the same set of facts the petitioner cannot be prosecuted for the same offence in view of Section 300(1) of Cr.P.C.

12. Consequently, this petition deserves to be allowed and is allowed accordingly and the FIR and further proceedings of Criminal Case No.15963/2013 pending in the Court of JMFC, Gwalior, in connection with Crime No.581/2013 registered under Sections 498-A, 506/34 of IPC at police Station, Kampoo, Distt. Gwalior, are hereby quashed so far as it relates to the petitioner.

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