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Court : Madhya Pradesh

Decided On : Nov-17-2014

Judge : S.K. Palo

Appeal No. : M.Cr.C. No. 3290 of 2014

Appellant : Badam Singh and Another

Respondent : State of M.P. and Another

Judgement :

Heard.

The petitioners have requested to invoke the inherent powers of this Court under Section 482 of Cr.P.C. for quashing the FIR registered as Crime No. 283/2013 dated 03.11.2013 at Police Station Bhitwarwar district Gwalior under Sections 498-A, 506, 294, 323 and 34 of IPC and also the Police Challan No. 248 dated 11.11.2013 submitted before JMFC, Bhitwarwar district Gwalior, which are marked as Annexures P-1 and P-2 respectively.

Brief facts of the case are that:-

The complainant/respondent No. 2 Smt. Saguna Bai married to accused Roop Singh 15 years ago. Due to their wedlock, two sons are born. It is alleged that her husband Roop Singh, father-in-law Khemu, mother-in-law Puniya Bai, brother-in-law (Jeth) Arjun Kushwaha, sister-in-law (Jethani) Leela Bai, sister-in-law (Nanad)

(petitioner No. 2) Suman and brother-in-law (Nandoi) petitioner No. 1 Badam Singh (husband of the petitioner No. 2) were demanding dowry. The complainant's parents are very poor. They are unable to fulfill the demands. Roop Singh husband of the complainant and her in-laws were harassing her physically and mentally. Roop Singh allegedly had illicit relationship with (Bhabhi) Leela Bai.

On 10.10.2013, the complainant was beaten by her husband Roop Singh, father-in-law Khemu, mother-in-law Puniya Bai, brother-in-law (Jeth) Arjun Kushwaha, sister-in-law (Jethani) Leela Bai with fists and kicks and also with wooden stick. She was thrown out from her matrimonial house along with her children.

Due to this, she received injuries. When she went to police station Bhitwar for lodging the report, no action was taken by Police. At the other hand, her in-laws were called to the police station in her presence. The complainant was threatened there. When she returned from police station, her husband and other family members did not allow her to enter into the matrimonial house. She felt helpless and was sitting outside the door throughout the night. The members of her matrimonial home threatened her of her life. She wrote a written complainant to the Superintendent of Police against her in-laws. On the basis of this FIR No. 283/2013 was registered on 03.11.2013 by Police Station Bhitwar district Gwalior under Sections 498-A, 506, 294, 323 and 34 of IPC.

Subsequently, the Police after investigation filed a charge-sheet No. 248 on 11.11.2014. In the charge-sheet along with husband Roop Singh, father-in-law Khemu, mother-in-law Puniya Bai, brother-in-law (Jeth) Arjun Kushwaha, sister-in-law (Jethani) Leela Bai, sister-in-law (Nandoi) Suman petitioner No. 2 and brother-in-law (Nandoi) petitioner No. 1 Badam Singh arrayed as accused persons. Consequent to this, the proceeding under Sections 498-A, 323-B, 294-A and 506/34 of IPC has been registered.

On behalf of the petitioners, learned counsel submitted that in the application for maintenance under Section 125 of Cr.P.C. at paragraphs 2 and 3, it is averred by the complainant that husband of the complainant Roop Singh, mother-in-law Puniya Bai, Jeth Arjun Kushwaha, Jethani Leela Bai, father-in-law Khemu treated her with cruelty and demanded motorcycle and Rs.50,000/- as dowry and

subjected her to cruelty. She was thrown out of her matrimonial home. In this application, emphasis has been given by the learned counsel for the petitioners that names of the present petitioners (Nanad) Suman and brother-in-law (Nandoi) Badam Singh has not been mentioned. It is also claimed that the petitioner No. 1 Badam Singh is a resident of village Jaura Tahsil Bhitwar district Gwalior, which is far away from the matrimonial home of the complainant. Complainant's in-laws house is situated at village Baniyator of the same Tahsil. In this regard copy of application under Section 125 of Cr.P.C. and photocopy of voter Identity Card issued by the Election Commission have been submitted, which are marked as Annexures P-3 and P-9 respectively.

Learned counsel for the respondent No. 2 opposed this submissions and stated that in the application under Section 125 of Cr.P.C., it is not required to mention the names of the accused persons and the same does not create any estoppel and any bar in the case.

Counsel for the petitioners submits that the plain reading of the application under Section 125 of Cr.P.C. (Annexure P-3) gives the details of the alleged harassment and cruelty caused to the complainant but the names of the petitioners are missing.

Learned counsel for the petitioners also argued that the petitioner No. 2 Suman is aged 21 years as per the identity card issued by the Election Commission (Annexure P-9). Her date of birth is 1992. As per the FIR (Annexure P-1) dated 03.11.2013, the complainant Puja Bai married to Roop Singh 15 years ago. That being so, the marriage is solemnised roughly in the year 1998. Therefore, the petitioner No. 2 Suman Bai must have been around 6 years old at the time of marriage of the complainant Suman. That being so, she was neither a major on that time nor she could be in a position to demand dowry along with other accused persons. And as she was not married, the petitioner No. 1 Badam Singh was not at all present at that time.

Learned counsel for the respondent No. 2 argued that the petitioner might not be of that age, at the time of marriage of the complainant, but she could have harassed her in the past 4-5 years. Therefore, the contention of the petitioners be

not adhere to. With this reasoning that the petitioner No. 2 Suman married to the petitioner No. 1 Badam Singh and they have been living separately at village Jaura and not at village Baniyator is also not tenable. The identity card Annexure P-9 issued by the Election Commission in the year 2012 shows that her husband name is Badam Singh and they are residents of village Jaura. The petitioners were residing at different village and not at village Baniyator is also a matter of evidence.

Counsel for the petitioners further contended that in such disputes, the family members of distant relatives are also roped in. The tendency of involving the entire family members in the house held in the domestic quarrel taking place in the matrimonial disputes is not unknown in the Indian rural background. Counsel for the petitioners is fortified by the decision rendered in *Geeta Mehrotra and another Vs. State of U.P.* and another reported in (2012) 10 SCC 741, it is held that:-

A. Criminal Procedure Code, 1973 S. 482 Matrimonial dispute Casual reference to family members of husband (unmarried sister and elder brother of husband, appellants) in FIR as co-accused (as well as to parents of husband) Absence of any specific allegation and prima facie case against co-accused Proceedings quashed by Supreme Court itself Penal Code, 1860 Ss. 498-A, 323, 504 and 506 Dowry Prohibition Act, 1961, Ss. 3 and 4.

Besides the allegations of demand of dowry, it is also alleged in the police statement that on 10.10.2013 along with the other accused persons, the petitioners also beaten the complainant and thrown her out of the matrimonial home. The address of the petitioners as per the identity card shows that they are residents of village Jaura but the arrest memo of petitioners shows that they are residents of Baniyator, Police Station Bhitawar. This aspect can only be clarified after adducing evidence.

Coming to the facts of the present case, the petitioners named in the FIR along with other accused persons, it is alleged that on 10.10.2013 the complainant was thrown out of her matrimonial home, the petitioners were also involved along with other in-laws. Their names are not been casually referred.

Learned counsel for the petitioners relied on Satish Mehra Vs. State (NCT of Delhi) and another reported in (2012) 13 SCC 614, in which a Division Bench of Hon'ble the Supreme Court has held that:-

A. Criminal Procedure Code, 1973 S. 482 Inherent power of High Court Power to quash proceedings specially after framing of charges Scope and nature of Reiterated Held, power to quash proceedings after charges were framed is wider as evidence adduced while submitting charge-sheet can be looked into for determining disclosure of offence against accused Where allegations do not disclose prima facie case and prosecution of accused would result in abuse of process then proceedings can be quashed either at early stage or at later stage This extraordinary power available to High Court needs to be exercised carefully and sparingly it cannot be used for quashing legitimate prosecution Criminal Procedure Code, 1973, Ss. 161, 165, 173, 227 and 239.

But Hon'ble the Apex Court has cautioned that this extraordinary power available to the High Court needs to be exercised carefully and sparingly. It cannot be used for quashing legitimate prosecution. A full Bench decision rendered by Hon'ble the Supreme Court in Bhaskar Lal Sharma and another Vs. Monica and others reported in 2014 (1) MPLJ (Cri) 721, it is held that:-

(a) Criminal Procedure Code (2 of 1974),

S. 482 Complaint petition filed by respondent alleging commission of offences under sections 498- A and 406, Penal Code against appellants Appreciation, even in a summary manner of averments made in a complaint petition or FIR would not be permissible at stage of quashing and facts stated will have to be accepted as they appear on very face of it Complaint filed by respondent contains allegations to prima facie sustain commission of offence under section 406, Penal Code cannot be interdicted but has to be finally concluded by trial Court.

In the light of the above, appreciation of the evidence in a summary manner is not permissible at the stage of quashing the proceedings. The facts stated in the FIR and in the statements recorded under Section 161 of Cr.P.C. will have to be accepted as they appear on the face of it. The allegation levelled against the

petitioners prima facie sustain commission of offence under Section 498-A of IPC, therefore, it cannot be interdicted but has to be finally concluded after adducing evidence by the Trial Court. That being so, this Court is not inclined to quash the proceedings against the petitioners.

On the aforesaid analysis and on the basis of law laid down by full Bench decision of Hon'ble the Supreme Court in Bhaskar Lal (supra), it is not a fit case to invoke the inherent powers under Section 482 of Cr.P.C., therefore, petition is dismissed.

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