

Gopal Jee and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-06-1998

Judge : S.K. Chattopadhaya, J.

Appeal No. : Crl. W.J.C. No. 149 of 1997 (R)

Appellant : Gopal Jee and ors.

Respondent : State of Bihar and ors.

Disposition : Application Dismissed

Prior history : K. Chattopadhaya, J. 1. Heard Mr. V.P. Singh for the petitioners, Mr. P.C. Roy, on behalf of respondent No. 5 and Mr. P.D. Agrawal, Government Advocate, on behalf on respondents 1 to 4. 2. Invoking the jurisdiction under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ of Mandamus, directing the respondents not to proceed with Sector IV PS. Case No. 38/97 under Section 304(B), 405, 406/34 of the Indian Penal Code which has been registered on the ba

Judgement :

K. Chattopadhaya, J.

1. Heard Mr. V.P. Singh for the petitioners, Mr. P.C. Roy, on behalf of respondent No. 5 and Mr. P.D. Agrawal, Government Advocate, on behalf on respondents 1 to

4.

2. Invoking the jurisdiction under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ of Mandamus, directing the respondents not to proceed with Sector IV PS. Case No. 38/97 under Section 304(B), 405, 406/34 of the Indian Penal Code which has been registered on the basis of a complaint filed in the Court of C.J.M. of Bokaro. The petitioners have further prayed for quashing the order dated 13-8-97 by which the Chief Judicial Magistrate, Bokaro, has issued process under Section 82/83 Cr. P.C. against the petitioners. The only question of law which is to be decided in this case is as to whether the Bokaro Court has any jurisdiction to entertain complaint and pass the impugned order when the incident took place at Varanasi and the police filed final form, submitting that no foul play was committed in regard to the death, and as such the police action is not necessary.

3. The facts of the case lie in a narrow compass.

4. Anju Verma, daughter of respondent No. 5 was married with one Suresh Chandra, son of petitioner No. 1 on 23-4-1994 at Bokaro Steel City. Anju went to her matrimonial house at Varanasi and for some reasons or the other, both husband and wife, started living separately in the first floor of the house leaving parents in law on the ground floor. There was some hot discussion at 7.30 a.m. on 29.10.1996 and out of burn injuries not only Anju but her husband, Suresh died subsequently in the hospital on 7.11.1996 and 29.11.1996 respectively. Petitioner No. 2, being the brother of the deceased, Suresh informed the Police regarding the occurrence and after completion of investigation, the Police found that the death was caused due to burn injuries.

5. It appears that both Anju and Suresh gave their dying declarations on 30-10-1996 before A.C.J.M. 1st, Varanasi which reveals that there was a quarrel between the husband and the wife during which the wife became furious and sprinkled kerosene oil herself on her body and lit the light. The husband, while trying to save also sustained burn injuries. The final form, submitted by the Varanasi Police is to the effect that both the husband and the wife died due to burn injuries and, in fact, there was no criminal conspiracy and the said report was

accepted by A.C.J.M. 1st, Varanasi. Subsequently, on 21-12-1996, the complainant, respondent No. 5 filed a complaint in the Court of C.J.M., Bokaro at Chas making allegations against the petitioners that due to non-fulfillment of the demand of dowry, his daughter was regularly tortured and ill treated and as a result of which, she ultimately died out of burn injuries. On the basis of the complaint, the Chief Judicial Magistrate directed the police to register a case, but initially it was declined by the police on the ground that the incidents had occurred at Varanasi, the police at Bokaro had no jurisdiction to register a case in this regard. However, thereafter, pursuant to the judicial order passed by the Magistrate the Police registered a case under several sections of the Indian Penal Code as stated earlier. On 3-6-1997, non-boilable warrant of arrest was issued against the petitioners, but the petitioners could not be apprehended and as such on 19-8-1997 on the prayer made by the I.O. process under Section 82/83 Cr. P.C. was issued considering the facts that the petitioners were evading arrest and were removing their immovable properties.

6. Mr. V.P. Singh, learned Counsel appearing for the petitioners has firstly contended that on reading of the entire complaint petition, it would be crystal clear that respondent No. 5 with an oblique motive, has filed the said complaint in order to harass the petitioners. Referring to some paragraphs of the complaint petition, he submits that the motive behind filing of such complaint is to get some properties, which were alleged to have been given to the deceased couple at the time of their marriage. It is contended that when after full fledged investigation the police at Varanasi found that the death of the couple was accidental and there was no criminal conspiracy of murder and the said report having been accepted by the A.C.J.M. at Varanasi the Magistrate at Bokaro could not have reopened the case afresh merely on the basis of the complaint filed by respondent No. 5. Second contention of Mr. V.P. Singh is that admittedly after the marriage Anju and Suresh started living at Varanasi and unfortunate event occurred at Varanasi, the Criminal Court at Bokaro, has no jurisdiction to entertain a complaint in this regard. It is submitted that allowing the proceeding to continue at Bokaro will be an abuse of the process of the Court and High Court should interfere in exercising its extraordinary jurisdiction.

7. Mr. P.C. Roy, learned Counsel for the State vehemently countering the arguments of Mr. V.P. Singh, has submitted that the very nature of the case will indicate that helpless lady was subjected to cruelty and torture and as a result of which she had no option but to commit suicide. Referring to the dying declaration of Anju Mr. Roy has submitted that the statement itself will show that there was constant mental irritation of the victim girl in which her in-laws were also participating. Drawing my attention to the memo dated 29-10-1996, issued from the B.D.A Hospital, Varanasi. Mr. Roy has contended that the lady sustained 85% burn injuries and husband to the extent of 80% burn injuries. An information was given to the police by the hospital authority on the basis of which the police started investigation, but after conniving with the accused persons submitted a final form. According to Mr. Roy the very dying declaration of the victim girl will suggest that she was so disgusted with her in-laws including her husband that she had herself sprinkled kerosene oil on her body and lit the matches on it. Under these circumstances, learned Counsel continues, the case is completely covered under the provision as laid down under Section 304B of the Indian Penal Code.

8. Regarding the point of jurisdiction, Mr. Roy relying on the decision in the case of M. Sridhar Reddy and Anr. v. State of A.P reported in 1996 Cr. LJ 4169, and in the case of Smt. Sujata Mukherjee v. Prashant Kumar Mukherjee, 1997 SC 2465, has urged that on similar circumstances the Division Bench of the Andhra Pradesh High Court has held that the Court at place where dowry was received, has jurisdiction to entertain complaint.

9. Mr. P.D. Agrawal, learned Government Advocate, however, submitted that when there is no direct decision of this Court on this point then the writ application should be admitted for final hearing because some aspects of facts and law are to be gone into.

10. After hearing the learned Counsel for the parties, I am of the view that if on the basis of the submissions made by learned Counsel for the parties on merit of the case if any specific finding is given the same may prejudice the case of either party inasmuch as the matter is still under investigation. Whether the investigation done by the Varanasi police is fool proof or whether the complaint filed by

respondent No. 5 is with an ulterior motive only to coerce the petitioners for some material gain is to be investigated by the police and ultimately to be decided by the concerned trial Court. The High Court in exercising its jurisdiction under Article 226 of the Constitution, in my view, should not embark upon the merit of the case at this stage. However, as far as the question of jurisdiction is concerned in respectful agreement with the Division Bench judgment of the Andhra Pradesh High Court. I am of the view that the Court at Bokaro has jurisdiction to entertain the complaint filed by respondent No. 5. In the reported case their Lordships have not only dealt with the provisions of Section 304B and Section 113A of the Indian Evidence Act but also have dealt in extenso with other provisions of different Acts and has observed as follows:

We have made a cursory survey of the relevant provisions which in our opinion, provide the idea whether Madanpalle Police Station has rightly entertained the complaint of the father of the victim girl and we have no hesitation in concluding that in case of a dowry death and particularly when there are clear allegations by the father of the victim girl that petitioners demanded monies by way of dowry and received the same in part at Mahanpalle and through his victim daughter conveyed further demands to him to Madanpalle, Madanpalle Police committed no error of jurisdiction when it entertained the complaint and registered the crime for Investigation. It is clear case in which all transactions pertaining to demand of dowry and payment thereof have taken place at Madanpalle and since the father of the victim girl has not been able, as alleged, to meet the demand, the victim has allegedly suffered the torture at the hands of the petitioner-appellants in Jalgaon in the State of Maharashtra and met the ultimate death at the said place. The jurisdiction to investigate, thus, in terms of Section 156(1) of the Code of Criminal Procedure being coextensive with the jurisdiction of the Court to inquire into or try the case as contemplated under Section 179 of the Cr. P.C. cannot be denied to Madanpalle Police. In any case, since there are allegations that the victim had informed her father (informant) who was at Madanpalle of the demands by tele-communication, there is no warrant for any objection by the petitioner-appellants to question the jurisdiction of the Madanpalle Police. Facts as above clearly show that Jilapet Poti Police, Jalgaon only acted under Section 174 of the Code of Criminal Procedure to enquire report on suicide and not the case of dowry death

or the alleged murder along with the offence under Sections 3 and 4 of the Dowry Prohibition Act, 1961. Such a case has been registered only with Madanpalle Police. Records of an enquiry under Section 174 of the Code of Criminal Procedure are relevant materials for an effective investigation of the case, which the father of the victim girl has lodged with Madanpalle Police. The District Superintendent of Police, Jalgaon has thus committed no mistake of impropriety in handing over the records pertaining to the case under Section 174 of the Code of Criminal Procedure to Madanpalle Police.

11. In the complaint petition, it has been categorically alleged that the entire amount of dowry and articles worth about Rs. 4,00,000/- (Rupees four lacs) including gold ornaments, clothes and other things were entrusted to accused No. 1 in presence of the witnesses and several other persons, which were taken into possession by them soon after the marriage. Similarly, it has been stated that soon after the marriage the in-laws started harassing and torturing his daughter subjecting her to cruelty and atrocities and started compelling her for bringing a car from her parents house.

12. Having heard the learned Counsel for the parties, I am of the view that no case has been made out by the petitioner for interfering with the order of the learned Magistrate and the investigation of the Bokaro Police. This application is, accordingly dismissed. The interim protection, given to the petitioners by order dated 30-9-1997, is vacated and the petitioners are directed to appear before the Court below on or before 27th of January, 1998 and on their surrender, they (Gopal Jee, Ramesh Chandra and Rajesh Kumar) shall be released on bail on their furnishing bail bonds of Rs. 1,00,000/- (Rupees one lac) each with two sureties of the like amount each, to the satisfaction of the learned C.J.M., Bokaro in connection with Sector IV P.S. case No. 38/97.

13. It is needless to say that after the release of the petitioners they will co-operate in the investigation.