

Parsoon Kumar Srivastava and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Apr-05-1999

Reported in : 1999CriLJ3375

Judge : B.K. Sharma, J.

Acts : Indian Penal Code (IPC) - Sections 498A and 504; Code of Criminal Procedure (CrPC) , 1974 - Sections 200 and 202

Appeal No. : Criminal Revn. No. 1668 of 1998

Appellant : Parsoon Kumar Srivastava and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Atul Misra, Adv.

Advocate for Pet/Ap. : Rakesh Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.K. Sharma, J.

1. This is a revision against the order dated 16-7-1998 passed by Judicial Magistrate, Azamgarh in complaint case No. 338 of 1998, Anjana Srivastava v.

Prasoon Srivastava whereby he directed the summoning of the accused-revisionists for the offences under Sections 498A/504, I.P.C.

2. Heard the learned counsel for the parties.

3. The facts leading to this revision are that Smt. Anjana Srivastava wife of Sri Pradeep Kumar Srivastava (opposite party No. 2) filed a criminal complaint before the Judicial Magistrate, Azamgarh on 3-6-1998 against the revisionists. Prasoon Kumar Srivastava, Revisionist No. 1, is the elder brother of the husband of the complainant opposite party No. 2; Smt. Neeta Srivastava, revisionist No. 2 is the mother-in-law of the complainant while Triloki Nam Srivastava, Revisionist No. 3, is the father-in-law of the complainant. The allegations made in the complaint were that the complainant Smt. Anjana Srivastava was married to Pradeep Srivastava on 1-12-1995 according to Hindu Customs and went in Biato the house of the accused-revisionists that in the marriage her father had spent money beyond his means and even given Rs. 2,50,000/- to the accused-revisionists 1 and 3 for the purposes of getting a computer school opened by her husband but even after receiving the said money, they kept on treating her with cruelty; that on 13-11-1996, a daughter was born to her; that the accused-revisionists started pressing her to bring one lack rupees from her father otherwise she would be beaten and turned out from the house; that on 10-4-1998, at about 4.00 p.m., when her husband was not in the house, the accused-revisionists asked her to telephone her father to give Rs. 1 lack whereupon she said that her father had already given Rs. 2,50,000/- to them on the pretext that they would get a computer school opened for her husband and that they have committed breach of trust with her father and they (the revisionists) are now demanding the money again; that on this, she was badly beaten by the accused-revisionist and was turned out from the house along with her infant daughter and at that time, she was threatened that in case she would come back, she would be killed. She further claimed in her complaint that she had given information about the occurrence to the Senior Superintendent of Police, Azamgarh personally but since there was no hope of getting justice from the police, she filed the complaint in Court.

4. In support of her complaint she repealed the allegations on oath besides herself, she examined her husband Pradeep Kumar Srivastava and one Sri Umesh Lal Srivastava under Section 202, Cr. P. C. Her husband Pradeep Kumar Srivastava in his statement on oath under Section 202, Cr. P. C. claimed that his father-in-law had given Rs. 2,50,000/- at the asking of his elder brother Prasoon Kumar Srivastava, accused-revisionist No. 1, for opening of a computer school but that money was digested by his father and a breach of trust was committed; that after birth of a daughter, they started harassing her and demanded one lakh rupees more and threatened her. He also testified in his statement that she was turned out from the house by the accused-revisionists. Umesh Lal also supported her case about the demand of dowry of Rs. 2,50,000/- for getting a computer school opened for her husband; digesting of money by her father-in-law Triloki Nath Srivastava, revisionist No. 3 and also about the harassment and ill-treatment to her. He has also testified about her turning out from the house.

5. Obviously, there was enough material on record before the learned Magistrate to warrant the summoning of the accused-revisionists for the offences under the aforesaid sections. In doing so, the learned Magistrate has only to see whether there is existence of a prima facie case on the assumption that what was stated would be true unless the prosecution allegations were so fantastic that they could not reasonably be held to be true, or unless the essential ingredients of the offences alleged are absent. (See *Deberidra Nath Bhattacharyya v. State of W. B.*, 1972 Cri LJ 1037 : (AIR 1972 SC 1607). It has been observed by the Apex Court in the case of *Nirmaljit Singh Hoon v. State of West Bengal*, reported in AIR 1972 SC 2639 :-

The words 'sufficient ground' used in Ss. 203 and 209 mean the satisfaction that a prima. facie case is made out against the person accused, by the evidence of witnesses entitled to a reasonable degree of credit, and do not mean sufficient ground for the purpose of conviction. The test is whether there was sufficient ground for proceeding and not whether there is sufficient ground for conviction, and where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defense, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process

could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case.

6. In the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi, 1976 Cri LJ 1533 : (AIR 1976 SC 1947) the Apex Court observed :-

At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one.

The scope of the inquiry under Section 202 is extremely limited - only to the ascertainment of the truth or falsehood of the allegations made in the complaint.- (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact, in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

7. I may also refer a single Judge authority of this Court in the case of Riyasat Ali v. State of U. P., reported in 1992 Cri LJ 1217 wherein it was said: When the allegations contained in

the complaint disclose an offence and the same allegations have been substantiated by the evidence of the witnesses examined under Section. 200 and 202 and the Magistrate is satisfied that there are reasons to proceed against the accused persons, the order of the Magistrate should not be interfered with lightly. It is the subjective satisfaction of the Magistrate after taking an objective view of the allegations made in the complaint and in the evidence of the witnesses examined by the complaint. The Sessions Judge while exercising revisional power

is not expected to find discrepancy in the case of the complainant. The allegations in the complaint and evidence of the witnesses are to be taken at their face value, as the Magistrate can himself discharge or acquit the accused if the accused after appearing before him satisfied the Magistrate in this regard.

8. It has been held by the Apex Court in the case of Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose, reported in AIR 1963 SC 1430 : (1963 (2) Cri LJ 397):.Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired at the trial.

The Apex Court further said :-No doubt, as stated in sub-section.

(1) of Section. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

9. In view of this legal position, it has to be kept in mind that while deciding this revision the affidavit filed by the revisionists with which certain documents were also filed cannot be taken into account. It was said in the affidavit that Pradeep Kumar Srivastava, the husband of the complainant was already running a computer school before the marriage; that the advertisement which had been published in newspaper about the same, itself said that he was running a computer school; that the complainant did not pay the electricity bill of the school and misbehaved with the revisionists and in this regard, a report has also been made to the police. It was also claimed in the affidavit that the allegations made in the complaint were totally false and the evidence under Sections 200 and 202, Cr. P. C. in support thereof was also false. The learned counsel for the revisionists has repeatedly argued that there was no specific denial in the counter-affidavit about the existence of the computer school from before and the existence of this school belied the case of the complainant of the demand and payment of Rs.

2,50,000/- for opening a computer school.

10. With regard to the alleged report to the police, a copy of an application alone has been filed and there was nothing in the affidavit to show that the report had actually been lodged or filed at the police station on any particular date and what happened about it.

11. The plain position is that the revision against the summoning order has to be disposed of considering whether there was anything illegal in the summoning order passed by the learned Magistrate on the basis of the material placed before him under Sections 200 and 202, Cr. P. C. If there is such prima facie material, as obviously is present on the record in this case, then it is not open for this Court to take into consideration the extraneous material filed from the side of the accused-revisionists along with the revision petition. There is no provision for placing on record additional material in the revision against the summoning order and the Court would be traveling beyond its jurisdiction if it relied on any extraneous material other than the material led before the learned Magistrate under Sections 200 and 202, Cr. P. C. It is always open to the accused to place material before the learned Magistrate at the trial which may knock the bottom out of the prosecution case. Any such material cannot be looked into at this stage to Judge whether the material led before the learned Magistrate under Sections 200 and 202, Cr. P. C. was credible or reliable or not.

12. The learned counsel appearing for the opposite party No. 2 has claimed that the summoning order is an interlocutory order and, therefore, the revision cannot lie against the same but it is unnecessary to enter into that question as even otherwise this revision has no substance.

13. Consequently, the revision fails and is dismissed. The stay order dated 26-10-1998 stands discharged.

14. Let a copy of this order be sent to the learned Magistrate concerned within a week from today by the registry by FAX/registered post A/D for information and taking further proceedings according to law.

