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Court : Allahabad

Decided On : Jul-30-2008

Reported in : 2008CriLJ4668

Judge : Vinod Prasad, J.

Appellant : Ashok Kumar Tiwari and ors.

Respondent : State of U.P. and anr.

Disposition : Application dismissed

Judgement :
ORDER

Vinod Prasad, J.

1. A family of Dina Nath Tiwari consisting of himself, his wife Smt. Ram Dulari, son Ashok Kumar Tiwari along with Smt. Nirmala w/o Bharat Tiwari have invoked my inherent jurisdiction with the prayer that entire proceedings of Case No. 574 of 2008. State v. Ashok Kumar Tiwari and others arising out of Crime No. C-131/2007, Under Section 498-A, 304-B and 201 of IPC and Section 3/4 of Dowry Prohibition Act, P.S. Sahatwar, District Ballia, pending in the Court of Judicial Magistrate 1st, Ballia be quashed. The ancillary prayer is to stay further proceedings of the aforesaid case pendente lite.

2. The background facts are that Reena Tiwari d/o informant Prem Shanker Tiwari respondent No. 2 was married with Ashok Kumar Tiwari applicant No. 1 s/o Dina Nath Tiwari and Smt. Ram Dulari applicant Nos. 2 and 3. Reena Tiwari however, was murdered and in respect of her death, her brother Krishna Kant Tiwari s/o respondent No. 2 Prem Shanker Tiwari lodged a FIR as Crime No. 149 of 2005. Under Section 302/201, IPC at P.S. Sahatwar, District Ballia on 24-11-2005 at about 1.50 p.m., mentioning there in that his sister was married with Ashok Kumar Tiwari s/o Dina Nath Tiwari and for the reasons unknown, Bharat Tiwari, brother of Ashok Kumar Tiwari has burnt the deceased to death after pjurdering her.

3. It transpires that on the basis of the registered FIR, Annexure Na. 1, investigation was taken up by the I.O., who concluded the same and, submitted charge sheet No. 5 of 2006 in the Court on 20-1-2006 for the offences Under Section 306/201, IPC against Bharat Tiwari, Madhuvan Yadav and Prabhawati. On the basis of the said charge sheet, Annexure 2, cognizance was taken by the Magistrate and the accused were summoned. Their case was committed to the Court of Session and Sessions Trial No. 124/07 was registered in the Court of Sessions Judge, Ballia vide annexure 3-A to this application.

4. It seems that respondent No. 2 Prem Shanker Tiwari moved an application Under Section 156(3) Cr.P.C. against the present applicants along with Bharat Tiwari, Smt. Nirmala and Prabhawati Devi with the prayer to direct the police to register his FIR and investigate the offences of 498-A, 304-B, IPC and 3/4, D.P. Act. It is pertinent to mention here that Prabhawati and Bharat Tiwari were charge sheeted accused for the offences Under Section 306/201, IPC vide annexure 2 as has already been mentioned above.

5. The allegations, which were levelled by respondent No. 2 in his application Under Section 156(3), Cr.P.C. were that he had married his daughter Reena, according to Hindu customs and rites with Ashok Kumar Tiwari s/o Dina Nath Tiwari on 1-5-2004. Soon after the marriage the husband, father-in-law and mother-in-law along with Jeth Bharat Tiwari and his wife started demanding Rs. 50,000/- cash, a Fridge and a Maruti Car from his daughter and started torturing her for non-fulfilment of the same. For making the life of his daughter happy,

respondent No. 2 parted with the Rs. 50,000/-, so tfyat the torture of his daughter comes to an end but the act resulted in aggravation of torture of his daughter for demand of a Fridge and a Maruti Car. When the informant came to know of it, he sent his son Krishna Kant on 17-11-2005 for bringing back his daughter but the applicants did not send her back. His daughter Reena was assaulted in the presence of her brother as well.

6. On 18-11-2005 Krishna Kant informed the respondent No. 2 regarding torture and assault on Reena on telephone, on which the informant asked him to take respectable persons along with him and bring back Reena. Thereafter when Krishna Kant had gone to bring back Reena, then he found that Reena was murdered and cremated, Krishna Kant informed regarding the said murder to Prem Shanker Tiwari on telephone who came to district Ballia and endeavoured to lodge his report but his report was not taken down. On the contrary the I.O. started pressurising him for a compromise. A written application was dispatched by Prem Shanker Tiwari to Superintendent of Police, Ballia but in vain. According to the version of the informant, the police, to save the accused from rigour of punishment, in connivance with the accused, registered a FIR on their own in the name of Krishna Kant Tiwari son of respondent No. 2 ostensibly to save the accused from offences commited by them and it was asserted by respondent No. 2 that his son never lodged any FIR at P.S. Sahatwar. It was further mentioned that even at the time of marriage of Reena, the accused had demanded Hero Honda Splendor Motor-Cycle which was given in dowry by the informant respondent No. 2.

7. With the aforesaid allegations respondent No. 2 prayed to the Magistrate vide his application dated 4-1-2006 to direct the police to register the FIR and investigate the offence. His application Under Section 156(3) Cr.P.C. is annexure No. 4.

8. Vide order dated 23-1-2006, the Magistrate rejected the said application recording in his order that the FIR lodged by Krishna Kant Tiwari as Crime No. 149/05, Under Section 302/201 IPC was registered at the Police Station Sahatwar, which crime was investigated and charge sheet was submitted Under Section

306/201 IPC. Learned Magistrate relied upon a judgment of the apex Court in T.T. Antony's case : 2001 CriLJ3329 and rejected the application of the applicant Under Section 156(3) Cr.P.C. observing that the second FIR cannot be registered at the instance of respondent No. 2 as the earlier FIR was already registered.

9. Order of rejection dated 23-1-2006 of the application Under Section 156(3) Cr.P.C. was challenged in Criminal Revision No. 24/06 unsuccessfully by respondent No. 2 wherein his revision was dismissed vide order dated 8-2-2007 passed by Special Judge/Additional Sessions Judge, Court No. 7, Ballia vide annexure 6 to this application.

10. According to the case of the applicants both the aforesaid rejection orders were challenged before this Court in Criminal Misc. Writ Petition No. 2680/07, which was allowed and both the orders passed by Magistrate as well as by learned Additional Sessions Judge dated 23-1-2006 and 8-2-2007 respectively were set aside and the matter was remanded back for fresh decision on the application of respondent No. 2 Under Section 156(3) Cr.P.C.

11. It was after the remand that on 17-4-2007, the Magistrate ordered for registration of FIR and investigation and hence crime No. C-131/07 was registered against the present applicants Under Section 498-A, 304-B and 201 IPC and Section 3/4 D.P. Act at P.S. Sahatwar, district Ballia vide Annexure No. 7 to this application.

12. Follow-up investigation resulted in filing of Charge Sheet No. 5 A/08 against the applicants in the Court of Judicial Magistrate, 1st, Ballia, on the basis of which Case No. 574/08 State v. Ashok Kumar Tiwari and Ors. was registered in the Court of J.M. 1st, Ballia for the aforesaid offences.

13. It is on background of the above facts that the four applicants who are husband, father-in-law, mother-in-law and sister-in-law (Bhabhi) have filed the instant Criminal Misc. Application with the prayer that entire proceedings of the subsequent registered case No. 574/08 State v. Ashok Kumar Tiwari and Ors. for causing dowry death and offence under Dowry Prohibition Act be quashed.

14. I have heard Sri Satish Trivedi, learned Senior Counsel in support of this application and learned AGA in opposition.

15. Sri Satish Trivedi learned Senior Counsel raised no new argument but confined himself on the same contention that second FIR cannot be registered, therefore, the prosecution of the applicants be quashed. He further submitted that at least two of the applicants Prabhawati and Bharat Tiwari were already charge sheeted accused and therefore, the second FIR against them is bad in law. He further contended that so far as these two accused persons are concerned, it will be difficult for them to defend themselves for the charges which are opposite in nature and therefore there is likelihood of recording of conflicting findings in both the trials. Sri Trivedi also relied upon on the judgment of the apex Court in T.T. Antony v. State of Kerla and Ors. : 2001 CriLJ3329 .

16. Learned AGA on the contrary, refuted all the contentions raised by Sri Satish Trivedi and submitted that alternative charge can always be framed and whether it was a case of abetement of suicide or murder because of rapacity can be decided only at the stage of trial. It is further contended that the deceased was murdered within a very short span of time and there is nothing on record to suggest that she was inclined to commit suicide and therefore, earlier charge sheet submitted by the police was wholly dis-satisfactory. Learned AGA also submitted that it is not a case of registering of second FIR but it is a case of bringing out new version by the father of the deceased, who had lost his daughter in prime of her youth. Concludingly, learned AGA contended that this application is bereft of merit and T.T. Antony's case (supra) does not apply at all and this application deserves to be rejected.

17. I have considered the contentions of rival sides and have gone through various annexures appended along with this application. I have also gone through the judgment of the apex Court in T.T. Antony's case : 2001 CriLJ3329 (supra).

18. From the material placed on the record of this case, it is absolutely clear, which has not been rebutted by the learned Counsel for the applicant, that the case of the father Prem Shankar Tiwari respondent No. 2 is that no FIR was lodged by his son Krishna Kant Tiwari with the allegations of murder and the police

on its own registered FIR by impersonation in the name of Krishna Kant Tiwari. This allegation by respondent No. 2 has to be taken to be correct on its face value. The applicants have not been able to show any thing on the basis of which it can be said that the said allegation levelled by the present informant is false. In such a view, there does not arise any question of lodging of second FIR as according to the case of the informant registration of the first FIR is fictitious and that is a sham document. Further it transpires that the allegations levelled by the present informant, the father is that the accused have committed dowry death. The earlier FIR, which has been appended as Annexure No. 1 to this application speaks volume in itself. The said FIR does not contain anything but for a very cursory narration of fact without disclosing the time and even the date of the incident, name of any witness etc. It transpires that the allegations of the present informant that his son had not lodged any FIR seems to be more probable.

19. Further, offence Under Section 306 IPC is materially different from the offence Under Section 304-B IPC, so far as registration of FIR is concerned. Under Section 154 Cr.P.C., what is to be registered is the information relating the commission of cognizable offence. In this background the contention of learned Senior Counsel for the applicants has to be analysed.

20. Cogitating over the submissions it is clear that, if two persons give information regarding commission of two different offences which are cognizable in nature, may be in respect of the same incident, then the FIR of both the versions have to be registered. It will be the matter of investigation to investigate which version is correct. But so far as registration of FIR is concerned, the same cannot be denied for the reasons that the incident is one. For registration of FIR what is important is information disclosing particular offence and not the incident. Under Section 154 Cr.P.C. it is nowhere mentioned that in respect of a single incident, no two FIRs can be registered even if the version given by both the informants are materially different and they disclosing different kind of offence as is the case here. There is another aspect of the matter, which requires consideration at this stage and that is that if one version given by the informant is not registered then his case will be closed for ever even before it is investigated. This is not the intention of the legislature in enacting under Section 154 Cr.P.C. Even in T.T. Antony's case :

2001 CriLJ3329 (supra) while deliberating on the said aspect of the matter the apex Court has observed that any cryptic information cannot be registered as FIR. It has further been observed by the apex Court that any statements recorded during the investigation of cognizable offence disclosing commission of other cognizable offence will only be a statement Under Section 161 Cr.P.C. and any such disclosure during investigation cannot be treated to be a FIR. The apex Court has observed in the aforesaid decision as follows:

19. An information given under Sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (FIR) though this term is not used in the Code. It is very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Sections 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer-in-charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer-in-charge of police station is the First Information Report-FIR postulated by Section 154 Cr.P.C. All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr.P.C. No such information/statement can properly be treated as FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr.P.C. Take a case where FIR mentions cognizable offence under Sections 307 or 326 IPC, and the investigating agency leans during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular, in

such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H the real offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C. as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier than investigation is being directed against the person suspected to be the accused.

19. The scheme of the Cr.P.C. is that an officer-in-charge of a Police Station has to commence investigation as provided in Sections 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Sections 169 or 170 of Cr.P.C. as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the Court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of Sub-section (8) of Section 173 Cr.P.C.

21. Thus what has been prohibited by the apex Court is the registration of two FIRs for the same offences. It however, does not preclude from lodging of two FIRs in respect of the same incident having materially different allegations of commission of different cognizable offences as is the present case.

22. Moreover, on the facts of the present case T.T. Antony's case : 2001 CriLJ3329 (supra) does not apply at all as second FIR was registered after the investigation on the earlier FIR, which was alleged to be manufactured and sham document was already over. The grievance in the present case by the father of the deceased is that the police in connivance with the accused, and to save them from the clutches of law, registered a FIR in the name of his son which was not lodged

by his son at all. By no stretch of logic can such allegations be treated to be a second FIR.

23. The contention of the learned Counsel for the applicants regarding the registration of second FIR in the backdrop of above discussion is bereft of any merit and is hereby repelled.

24. For obliterating the anxiety of learned Counsel for the applicants regarding recording of the conflicting findings, it is desirable that both the trials should be conducted by the same Court, which is hereby directed.

25. Another submission of the learned Counsel for the applicants regarding defence of the accused, only this much is observed that the said contention is wholly meritless and bereft of any reasoning whatsoever and hence is repelled.

26. While concluding the argument learned Counsel for the applicants madeoral request that in ease the proceedings of the aforesaid case No. 574/08 State v. Ashok Kumar Tiwari and Ors. Crime No. C-131/07, Under Section 498-A, 304-B and 201 IPC and Section 3/4 D.P. Act, P.S. Sahatwar, district Ballia is not quashed, then the bail prayer of the applicants be directed to be considered if possible on the same day.

27. Looking to the facts of the case, I hereby direct that in case the applicants appear before the Court concerned and move an application for their bail, the same is directed to be considered as expeditiously as possible without unreasonable delay and in the case of lady applicants the bail prayer shall be considered if possible on the same day.

With the aforesaid direction this application stands dismissed.

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