

Geeta Devi and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Apr-16-2008

Reported in : [2008(3)JCR140(Jhr)]

Judge : D.K. Sinha, J.

Appellant : Geeta Devi and ors.

Respondent : State of Jharkhand and anr.

Disposition : Petition allowed

Judgement :

D.K. Sinha, J.

1. This Cr. Revision is directed against the order impugned dated 7.2.2006 passed by the learned S.D.J.M. Ranchi arising out of Sukhdeo Nagar P.S. Case No. 711 of 2004 corresponding to G.R. No. 3799 of 2004 whereby and whereunder the petition filed on behalf of the petitioners for their discharge under Section 239 of the Code of Criminal Procedure was rejected and the petitioners were directed to stand charge along with the principal accused Shashi Shekhar Pathak for the offence under Sections 311/420/493/496/506/34, IPC.

2. The brief fact of the case as it stands narrated was that the O.P. No. 2 Usha Pathak presented a Complaint Case No. 102 of 2004 before the C.J.M. Ranchi

alleging inter alia, that she was fraudulently taken to Deori Mandir on 10.12.2000 by the principal accused Shashi Shekhar Pathak (not amongst the petitioners) where they got married and she was forced to believe that she was his legally wedded wife. After the marriage they began to live together and consummated, as a result of which she became pregnant in the month of May, 2003. The complainant O.P. No. 2 clarified that prior to such event of her pregnancy all the petitioners accepted her as the legally married wife of Shashi Shekhar Pathak. It was alleged therein that having come to know that she had conceived, the petitioners started neglecting her and they denied even her marital relationship with the principal accused and that she was not allowed to live with the petitioners in the house of her husband on the pretext of paucity of accommodation. Finding apathy of the principal accused she initiated a proceeding vide Maintenance Case No. 80 of 2003 under Section 125, Cr PC before the Principal Judge, Family Court, Ranchi but after persistent persuasion and demonstration that he was faithful to the complainant got the proceeding under Section 125, Cr PC withdrawn and further persuaded to get her pregnancy terminated. Finally, it was alleged that the petitioners who were none other than the mother, brother, sister and the brother-in-law of the principal accused Shashi Shekhar Pathak acted as abettors for all the atrocities, mental and physical extended by the principal accused. After institution of the complaint it was sent to the Kotwali Police Station under Section 156(3), Cr PC and pursuant to that the police instituted the case and after investigation submitted charge-sheet against the petitioners and the principal accused.

3. Mr. Tripathy, learned Senior counsel submitted by attracting the attention that from plain reading of the complaint petition no offence whatsoever was made out against any of the petitioners as no specific overt act or any active participation or concert of minds was alleged against any of them. The allegation for the offence under Section 312, IPC was not applicable in the instant case as the Opposite Party No. 2 admitted in her complaint case that she aborted her pregnancy unwillingly by putting her life on risk to fulfill the wishes of the accused No. 1 and in that manner she was a consenting party and no allegation of the alleged' offence under Section 312, IPC could be attracted against the petitioners.

4. Learned counsel for the petitioners further submitted that the complainant-O.P. No. 2 was already a married woman having children from her husband Awadhesh Kumar Gupta and she was leading a deserted life without obtaining a decree of divorce for the last 8 years, therefore, in the circumstances she was not a competent woman to perform second marriage with anyone and she could not be a legally wedded wife of the principal accused. There was no documentary evidence on the record before the learned S.D.J.M. that her pregnancy was at any point of time terminated by the accused No. 1. As a matter of fact, on the alleged date of void marriage on 4.12.2000 one of the near relations of the petitioners had died and they had visited the last rites of Sita Devi to which Xerox copy of the death certificate of Sita Devi has been annexed.

5. Finally, Mr. Tripathy submitted that there was almost lack of materials on record even to disclose a remote suspicion against these petitioners and therefore, their prosecution would be unwarranted and result in miscarriage of justice, and that they will have to undergo rigors of trial without any offence whatsoever. Even there was no evidence to presume that she was married to Shashi Shekhar Pathak and when no specific allegation was attributed, they would suffer irreparable loss and therefore, they may be discharged under Section 239, Cr PC.

6. Heard Mr. S.K. Srivastava, APP and Mr. A.K. Sahani appearing on behalf of O.P. No. 2.

7. On careful perusal of the materials on record including the Complaint Petition and the order impugned I find prima facie that the allegations were levelled against the principal accused Shashi Shekhar Pathak the so-called husband of the complainant-O.P. No. 2 for all the relevant sections of the offence in which cognizance was taken.

8. While rejecting the petition filed on behalf of the petitioners the learned S.D.J.M. observed:

On perusal of record and case diary it is much clear that the petitioners are named in the FIR and after investigation IO had submitted charge-sheet against the petitioners. Cognizance has already been taken by the learned C.J.M. against the

said accused persons that considering the all facts and the materials on the record the discharge petition of the petitioners is hereby, rejected.

9. It is evident from the impugned order aforesaid that the same was drawn without appreciation of the materials and the allegation made in the Complaint Petition which do not constitute prima facie case against the petitioners for the alleged offence. The learned S.D.J.M. has simply relied on the fact that the petitioners were named in the FIR the police after investigation had submitted charge-sheet against them and that the cognizance of the offence was taken by the C.J.M. against the petitioners. The learned S.D.J.M. failed to consider that the materials on the record were not sufficient to constitute prima facie alleged offence against them in the backdrop that the allegations were mainly levelled against the principal accused.

10. In the circumstances, I find and observe that the criminal prosecution of the petitioners who are the mother, brother, sister and brother-in-law of the principal accused cannot sustain. Accordingly the order impugned dated 7.2.2006 passed by the S.D.J.M., Ranchi in G.R. No. 3799 of 2004 is set aside and the petitioners are discharged from their criminal liability.

This petition is allowed.