

Md. Mustafa @ Mustafa and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Sep-16-2005

Reported in : 2006(3)BLJR2363; 2006CriLJ786; [2006(2)JCR174(Jhr)]

Judge : Amareshwar Sahay, J.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 3 and 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A; Code of Criminal Procedure (CrPC) - Sections 202, 203, 204, 239, 244, 245 and 245(2)

Appeal No. : Cri Revision No. 735 of 2004

Appellant : Md. Mustafa @ Mustafa and ors.

Respondent : State of Jharkhand and anr.

Advocate for Def. : Indrajeet Sinha, Adv.

Advocate for Pet/Ap. : Sanjay Piprewal, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Amareshwar Sahay, J.

1. Heard the learned Counsel for the parties.

2. The grievance of the petitioners in this application is that the Court below without appreciating the fact and law involved in the case and without applying his judicial mind, in a mechanical manner, rejected the prayer for discharge of the petitioners by dismissing the petition, filed by the petitioners.

3. The relevant facts of the case are as under:-

The O.P. No. 2 Farida Khatoon filed a complaint before the Chief Judicial Magistrate, Jamshedpur against her husband and her in laws for the alleged commission of the offence under Sections 498A and 406 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act.

4. The complainant was examined on solemn affirmation and the learned Sub-Divisional Judicial Magistrate, Jamshedpur held enquiry under Section 202 Cr PC and, thereafter, took cognizance of the offence alleged and issued processes against the accused persons on 28-7-2001.

5. Thereafter, it appears that a petition was filed on behalf of the accused persons (the petitioners herein) purported to be under Section 203, 239 and 245 of the Code of Criminal Procedure praying therein to dismiss the complaint under Section 203 Cr PC and to discharge the accused persons from the case because, no case was made out against the accused persons. In the said petition, which has been annexed as Annexure-3 to the present revision application, it was stated that the allegation made by the complainant in the complaint petition was all false and fabricated. There was no ill treatment or torture or demand of dowry from the side of the petitioners and that the criminal case was launched against them with mala fide intention.

6. The learned Sub-Divisional Judicial Magistrate after hearing the parties, by the impugned order dated 5.6.2004, firstly held that since the cognizance has already been taken and the process has already been issued against the accused persons and at this stage, the complaint cannot be dismissed under the provisions of Section 203 of the Cr PC. In that regard it was further held that once the process has been issued under Section 204 Cr PC he had no jurisdiction to recall or review his own order by dismissing the complaint and if at all the accused were aggrieved

by the order issuing process they could have moved the higher Court.

Secondly, it was held by the learned Sub-Divisional Judicial Magistrate that Section 239 Cr PC did not apply in the facts and circumstances of the present case as the present case arose out of a private complaint, whereas Section 239 Cr PC applies in a case instituted on a police report.

Thirdly, it was held by the learned Sub-Divisional Judicial Magistrate, that the petition under Section 245 Cr PC was also not maintainable because the grounds taken by the accused persons that the charges were groundless cannot be examined at this stage because the complainant was yet to adduce evidence before charge as envisaged under Section 244 Cr PC and, therefore, the accused persons were not entitled to be discharged at this stage.

7. As it appears that without appearing in the Court pursuant to the summons the accused/petitioners filed the aforesaid petition for their discharge.

8. The learned Counsel for the petitioners Mr. Piprewal relying on a decision of Gauhati High Court in the case of Hari Sadhan Deb v. Dulal Deb reported in 1991 Cr LJ 2800 has submitted that even after issuance of process under Section 204 Cr PC and before adducing the evidence before charge, the Magistrate was empowered to discharge the accused under Section 245(2) Cr PC at any previous stage of the case if for the reasons to be recorded by the Magistrates he considers the charge to be groundless.

9. On the other hand Mr. Indrajeet Sinha, learned Counsel appearing for the O.P. No.2, i.e., the complainant, has submitted that the learned Sub-Divisional Judicial Magistrate has rightly dismissed the petition, filed by the accused persons, holding it to be not maintainable under the law.

10. More or less in a similar situation as in the present case, in the case of Adalat Prasad v. Rooplal Jindal reported in : (2004)7SCC338 where an accused after issuance of summons against him by the trial Magistrate, filed an application purported to be under Section 204 Cr PC before the Magistrate for recall of the summons and the Magistrate after hearing the parties, recalled the said summons

the said order of the Magistrate recalling summons was challenged before the High Court on the ground that the Magistrate has no jurisdiction to recall said summon. The High Court allowed the revision application and, thereafter, the matter went to the Supreme Court. The Supreme Court in the said case of Adalat Prasad v. Rooplal Jindal (Supra) held as follows :-

A condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate, either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint. In none of these stages the Code of Criminal Procedure, 1973 has provided for hearing the summoned accused, because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provisions in the Code. The only stage of dismissal of the complaint arises under Section 203 Cr PC at which stage the accused has no role to play, therefore, the question of the accused on the receipt of summons approaching the Court and making an application for dismissal of the complaint under Section 203 Cr PC for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

11. The Supreme Court thereafter in a recent decision in the case of Subramaniam Sethuraman v. State of Maharashtra reported in 2005 SCC (Cri) 242 held that 'the issuance of process under Section 203 Cr PC is a preliminary step in the stage of trial contemplated in Chapter XX Cr PC. Such an order made at a preliminary stage being an interlocutory order, the same cannot be reviewed or reconsidered by the Magistrate, there being no provision under Cr PC for review of an order by the same Court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order.'

12. In view of the aforesaid two decisions of the Supreme Court, I hold that the learned Magistrate has rightly rejected the prayer of the accused persons for dismissing the complaint or for discharge on the grounds mentioned in the impugned order, which have already been discussed above. After issuance of

process under Section 204 Cr PC the Magistrate had no jurisdiction to recall/review the order issuing process against the accused and to dismiss the complaint under Section 203 Cr PC as that stage has already expired.

Since the complainant, i.e., O.P. No. 2 is yet to adduce evidence before charge and, therefore, the prayer for discharge of the accused persons on the ground that the same was groundless, was also not maintainable as the same was prematured.

In view of the above discussions and findings, I do not find any illegality in the impugned order and, as such, the revision application is dismissed.

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