

Md. Ibrahim and ors. Vs. State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Oct-06-2004

Reported in : [2005(1)JCR306(Jhr)]

Judge : S.J. Mukhopadhaya, A.C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4

Appeal No. : Cr. M.P. No. 25 of 2004

Appellant : Md. Ibrahim and ors.

Respondent : State of Jharkhand and anr.

Advocate for Def. : Additional Public Prosecutor for Opposite Party No. 1 and; Manoj Kumar Sah, Adv. for Opposite Party N

Advocate for Pet/Ap. : Subodh Kumar Jha, Adv.

Disposition : Application allowed

Judgement :

ORDER

S.J. Mukhopadhaya, A.C.J.

1. This application has been preferred by the petitioners for quashing the entire criminal proceedings arising out of P.C.R. Case No. 79 of 2003 corresponding to T.R. No. 1090 of 2003, pending in the Court of the Sub-Divisional Judicial Magistrate, Godda. The petitioners have also challenged the order dated 13th August, 2003 whereby the learned Court below has taken cognizance of the offence under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

2. Before deciding the case on merits, it is necessary to state the relationship between the petitioners and opposite party No. 2. Opposite party No. 2 is the wife of petitioner No. 1 (Md. Ibrahim), whereas petitioner No. 2 (Md. Mobarak alias Chamru) and petitioner No. 3 (Md. Mazid alias Mazlu) are the brother-in-laws (Bhaisur); petitioner No. 4 (Bibi Hazbi) is the mother-in-law; petitioner No. 5 (Bibi Salma) is the sister-in-law; Petitioner No. 6 (Md. Manir) is the brother-in-law (Bahnoi), petitioner No. 7 (Bibi Dukhani) is the sister-in-law and petitioner No. 8 (Md. Lukman) is another brother-in-law of opposite party No. 2.

3. The case of the petitioner is that opposite party No. 2 filed one complaint case on 5th January, 1996 being P.C.R. Case No. 9 of 1996 in the court of the Chief Judicial Magistrate, Godda. In the said case, the police was asked to lodge a first information report and make investigation. A case being Pathargama (Basantrai) P.S. Case No. 42 of 1996 was instituted under Sections 498A, 323, 379 of the Indian Penal Code, and Section 3/4 of the Dowry Prohibition Act. In the said case, the police after investigation submitted final form on 16.6.1996. Thereafter, opposite party No. 2 (Bibi Saina Khatoon) neither chosen to appear in the Court nor filed any objection and ultimately the learned Chief Judicial Magistrate, Godda, accepted the final form vide its order dated 31st August, 1996, passed in G.R. No. 396 of 1996. After lapse of about seven years opposite party No. 2 (Bibi Saina Khatoon) again filed another complaint case, being PCR Case No. 79 of 2003/T.R. No. 1090 of 2003, in the Court of the Chief Judicial Magistrate, Godda, for the same set of acts alleged to have committed during the said period i.e. February, 1995 to 31st December, 1995 for same offence against the same accused (petitioners herein), as was alleged in the earlier complaint case being PCR Case No. 9 of 1996. However, she disclosed that she (opposite party No. 2) had earlier

filed a complaint case but it was alleged that the investigation was not properly made.

Counsel appearing on behalf of opposite party No. 2 opposed the prayer made in the present case and submitted that the Magistrate can take cognizance on a protest petition, treating it as a complaint, even if final report has been submitted by the police and accepted by the Magistrate. He placed reliance on the Patna High Court decision in Bhagwat Pandey and Ors. v. The State of Bihar, reported in 1985 BBCJ 760. But the opposite party No. 2 cannot derive advantage of the aforesaid case. In Bhagwat Pandey, (supra), the Magistrate accepted the final report submitted by the police. Thereafter, a protest petition was filed by the complainant in the said case which was treated to be a complaint petition filed by the complainant and cognizance was taken against the accused. In the present case, in the complaint case, PCR; Case No. 9 of 1996 filed by opposite party No. 2, final report was submitted by the police in favour of the accused (petitioners). There- after, although a protest petition was filed by the complainant in the said case which was treated to be, a complaint petition filed by the complainant and cognizance was taken against the accused. In the present case, in the complaint case, PCR. Case No. 9 of 1996 filed by opposite party No. 2, final report was submitted by the police in favour of the accused (petitioners). There- after, although a protest petition was filed by opposite party No. 2, it was not pressed by her and the final report was accepted by the Magistrate in the year 1996. Thus, the protest petition filed by opposite party No. 2 reached finality. So far as the PCR Case No. 79 of 2003 is concerned, it does ,not arise out of the earlier protest petition. It is a fresh complaint case filed by opposite party No. 2 on 17th February, 2003 in the Court of the Chief Judicial Magistrate, Godda for the same offence, alleged to have committed during same period against the same accused (petitioners). Such allegation against the accused made by same complainant having reached finality in August, 1996, the opposite party No. 2 cannot be allowed to regulate same allegation again.

5. In the facts and circumstances, the order taking cognizance dated 13th August, 2003 passed by learned Sub- Divisional Magistrate, Godda, in PCR. Case No. 79 of 2003 (T.R. Case No. 1090 of 2003) cannot be upheld so far, as it relates to the

petitioners. It is, accordingly, set aside. This application is, allowed.

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