

Niranjan Chatterjee and ors. Vs. State of Jharkhand and anr.

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SooperKanoon Citation : sooperkanoon.com/523807

Court : Jharkhand

Decided On : Apr-02-2003

Reported in : I(2004)DMC313

Judge : Amareshwar Sahay, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 498A; ; [Dowry Prohibition Act, 1961](#) - Sections 3, 4 and 5; ; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Cr. M.P. No. 242 of 2003

Appellant : Niranjan Chatterjee and ors.

Respondent : State of Jharkhand and anr.

Advocate for Def. : A.P.P.

Advocate for Pet/Ap. : Mahesh Tiwary and; Rashmi Pradhan, Advs.

Disposition : Application dismissed

Judgement :

Amareshwar Sahay, J.

1. Heard the learned Counsel for the parties.

In the present application the petitioners have prayed for quashing the entire criminal proceeding being C.P. Case No. 598 of 2001 and also the order dated 16.1.2003 passed by the Sub-Divisional Judicial Magistrate, Dhanbad whereby the cognizance of the offence under Section 498A of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act has been taken against the petitioners.

2. The petitioner No. 1, Niranjana Chatterjee, is the husband of the opposite party No. 2, Sumitra Chatterjee, petitioner Nos. 2 and 3 namely Debidas Chatterjee and Iti Chatterjee are the father-in-law and mother-in-law respectively, whereas the petitioner Nos. 4 and 5 are sisters-in-law of the opposite party No. 2.

3. The opposite party No. 2 lodged a complaint in the Court of Chief Judicial Magistrate on 1.6.2001, stating inter alia that she was married with petitioner No. 1, Niranjana Chatterjee on 18.2.1991. In the said marriage the father of the complainant, gave Rupees one lakh in cash and articles worth Rs. 50,000/- to the petitioner No. 3 and her family members. She lived in her matrimonial home peacefully for about two years and out of the wed-lock a daughter was born who is presently aged about 9 years and was living with her. She alleged in the complaint that trouble started only after two years of the marriage, when all the accused persons started treating her as a maid servant. There were frequent demands of dowry by the petitioners could not be fulfilled by her father. Therefore, she was assaulted by the accused persons and was confined in a room, tied with rope and was not provided even food or water. She further alleged that about three years back on being frustrated due to the behaviours of the accused persons, the complainant left her matrimonial home and came to her parents' place with her daughter. Thereafter, on the intervention of Mahila Samity, an oral compromise was arrived at and the complainant was sent to her matrimonial home again. It is further alleged in the complaint that about a year back all the accused persons again started torturing her and confined her in a room where she was assaulted and they also tried to kill by pouring kerosene oil on her body but any how she could escape from there and again took shelter in the house of her parents with her daughter. The further allegation is that the accused persons kept her ornaments and other belongings of the complainant worth Rs. 50,000/-. In spite of the demand made by the complainant for returning of those articles, they did not

return the same to the complainant and ultimately the complaint was filed in the Court.

4. The learned Sub-Divisional Judicial Magistrate, examined the complainant on solemn affirmation and then started inquiry under Section 202, Cr. P.C. During which three witnesses were examined on behalf of the complainant. Thereafter, on the basis of the averments made in the complaint petition, the statements of the complainant on solemn affirmation and on perusal of the statements of the witnesses examined during the inquiry under Section 202, Cr. P.C., the learned Sub-Divisional Judicial Magistrate, Dhanbad, took cognizance of the offences under Sections 498A and Section 3/4 of the Dowry Prohibition Act against the petitioners.

5. Being aggrieved by the said order, the petitioners have filed the present application for quashing of the order taking cognizance.

6. Mr. Mahesh Tiwari the learned Counsel appearing for the petitioners, has contended that the criminal proceeding against the petitioners is wholly mala fide and has been filed only for the purpose of wrecking vengeance and the case stated in the complaint is totally false and, therefore, the entire criminal proceedings against them are liable to be quashed.

7. The learned Counsel has heavily relied on the decision of the State of Haryana and Ors. v. Choudhary Bhajan Lal and Ors., reported in (1992) 1 Cr. L.J. 527. He has drawn my attention to paragraph 108 of the said judgment and has argued that the Hon'ble Supreme Court has categorized some of the cases by way of illustration, wherein such power under Section 482 of Cr. P.C. can be exercised either to prevent abuse of process of any Court or otherwise to secure the ends of justice. Mr. Tiwari basing his arguments on the basis of one of the illustrations mentioned in category No. 5 of the said decision of Supreme Court, has submitted that the Hon'ble Supreme Court has held that where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, then the said proceeding is liable to be quashed. On basing of category No. 3, he further submitted that where a criminal

proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge then also, the criminal prosecution is liable to be quashed.

8. On the above back ground Mr. Tiwari submitted that before filing of the complaint case by the wife, a Title Matrimonial Case No. 83 of 2001 was filed by her husband before the Principal Judge, Family Court, Dhanbad under Section 13(1)(a) of the Hindu Marriage Act for a decree for divorce, a copy of which has been annexed as Annexure 2 to this application. The Principal Judge, Family Court Dhanbad by an ex parte judgment dated 6.9.2001 decreed the suit of the plaintiff i.e. petitioner No. 1 herein and granted decree for divorce, a copy of which has been annexed as Annexure 3 to this application. Even the application filed by the wife before the Family Court for setting aside the ex parte decree for divorce against her was rejected by the Principal Judge, Family Court on 9.9.2002 which is Annexure 4 to this application.

9. Basing his arguments on the basis of Annexures 2, 3 and 4, Mr. Tiwari submitted that from the above documents it would be clear that complaint was filed by the wife only for wrecking vengeance and as such it is absolutely mala fide.

10. I have perused the averments made in the complaint petition, the statements of the complainant on solemn affirmation and also Annexures 3, 4 and 5 to this application. In my considered opinion the allegations made in the complaint do constitute the offences under Section 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, the present case does not fall under any category as mentioned in Paragraph 108 of the judgment of the Supreme Court.

11. Similarly it cannot be said at this stage that the complaint case was filed only for wrecking vengeance with mala fide intention because husband had filed a case before the Principal Judge, Family Court for divorce. The aforesaid Annexures 3, 4 and 5 to this application cannot be looked into for the purpose of verifying the truthfulness or genuineness of the allegations made in the complaint petition. It is a settled law that at the stage of taking cognizance the Court has to consider only the averments made in the complaint petition, the statements of the complainant

on solemn affirmation and statements of the witnesses, if any, during the inquiry under Section 202, Cr.P.C. and nothing else. Therefore, at this stage only on the basis of the Annexures 2, 3 and 4 i.e. petition for divorce filed by the husband of the complainant or the decree for divorce granted by the Family Court or the order rejecting the petition of the wife for setting aside the ex parte decree, it cannot be said that the filing of the complaint was mala fide. Annexures 2, 3 and 4 can be said to a good defence for the petitioner but they cannot be looked into at the stage of taking cognizance. In Para 109 of the judgment of the Supreme Court supra a note of caution has been given to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

12. In view of the discussions made above, I am of the view that no case for quashing of the criminal proceeding or the order taking cognizance has been made out in this case.

In the result, this application dismissed.