

Anil Kumar Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Sep-22-2015

Appellant : Anil Kumar

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No. 102 of 2015
With I.A. No. 5344 of 2015 Anil Kumar Petitioner Versus 1. The State of
Jharkhand 2. Kumkum Kumari .. Opposite Parties ----- CORAM : HONBLE MR.
JUSTICE H. C. MISHRA ----- For the Petitioner : Mr. Manish Kumar, Advocate
For the State : Mr. V.K. Tiwary, A.P.P. For the O.P. No.2 : M/s M.B. Lal & A.K.
Singh, Advocates ----- 4/ 22.09.2015 Heard learned counsel for the petitioner
and learned counsel for the State, as also learned counsel for the opposite party
No.2.

2. The petitioner is aggrieved by the order dated 8.5.2014 passed by Miss R.A. Kujur, learned Judicial Magistrate, 1 st Class, Bokaro, whereby prima facie offence under Sections 498-A, 323, 504/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act has been found against the accused persons, including the petitioner. The petitioner is the husband of the complainant and he has also prayed for quashing the entire criminal proceeding against him in the said case.

3. The complaint petition has been brought on record, which shows that the complainant opposite party No.2 is the legally wedded wife of the petitioner. It is

alleged in the complaint petition that after the marriage, she was brought to her matrimonial home at Jamshedpur and the accused persons started subjecting her to cruelty and torture for demand of dowry in various ways. She was also taken to Saharsa where her husband is employed and there also, she was subjected to cruelty and torture. It is stated in the complaint petition that upon being subjected to cruelty and torture at Saharsa, she was turned out by her husband and she came back to her in-law's place at Jamshedpur. -2- On 28.12.2013 she was driven out of her in-law's place from Jamshedpur also, and she reached her parents' place at Bokaro on 29.12.2013 at about 8.00 A.M., where, again the brother-in-law of the complainant threatened the complainant on phone. It is also alleged that all the accused persons also came to Bokaro at her parents' place on 29.12.2013 at about 1.00 P.M., and they again abused and assaulted the complainant and her family members for the demand of dowry. With these allegations, the complaint case was filed in the Court of the Chief Judicial Magistrate, Bokaro, which was registered as Complaint Case No. 20 of 2014. It appears from the impugned order that the statement of the complainant was recorded on solemn affirmation and some enquiry witnesses were also examined, on the basis of which, prima facie offence under Sections 498-A, 323, 504 / 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act was found against the accused persons by the impugned order dated 8.5.2014.

4. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case and no part of the occurrence had taken place within the territorial jurisdiction of the Court at Bokaro. It is submitted that only in order to create the jurisdiction, it has been falsely stated in the complaint petition that the complainant reached her parents' place on 29.12.2013 at about 8 o'clock in the morning and thereafter at about 1.00 P.M., all the accused persons went there and assaulted and abused her and her family members. In this context, learned counsel has submitted that on 28.12.2013, the complainant was with the petitioner at Saharsa and both of them had boarded the train for coming to Jamshedpur, which actually left the Mansi railway station after 12.00 hours in the night of 29.12.2013 and in that view of the matter, it has -3- been falsely stated in the complaint petition that on 28.12.2013, she was at her in-law's place, from where she was turned out. In this connection, learned counsel has brought on record the

information obtained under the Right To Information Act from the South Eastern Railway. The application before the Information Officer of the Southern Railway Station, Chakradharpur, was given, seeking information whether on 28.12.2013 by Train No. 28182 Katihar Tata Link Express, the petitioner Anil Kumar along with his wife Smt. Kumkum Kumari had traveled, and accordingly, the information regarding the journey was sought. In reply thereto, the required information was furnished along with the copy of the working reservation chart showing the passengers, who had traveled in the train on that date, and it was also informed that Anil Kumar (i.e., this petitioner) and Smt. Kumkum Kumari (i.e., the complainant) had traveled in Train No. 28182 Katihar Tata Link Express from Mansi to Tatanagar in coach No. S-8, birth Nos.58 and 60. The working reservation chart has also been brought on record, confirming that the petitioner and complainant had traveled on that date. An information furnished by the Station Supdt., Mansi Jn., has also been brought on record to show that on 28.12.2013 the said train was running late and had left the Mansi Railway Station after 12.00 hours in the night on 29.12.2013. Learned counsel has submitted that these are the documents furnished by the Public Information Officer and accordingly, these documents are unimpeachable documents to show that the petitioner and the complainant were on train in night of 29.12.2013 coming to Tatanagar from Mansi, and as such, it is false statement in the complaint petition that on 28.12.2013, the complainant was turned out from her in-law's place at Jamshedpur and on 29.12.2013, she reached Bokaro where -4- the accused persons also came and assaulted and abused her and her family members. Learned counsel has accordingly, submitted that these documents being unimpeachable documents, can be taken into consideration even at this stage. In this context, learned counsel has placed reliance upon a decision of the Supreme Court in Rukmini Narvekar Vs. Vijaya Satardekar & Ors, reported in 2009 (1) JCR139(SC), wherein, it has been held that though ordinarily defence material cannot be looked into by the Court while framing of the charge, but there may some very rare and exceptional cases where some defense material would convincingly demonstrate that the prosecution version is totally absurd or preposterous and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. Learned counsel has also placed reliance upon a

decision of this Court in Ashok Kumar Sinha Vs. State of Jharkhand & Anr., reported in (2013) 3 Est. Cr. C. 470, wherein, it has been held that unimpeachable documents can be taken into consideration even at this stage to come to the conclusion about the bona fides of accusations against the accused persons. Learned counsel has accordingly, submitted that the allegation made in the complaint petition are absolutely false.

5. Learned counsel for the State, as also learned counsel for the opposite party No.2, on the other hand, have opposed the prayer. It is submitted by learned counsel for the opposite party No. 2 that the reservation chart furnished by the South Eastern Railway cannot be taken into consideration at this stage and it only shows that two persons of the namesake of the petitioner and complainant had traveled in the train, but it does not show that they were actually the complainant and the petitioner, who boarded the train. -5- Learned counsel has accordingly, submitted that there is specific allegation in the complaint petition that on 28.12.2013, the complainant was at her matrimonial place at Jamshedpur from where she was kicked out and she came to her parents' place at Bokaro on 29.12.2013 where she was again assaulted and abused by the accused persons for demand of dowry. It is submitted that in view of the allegation made in the complaint petition, the offence is clearly made out against the petitioner and the Court at Bokaro had the territorial jurisdiction to entertain the complaint. Learned counsel has accordingly submitted that there is no illegality in the impugned order passed by the Court below, and the materials relied upon by the petitioner cannot be taken into consideration at this stage. In this connection, learned counsel for the opposite party No.2 has also pointed out the statement made in the I.A. No. 5344 of 2015 filed by opposite party No.2, in which, it is stated as follows:- 11. That it is stated and submitted that petitioner is heavily placed reliance upon annexure 2 series of Cr.M.P application but same is not an unimpeachable document and further petitioner has booked the tickets in the name of the complainant and himself and managed some other person might have travelled in the name of the complainant and petitioner as annexure-2 nowhere reveals physical and photographic identity of the petitioner and complainant. It is further stated that the petitioner has managed the tickets in the name of the complainant just in order to save himself from the present case. Learned counsel for the complainant O.P.

No.2 accordingly, submitted that there is no merit in this application and it is fit to be dismissed.

6. Having heard learned counsels for both the parties and upon going through the record, I find that in the complaint petition, there is specific allegation that on 28.12.2013, she was at her in-law's place, from where she was -6- turned out, and the petitioner and the accused persons assaulted and insulted the complainant and her family members at her parents' house at Bokaro on 29.12.2013. The petitioner has brought on record the documents obtained under the Right To Information Act to show that on that date, the complainant and the petitioner were traveling in a train from Mansi Jn. to Tatanagar. Faced with this situation, by order dated 29.6.2015, learned counsel for the opposite party No.2 was asked to file counter affidavit in the matter. Till today, no counter affidavit has been filed, but I.A. No. 5344 of 2015 has been filed, in which, the statement quoted above has been made. However, in view of the specific claim of the petitioner coupled with the above documents to show that the petitioner and the complainant were travelling in a train on the said date, there ought to have been a denial of this fact by the O.P. No.2 on affidavit, but there is no denial by the complainant specifically stating that she had not traveled along with the petitioner on that particular date from Mansi to Tatanagar. The statement made in I.A. No. 5344 of 2015 is only doubting the assertion of the petitioner, but there is no specific denial of the statement of the petitioner by the complainant on affidavit to show that she had not traveled along with the petitioner on that date. In that view of the matter, in spite of giving opportunity to the complainant to deny the statement of the petitioner, the same has not been specifically denied by the complainant on affidavit.

7. The complaint petition clearly shows that all the other allegations against the petitioner and other co-accused persons of subjecting the complainant to cruelty and torture relate to either at Saharsa in Bihar, or at Jamshedpur. There is no other instance of subjecting the complainant to cruelty and torture, except the aforesaid allegation relating to occurrence allegedly taken -7- place on 29.12.2013, at the parent's place of the complainant at Bokaro. In view of the fact that the petitioner has brought on record the unimpeachable documents, supplied to him by the South Eastern Railway, under the Right To Information Act, which

has not been denied by the complainant, I find force in submission of learned counsel for the petitioner that allegations about the occurrence taken place at Bokaro have been made only in order to create a jurisdiction to the Bokaro Court. I find from the record that sans this allegation, the Court at Bokaro had no territorial jurisdiction to entertain the complaint petition. However, the fact remains that on the basis of the allegations against the petitioner and the co-accused persons, the offence is made out against them. In the facts of this case, I find that the continuance of the criminal proceeding against the petitioner and other co-accused persons at Bokaro, is a misuse of the process of the Court and the same cannot be allowed to be continued.

8. Accordingly, the impugned order dated 8.5.2014 passed by Miss R.A. Kujur, in Complaint Case No. 20 of 2014, as also the entire criminal proceeding against the accused persons in the Court below in the said complaint case, are hereby, quashed.

9. The complainant, however, shall be free to bring her cause of action before the Court of competent jurisdiction and she can also take back her complaint petition from the Court of Bokaro to present the same before the Court of competent jurisdiction.

10. This criminal miscellaneous petition is accordingly, allowed with the directions as above. The aforesaid I.A. also stands disposed of. (H. C. Mishra, J.) R.Kr.

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