

Devinder Singh Negi and ors. Vs. Sunil Bhandari and ors.

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Court : Delhi

Decided On : Mar-16-2005

Reported in : 118(2005)DLT746; I(2005)DMC688; 2005(81)DRJ740

Judge : Manju Goel, J.

Acts : Dowry Prohibition Act - Sections 3, 4, 6, 201 and 198A; Indian Penal Code (IPC) - Sections 12B, 406 and 498A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 186 and 220

Appeal No. : Crl. M.C. No. 334/2003

Appellant : Devinder Singh Negi and ors.

Respondent : Sunil Bhandari and ors.

Advocate for Def. : A.P. Dangwal, Adv.

Advocate for Pet/Ap. : Auragh Kumar Aggarwal, Adv

Disposition : Petition dismissed

Judgement :

Manju Goel, J.

1. This petition seeks consolidation of FIR No. 452/1997 under Sections 498A/201 and Sections 3, 4 & 6 of Dowry Prohibition Act pending in the court of Smt.Swaran

Kanta Mehra, Metropolitan Magistrate, Tis Hazari, Delhi with the complaint case No. 149/2001 under Sections 406 & 120B titled Sunil Bhandari v. Devender Singh Negi and Ors. pending in the court of Judicial Magistrate-I, Kotdwar, District Pauri Gharwal, Uttranchal.

2. The petitioners invoke the provisions of Sections 186 & 220 of the Code of Criminal Procedure Code, 1973 (in short `Code') and says that the court in Delhi and that in Kotdwar have taken cognizance of the same offence and, therefore, they ought to be enquired into or tried by the same court. Further it is prayed that an order should be made that the Delhi court should try the two matters mentioned above.

3. From the nature of the two matters, the FIR and the complaint case mentioned above, it is clear that the FIR in Delhi was in respect of an offence under Section 498A IPC along with Sections 3, 4 & 6 of Dowry Prohibition Act whereas the complaint at Kotdwar is made only in respect of the offence under Section 406 IPC. The ingredients of the offence under Section 406 IPC are entirely different from the ingredients of the offence under Section 498A as well as under Sections 3, 4 & 6 of Dowry Prohibition Act. The petitioners' counsel says that both the complaints are virtually the same and, therefore, they can be charged with the offence under Section 406 IPC by the Delhi court also. However, the fact remains that so far they have not been charged by the Delhi court under Section 406 IPC. The mere fact that allegations in the nature of an offence under Section 498A IPC have been made in the complaint before the Judicial Magistrate of Kotdwar or the mere fact that allegations in the nature of Section 406 IPC have been made in the FIR in Delhi will not be the same as saying that the subject matter of the two proceedings are the same. The offence of Section 406 has been committed at Kotdwar as the properties in question were handed over to the accused at Kotdwar where the marriage of the sister of the complainant took place. The sister of the complainant is now dead. It was the sister who was treated with cruelty by her husband and by the members of the family of her husband. Since she lived in Delhi and the offence of cruelty took place in Delhi the FIR in respect of the cruelty as well as demand for dowry have been rightly made in Delhi.

4. If an FIR in respect of the offence under Section 406 IPC being made in Delhi, it could have been appropriate for this court to order a consolidation of the two FIRs but the complaint in respect of the offence under Section 406 IPC has been made within jurisdiction of another High Court. The matter does not directly fall within the purview of Section 186 of the Code. It will not be appropriate for this court to order a consolidation or withdrawal of the case from the court of Judicial Magistrate-I, Kotdwar.

5. Before ending it will be proper to refer to the judgments cited by the learned counsel for the petitioner, namely, *State of Madhya Pradesh v. Bahadursingh and Ors.* reported as , *Kuljeet Singh alias Jeetu v. Central Bureau of Investigation, New Delhi and Ors.* reported as : 2000VAD(Delhi)12 , *Rakesh Kumar and Ors. v. State of Punjab and Anr.* reported as , *Rameshwar Dayal Sharma and Ors. v. State of U.P. and Anr.* reported as 1990 A.L.J. 479, *Vijai Ratan Sharma and Ors. v. State of U.P. and Anr.* reported as , *Yogendra Kumar Bansal v. Smt. Anju* reported as 1989 A.L.J.914, *Rajesh Kumar and Ors. v. State of Punjab and Anr.* reported as 2 (1990) DMC 404 and *Vijay Kumar and Anr. v. Sunita and Ors.* reported as . None of these judgments deal with facts similar to the one before this court. Not a single case deal with the question of the question of the High Court's power to withdraw a complaint or FIR from the court of a Magistrate within the jurisdiction of another High Court. The petition is accordingly dismissed.