

Vishnu Dutt Sharma and ors. Vs. State

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Court : Delhi

Decided On : Jul-01-1994

Reported in : 1994IIIAD(Delhi)894; 1994(31)DRJ160

Judge : Arun Kumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 188

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1149 of 1992

Appellant : Vishnu Dutt Sharma and ors.

Respondent : State

Advocate for Pet/Ap. : Jugal Wadhwa,; H.J.S. Ahluwalia and; Rajiv Duggal, Advs

Judgement :

Arun Kumar, J.

(1) This is a petition under Section 482 of the Code of criminal Procedure for quashing the proceedings pending in the court of the Metropolitian Magistrate, Delhi against the petitioners.

(2) At the back of the proceedings is matrimonial discord. A few facts necessary for purposes of disposal of the present petition are that the complainant and petitioner No.2 were married on 28th Nov. 1986. The husband was employed at

Tripole (Libya) while the wife was working in the Northern Railway. On 26th May 1989, the wife filed a complaint at New Delhi making various allegations against the petitioners and her mother-in-law (since deceased). The wife complained that she had been promised that she will be going to Tripoli with her husband after the marriage. However, for a long time after the marriage she had to stay back in Delhi on the pretext that her husband was not able to make arrangements for her at Tripoli, Libya. The wife was also told that the husband will ultimately return to India and will settle down in India. The complainant went to Libya more than a year after her marriage and stayed with petitioner No.2 for about 16 months. She says that she was ill treated all along. The complaint contains allegations of misbehavior, maltreatment, occasional beating, so much so that the complainant had to the matter to the Indian Ambassador at Tripoli. The complaint regarding demand for dowry and harassment on that account relates to period even before the complainant's departure to Tripoli as also during her stay in Tripoli. The mother-in-law of the complainant had also gone to Tripoli Along with the complainant and she stayed there during the period of the stay of the complainant. The complainant returned to India alone with her two young children on 26th May 1989. On her return she went to the house of her husband where the father-in-law of petitioner No. 1 in the present petition is alleged to have even not allowed her to enter the house. She Along with her children was on the road and they had no place to stay. In these circumstances the petitioner lodged the complaint with the police. F.I.R. was registered on 10th August 1989 against the petitioners and the mother-in-law. After investigations a case was filed in the Court of the Metropolitan Magistrate, Delhi on 7th March 1990 under Section 173 Cr. P.C. Thus, proceedings commenced before the Metropolitan Magistrate and the accused persons were charged under Sections 498A of the Indian Penal Code.

(3) By the present petition the petitioners have challenged the proceedings before the Metropolitan Magistrate and have prayed for quashing the same. The main grounds urged in this behalf are -

(A) the offences alleged to have been committed against the complainant were committed outside India and under Section 188 Cr. P.C. without the previous sanction of the Central Govt., such offences could not be inquired into or tried. (b)

the complaint does not make out any offence.

(4) So far the first point is concerned, it is obvious from a bare reading of Section 188 of Criminal Procedure Code . that if an offence is committed outside India by a citizen of India, previous sanction of Central Govt. is a must before the same can be inquired into or tried in India. Relying on this provision the case of the petitioners is that as per the allegations contained in the complaint the offences, if any, were committed outside India. Admittedly there is no previous sanction of the Central Govt. for trying the offences in India, therefore, the entire proceedings are vitiated and are liable to be quashed. In reply the case of the respondent in claiming that of the complainant is that perusal of the complaint as well as the statement of the complainant shows that the offences alleged against the petitioners are not committed outside India alone. In other words the submission is that the commission of offence started in India soon after the marriage of petitioner No.2 and the complainant and continued at Tripoli, i.e., outside India. For this the complainant has also relied on the fact that her husband came to India for some time before returning to Tripoli. During this period he did not even make an attempt to meet the complainant or his own daughters who were with the complainant. This is a continuation of the series of acts of cruelty and harassment for dowry committed on the complainant.

(5) In this connection my attention has been drawn to Section 498A Ipc as also to definition of cruelty contained in the Code. Cruelty normally consists of a series of incidents. While using the word 'normally' I am conscious of the fact that some times even an isolated instance may be enough to constitute cruelty. It is settled law that for purposes of petitions for quashing the charge or the proceedings in pursuance thereof of the allegations in the complaint or the statements or witnesses recorded in support of the same alone are to be taken into consideration at their face value. therefore, at this stage what is to be considered is the allegations in the complaint and the statement of the complainant and if they make out a case the charge sheet or the proceedings based thereon cannot be quashed. Further, at this stage the Courts is not to go into the veracity of the allegations because that will be pre-judging the issues which are to be in fact determined after trial.

(6) I have been taken through the complaint as also the statement of the complainant. Looking at the allegations contained therein it cannot be said that no offence is made out, nor it can be said that the offence was committed only outside India. thereforee, I am of the considered view that the proceedings cannot be thrown out on the basis of Section 188 Cr.P.C.

(7) Coming to the second point raised on behalf of the petitioners it has already been noticed that on the basis of the allegations made by the complainant against the petitioners it cannot be said that no offence is made out. Whatever may be the ultimate result after trial, it is neither possible to ascertain at this stage not it is appropriate to do so. Totality of the allegations contained in the complaint do not permit a conclusion that no case is made out. The petition fails and is dismissed.

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