

Phoola Kaul Vs. State and ors.

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Court : Delhi

Decided On : Sep-27-2007

Reported in : 2007(99)DRJ58

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 34, 406 and 498A; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 161, 227, 228, 397, 397(2) and 482

Appeal No. : Crl. M.C. No. 882/2005

Appellant : Phoola Kaul

Respondent : State and ors.

Advocate for Def. : Manoj Sharma and; Jaideep Malik, Adv.

Advocate for Pet/Ap. : T.N. Razdan; Smriti Razdan an; P.P.N. Razdan, Adv

Disposition : Petition allowed

Judgement :

Pradeep Nandrajog, J.

1. Petitioner, Phoola Kaul is the mother-in-law of the complainant, Neeru Kaul.

2. The present petition is directed against the order on charge dated 5.7.2004 passed by the learned Metropolitan Magistrate whereby the petitioner was charged with the offences under Section 498-A, 406 read with Section 34 of the Indian Penal Code.

3. Backdrop facts giving rise to the present petition are that the marriage between Neeru and Abhimanyu (son of the petitioner) was solemnized on 2.11.2000 as per Hindu rites and ceremonies. Abhimanyu was employed at Canada and after the marriage he left for Canada while Neeru continued to reside with her in-laws. Unfortunately, the marriage turned sour and Neeru left her matrimonial home.

4. On 22.4.2002, Neeru got a legal notice served upon her husband and father-in-law, Chaman Kishan Kaul through Ravinder Zadoo, Advocate. In the said legal notice it was alleged that her husband had deserted her and that her husband and father-in-law had subjected her to cruelty. Additionally, it was also alleged that her husband and father-in-law had illegally retained her istridhan and that she was tortured by both of them for dowry. It is pertinent to note that the said legal notice contained no allegations against the present petitioner.

5. Thereafter on 27.5.2002, Neeru lodged a complaint with the Crime Against Women Cell, Moti Bagh against her husband and father-in-law. In the said complaint, allegations as contained in the afore-noted legal notice were reiterated. Again, no allegations were leveled against the present petitioner save and except an incidental reference to her at the end of the complaint which reads as under:

The above said persons and my mother in law have committed the above said offences for which the proper investigation be made and guilty persons be punished.

6. Subsequently, in her statement dated 28.8.02 under Section 161, Cr.P.C. dated 28.8.02 Neeru stated that her husband, father-in-law and mother-in-law used to harass her for bringing more dowry and had illegally retained her istridhan.

7. Pursuant to the afore-noted complaint and statement of the complainant, on 28.8.02 a FIR no.554/02 was registered against the husband and father-in-law of

Neeru as also the present petitioner.

8. On 1.10.03 statements of parents of Neeru were recorded. Apart from allegations of dowry harassment and illegal retention of istridhan, they stated that their daughter was sexually harassed by her father-in-law and that her mother-in-law i.e. the present petitioner used to force her to do indecent acts with her father-in-law.

9. Taking a cue from her parents, in her supplementary statement dated 27.10.03 Neeru also leveled the allegations of sexual harassment against her father-in-law and mother-in-law.

10. On 29.1.04, a charge sheet under Sections 498-A, 406 read with Section 34 of the Indian Penal Code was filed against the three accused persons.

11. Noting the afore-noted documents and holding that at the stage of framing of charge the court has to only see whether a prima facie case is made out against an accused or not, vide order dated 5.7.2004, learned Metropolitan Magistrate framed charges under Sections 498-A, 406 read with Section 34 of the Indian Penal Code against Neeru's father-in-law and mother-in-law i.e. the present petitioner.

12. At the outset, learned Counsel for the respondent/complainant raised a preliminary objection against the maintainability of the present petition. Counsel urged that as the order framing charge is an interlocutory order, a revision to the High Court is barred by virtue of Sub-section (2) of Section 397 of Cr.P.C., 1973. And as the revision is barred, the court cannot exercise powers under Section 482 to quash the order framing charge. In support of his contention, counsel relied upon the decision of the Supreme Court in the report published as Amar Nath and Ors. v. State of Haryana and Anr. : 1977 CriLJ1891 . In the said decision, it was held as under:

3. While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under Sub-section (2) of Section 397 of the 1973 Code the inherent powers

contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express, provision, barring a particular remedy, the Court cannot (sic) to the exercise of inherent powers.

13. Decision afore-noted has to be understood in the light of law declared in the report published as *Madhu Limaye v. The State of Maharashtra* : 1978 CriLJ165 .

14. In the report published as *Madhu Limaye v. The State of Maharashtra* : 1978 CriLJ165 , a three-Judge Bench of the Supreme Court examined the decision in *Amar Nath's case* (supra) and held as under:

11. As pointed out in *Amar Nath's case* (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing Sub-section (2), in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, 'shall be deemed to limit or affect the inherent powers of the High Court'. But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation,

what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court....

15. It is thus obvious from the decision of the Supreme Court in Madhu Limaye's case (supra) that the High Court in exercise of its powers under Section 482, Cr.P.C. can quash an order framing charge.

16. Having decided the preliminary objection raised by the learned Counsel for the respondent the issue pertaining to legality of the order framing charge needs to be considered on merits.

17. Counsel for the petitioner seeks quashing of the order dated 5.7.2004 on the ground that the allegations contained in the complaint dated 27.5.02 do not disclose that offences under Section 498-A, 406 read with Section 34 of the Indian Penal Code has been committed by the petitioner. He further urged that the statements subsequent to complaint dated 27.5.2002 wherein allegations has been leveled against the petitioner are an after-thought. To establish the same, counsel relied upon the fact that the legal notice dated 22.4.2002 which is the starting point of the present proceedings does not contains any allegation against the petitioner.

18. In the decision reported as Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh 2003 SCC (Cri) 1305, Supreme Court has observed as under:

20. It is well settled that a first information report is not an Encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant.... At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information.... The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

19. In the decision reported as *Rajesh Bajaj v. State and Ors.* : 1999 CriLJ1833 , Supreme Court has observed as under:

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details....

20. In the decision reported as *Mohd. Yousuf v. Smt. Afaq Jahan and Anr.* 2006 (1) JCC 189, Supreme Court has observed as under:

There is no particular format of a complaint. A petition addressed to the magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably dealt with as in the instant case, is a complaint.

21. The reason is that generally FIR's are registered immediately and promptly after an offence is committed and the informant has no cooling period to frame the

complaint or ponder over its language. But where a FIR is lodged with a cooling period and the complainant has taken the help of a legal expert, subsequent additions of facts becomes relevant.

22. In a matrimonial dispute, generally wives resort to criminal remedy as a last resort. The parties thus file criminal complaints consciously well knowing the specific role played by each accused person in the commission of an offence.

23. In the decision reported as *Majhar @ Papoo and Ors. v. State* : 96(2002)DLT566 , noting initial that the FIR in question did not contain allegations constituting the offence under Section 498-A, IPC against the petitioners and that liability for the offence under Section 498-A, IPC was sought to be fastened against the petitioners on the basis of second supplementary statement of the complainant, a learned Single Judge of this Court quashed the FIR in question. As regards supplementary statement, it was observed as under:

In my view, this statement could be considered when some allegations was made in the FIR/complaint against the petitioner and not otherwise.

24. In the decision reported as *Anand R. Kalwani v. State of Maharashtra and Anr.* (2006) I DMC 177, quashing the FIR in question, the Court observed as under:

12. Besides, prima facie the contents of the supplementary statement relating to the dowry demand by the petitioner ex facie appears to be inconsistent and improbable as compared to the contents of the FIR and the other materials on record. As already stated above, the FIR does disclose the name of the petitioner. However, it nowhere refers to any act of harassment or demand of dowry by the petitioner though various details of the demand of dowry and harassment at the instance of the other family members have been stated therein. The letter dated 14.10.2004 by the respondent No. 2 does not contain any allegation against the petitioner. The letter dated 14.10.2004 by the parents of the respondent No. 2 refers to such demand specifically by the father-in-law of the respondent No. 2 with specific reference to the date of 10.7.2004. It speaks of such demand by phone call. The specific statement of the respondent No. 2 in her supplementary statement refers to such a demand by the petitioner with her parents by calling

them at his office on 10.7.2004. There is no reference to any act on the part of the petitioner in the letter dated 14.10.2004 either by the respondent No. 2 or by her parents. Being so, the allegations in the supplementary statement prima facie appear to be totally improbable, besides being after-thought.

25. In the decision reported as Smt. Sangeeta Kalra v. State : 138(2007)DLT535 , noting the allegations in FIR and supplementary statement of the complainant, a learned Single Judge of this Court while quashing the FIR in question observed as under:

5. It is true that while considering the quashing of criminal proceedings under Section 482 Cr. P.C, the Court should not embark upon an enquiry into the truthfulness of the allegations made by complainant but where the charges are framed by the lower court without considering the material, with closed mind and charges amount to gross misuse of criminal justice system and trial is an abuse, it becomes the duty of the High Court to intervene in such cases, under Section 482 Cr. P.C so that there is no miscarriage of justice and faith of people remains intact in the judicial system. In this case, charges have been framed against the petitioner, sister of the husband, without their being an iota of evidence of any cruelty or entrustment of any property by the complainant in the initial complaint or in the later complaint. Even in subsequent complaint made by the complainant herself there are no specific allegations and only vague allegations are there involving every family member.

x x x x x7. I consider that while framing charges, the Trial Court must take into account the entirety of the case, all documents which are brought to its notice including the correspondence between the parties and thereafter should decide whether there was case made out or the court was being used as a tool. I consider it is a fit case where criminal proceedings against the petitioner be quashed....

26. Lastly, I note decision of the Supreme Court in the report published as Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj : 1990 CriLJ1869 wherein after considering provisions of Sections 227 and 228, Cr.P.C., 1973, it was observed as under:

From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

27. In the instant case, from a plain reading of the complaint dated 27.5.2002, it is apparent that grievance of the complainant in relation to demand of dowry and harassment was essentially against her husband and father-in-law and not against the present petitioner. Likewise, is the position in the legal notice dated 22.4.2002.

28. In the result, the petition is allowed and order dated 5.7.2004 in so far it frames charges against the petitioner is set aside.

29. No costs.

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