

Anjali @ Devi and anr. Vs. State and anr.

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Court : Rajasthan

Decided On : May-27-2003

Reported in : I(2004)DMC511; RLW2004(1)Raj1; 2003(3)WLC645

Judge : A.C. Goyal, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 406, 494 and 498A; Crimianl Procedure Code - Sections 156(3) and 482

Appeal No. : S.B. Civil Misc. Petition No. 1045 of 2002

Appellant : Anjali @ Devi and anr.

Respondent : State and anr.

Advocate for Def. : G.S. Rathore, P.P. and; S.S. Sunda, Adv. for Respondent No. 2

Advocate for Pet/Ap. : M.L. Goyal, Adv.

Disposition : Petition dismissed

Judgement :

Goyal, J.

1. This petition under Section 482 Cr. P.C. by the accused petitioners is directed against the order dated 11.5.02, whereby learned Judicial Magistrate No. 8, Jaipur

City, Jaipur, forwarded the complaint of complainant respondent No. 2 under Sections 494, 406, 120B 1PC, for investigation as provided under Section 156(3) Cr. P.C. with a further prayer to quash the F.I.R. No. 132/02 and the investigation done so far.

2. The relevant facts in brief are that the complainant Raj Kumar filed a complaint in the Court of Judicial Magistrate No. 8, Jaipur City, Jaipur, on 8.5.2002 against Smt. Anjali alias Devi, her brother Bhagwan Ramani and Smt. Kamla with the averments that having come to know from Kamla about the present petitioner Smt. Anjali @ Devi that she is a widower, he got married with her in March 1998, in Sindhi Gurudwara according to Sindhi rites and rituals but now he has come to know that Smt. Anjali was previously married to Kishore resident of Bhopal, Indra Kumar resident of Jaipur and Mohan Ahuja, resident of Pune and all previous husbands are alive. It was further averred in the complaint that Ms Anjali, in collusion with her brother Bhagwan Ramani, married time to time with an intention to cheat by taking away money clothes, ornaments etc. When the complainant enquired about this fact from Anjali, she alongwith her brother took away cash amount, golden ornaments and clothes belonging to the complainant and ran away. Thereafter both of them started threatening him and raised further demand of Rs. 3 lacs.

3. This complaint was sent for investigation to Police Station Shipra Path, Jaipur, as provided under Section 156(3) Cr. P.C. Police registered F.I.R. No. 132/2002, for the offences under Sections 494, 406, 120B IPC and started investigation. A perusal of the case diary goes to show that investigation officer after completion of the investigation prepared charge sheet against both the accused petitioners for offences under Sections 420, 494, 406 read with Section 120B IPC. No case was found against Smt. Kamla.

4. I have heard learned counsel for the parties and learned P.P. Counsel for the accused petitioners referred the Provisions of Sub-section (1) of Section 198 Cr. P.C. and contended that the learned Magistrate is not empowered to take cognizance of an offence punishable under Chapter XX of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. The

offence under Section 494 I.P.C. comes within the purview of Chapter XX of I.P.C. The first argument raised by counsel for the accused persons is that the present complainant Raj Kumar is not the person aggrieved and only previous husbands may be aggrieved persons. This argument has got no force as the complainant Raj Kumar, according to him being 4th husband is certainly a person aggrieved as provided by Section 198(1) Cr.P.C. The second argument raised by learned counsel is that the Magistrate had no jurisdiction to forward this complaint under Section 156 Cr.P.C. for investigation and cognizance on the basis of the charge sheet to be submitted by the I.O. is barred under Section 198(1), hence the order dated 11.5.02 and subsequent investigation in compliance of that order are liable to be quashed. Reliance is placed upon *Kanhaiya Lal v. State of U.P. and Anr.* (1), *Allahabad* and *Asu Lal v. The State of Raj.* (2). Both the judgments were delivered on the basis of the Provisions of Section 199 Cr.P.C. dealing with the offences under Chapter XXI of IPC. The Provisions of Section 198 and 199 Cr.P.C. are similar. In both the rulings, it was held that no Court is competent to take recourse to the provisions of Section 156(3) Cr.P.C. for any offence falling under Chapter XXI.

5. Learned P.P. and learned counsel for the respondent No. 2 supported the impugned order dated. 11.5.02. I have considered the above submissions but unable to agree as facts of this case disclose both cognizable and non-cognizable offences and police is not debarred from investigating non-cognizable cases and including them in the charge sheet. In *State of Orissa v. Sharat Chandra Sahu and another* (3), the facts were that the wife made a complaint in writing against her husband to the Women's Commission, making allegations of the offences punishable under Section 494 and 498A IPC. The Women's Commission sent the complaint to the police station and charge sheet came to be filed under both the Sections. The High Court quashed the charge under Section 494 in view of the Provisions of Section 198(1) Cr. P.C. The Hon. Supreme Court set-aside the order of Orissa High Court and held that the offence under Section 494 is non-cognizable but the offence under Section 498A IPC was a cognizable offence and the police was entitled to take cognizance of the said offences and thus the order of quashing charge under Section 494 IPC by the High Court was set-aside.

6. Learned counsel for the accused persons next argued on merits that no offence is made out. According to him neither there is evidence of marriage with the complainant respondent nor entrustment of any property to the accused persons or cheating against them. Reliance is placed upon *Kanwal Ram and Ors. v. The Himanchal Pradesh Administration* (4), wherein it was held by hon. Apex Court that for the offence under Section 494 IPC, second marriage must be proved by producing the evidence of performance of essential ceremonies. In *Velji Raghavji Patel v. The State of Maharashtra* (5), it was held that to constitute offence under Section 406 IPC, entrustment of dominion over property is essential. Per contra, learned counsel for the complainant and learned P.P. contended that even the charge sheet has not been filed so far and all the objections on merit may be raised before the trial court and F.I.R. can not and should not be quashed under Section 482 Cr. P.C. Having considered the above submissions no ground exists at this stage for quashing the F.I.R. and investigation done so far. The accused petitioners may raise all their objections on merits before the trial court at appropriate stage.

7. Consequently this petition alongwith stay application is dismissed.