

Ashwini Kumar and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Aug-12-1998

Reported in : I(2000)DMC317

Judge : Amaresh Ku. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 173 and 482

Appeal No. : Cr. Misc. Petition No. 357 of 1996

Appellant : Ashwini Kumar and ors.

Respondent : State of Rajasthan and anr.

Advocate for Def. : R.S. Rathore, Public Prosecutor for the Respondent No. 1 and; P.N. Mohnani, Adv. for the Respondent N

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

Disposition : Petition dismissed

Judgement :

Amaresh Ku. Singh, J.

1. Heard the learned Counsel for the petitioner, the learned Public Prosecutor and the learned Counsel for the non-petitioner No. 2.

2. This petition under Section 482, Cr. P.C. is directed against the order dated 9th May, 1996 passed by the Civil Judge (Jr. Division) and Judicial Magistrate, 1st Class, Sri Ganganagar, whereby the learned Judicial Magistrate took cognizance of the offences under Sections 498A and 496, I.P.C. and directed the issue of bailable warrants against the petitioners, namely, Ashwini Kumar, Smt. Renu, Madan Lal and Ram Kumar.

3. The facts of the case so far as they are relevant for the disposal of this petition may be briefly stated as below.

4. The complainant Smt. Manju @ Poonam (non-petitioner No. 2) submitted a complaint on 12th June, 1995 in the Court of Civil Judge (Jr. Division) and Judicial Magistrate, 1st Class/Sri Ganganagar alleging the commission of offences under Sections 498A and 496, I.P.C. In her complaint, she alleged that her marriage with Shri Pawan Kumar was solemnised on 9th December, 1990 and after her marriage she lived with her husband for some time. She gave birth to a daughter namely, Ku. Prema. It was further alleged in the complaint that at the time of marriage, her father gave various articles and dowry and spent sufficient amount according to his status, but after her marriage, the accused persons started treating her with cruelty. They made demand of money and gave her beatings. After some time, she was turned out of the house by the accused persons. It was also alleged that at Ganganagar, accused Pawan Kumar, Ashwini Kumar, Madan Lal and Ram Kumar made a demand for money and they took away a sum of Rs. 20,000/- and for the remaining 80,000/-, they said that Poonam should be sent when the sum of Rs. 80,000/- were available. It has been further alleged in the complaint that the 'Stridhan' of the plaintiff was not returned to the complainant.

5. The complaint submitted by Smt. Manju (non-petitioner No. 2) was forwarded to the Station House Officer of the Police Station, Jawahar Nagar for investigation. FIR No. 36/95 was registered by the police treating the complaint submitted by the non-petitioner No. 2 as FIR. After investigation, a report under Section 173, Cr. P.C. was submitted by the police against the accused Pawan Kumar. On the same day, the complainant submitted an application praying that cognizance should be taken against the other accused also.

6. The learned Judicial Magistrate after perusal of the documents submitted with the report under Section 173, Cr. P.C., found a prima facie case against the petitioners for issuing process under Section 204, Cr. P.C. in respect of the allegations relating to offences under Sections 498A and 496, I.P.C. That order has been challenged by this petition.

7. The learned Counsel for the petitioner has submitted that certain material facts have been concealed by the non-petitioner No. 2. Her marriage took place in Punjab at the distance of 4 to 5 miles from Chandigarh and at the time of marriage, no dowry was given. It is also submitted by the learned Counsel for the petitioner that the allegations made by Smt. Manju in the complaint are vague and no prima facie case is made out against the petitioners.

8. The learned Counsel for the non-petitioner No. 2 has submitted that the allegations made by the non-petitioner No. 2 in the complaint were correct and that in fact she was subjected to cruel treatment with a view to force her to make payment towards dowry and that she was given beating and turned out of the house by her husband and when she was living at Ganganagar, the petitioners went there and again made a demand and obtained the sum of Rs. 20,000/-. It is further submitted by the learned Counsel for the non-petitioner No. 2 that the offence of cruelty in such cases is a continuing offence, because the object of the cruelty meted out to the lady in such cases is with a view to force her and her relatives so that they may fulfil the demand for dowry, and therefore, all the events and transactions involving cruelty caused to the lady on account of non-payment of dowry should be taken to be part of the same transaction.

9. In support of his submission, the learned Counsel for the non-petitioner No. 2 has placed reliance on a decision of the Hon'ble Supreme Court in Smt. Sujata Mukherjee v. Prashant Kumar Mukherjee, 1997 Cri. L.J. 2985. In the case of Smt. Sujata Mukherjee, it was contended that in view of Section 178, Cr. P.C. where an offence is committed partly in one local area and partly in another, such offence can be tried by a Court having jurisdiction over any such local areas. On behalf of the State, it was contended that the episode at Rajpur was only a sequence of the continuing offence of harassment and ill-treatment meted out to the complainant.

and Clause (c) of Section 178 was, therefore, attracted.

Their Lordships observed-

'We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of mal-treatment and humiliation meted out to the appellant in the hands of all the accused-respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, Clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted. We, therefore, set aside the impugned order of the High Court and directed the learned Chief Judicial Magistrate, Raipur to proceed with the criminal case.'

10. In the instant case, it is prima facie proved that at Ganganagar, the petitioners repeated the demand for dowry and as alleged by the non-petitioner No. 2, they obtained a sum of Rs. 20,000/-, which they took away with them and made a demand for further sum of Rs. 80,000/-. This act of the petitioners was a part and parcel of the same design, which had the object of obtaining dowry from her. In these circumstances, it is difficult to say that taking of cognizance by the learned Judicial Magistrate, Sri Ganganagar on the basis of the report submitted by the police under Section 173, Cr. P.C. is without jurisdiction or without sufficient grounds.

11. For the reasons mentioned above, I do not find any force in this petition. It deserves to be dismissed and is hereby dismissed.

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