

Manak Chand Vs. the State and ors.

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Court : Rajasthan

Decided On : Jan-14-1998

Reported in : 1998CriLJ1950

Judge : Amaresh Ku. Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 156(3), 156(6), 161, 172(2), 172(3), 173 and 482, ; Indian Penal Code (IPC) - Sections 323, 326, 327, 406, 493A and 498A

Appeal No. : Criminal Misc. Petn. No. 698 of 1996

Appellant : Manak Chand

Respondent : The State and ors.

Advocate for Def. : R.S. Rathore, Public Prosecutor and; Himanshu Maheshwari for No. 2

Advocate for Pet/Ap. : Shamhhoo Rathore, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Amaresh Ku. Singh, J.

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

2. By this petition under Section 482 Cr.P.C. the petitioners have prayed that F.I.R. No. 78/96 registered at police station, Sumerpur be quashed.

3. According to the averments made in the petition, respondent No. 2 Smt. Shobha was married to Shri Manak Chandel (petitioner No.

1) on 28-1-1995. After their marriage the relations between Manak Chand and Smt. Shobha (respondent No.

2) became strained. As a result Smt. Shobha has filed a complaint against the petitioners in the Court of Judicial Magistrate Sumerpur alleging the commission of offences Under Sections 498A and 406, IPC. That complaint was forwarded by the learned Judicial Magistrate, Sumerpur to the Station House Officer of the Police Station, Sumerpur under Sub-section

(3) of Section 156, Cr.P.C. for investigation. On receipt of the complaint, the Station House Officer of the Police Station registered the F.I.R. No. 5/96 in respect of offences Under Sections 498A and 406, IPC. During the course of investigation statements of several persons were recorded Under Section 161, Cr.P.C. After investigation, a charge-sheet under Sub-section

(2) of Section 172, Cr.P.C. was filed in the Court of learned Civil Judge-cum (Junior Division) cum-Judicial Magistrate, Sumerpur. The learned Judicial Magistrate took cognizance on the basis of the charge-sheet submitted by the police. It is also mentioned in the petition that the petitioners are facing trial in the Court of learned Judicial Magistrate, 1st Class, Sumerpur. It is also stated in the petition that the petitioners had to run from pillar to post for obtaining anticipatory bail during the investigation of the aforesaid F.I.R. No. 5/96. It is alleged that the non-petitioner No. 2 has filed another complaint alleging the commission of offences Under Sections 498A and 406, IPC and the second complaint filed by the non-petitioner No. 2 was also sent to the Station House Police Officer of the Police Station. Sumcrpur by the learned Judicial Magistrate under Sub-section

(3) of Section 172, Cr.P.C. and in compliance of the order passed by the learned Judicial Magistrate, the Station House Officer of the Police Station had registered another F.I.R. No. 78/96 and investigation has also been commenced in respect of the second first information report.

4. The learned Counsel for the petitioners has submitted that registration of the second F.I.R. No. 78/96 in respect of the same offences for which F.I.R. No. 5/96 was registered amounts to abuse of the process of the law and that the police has no jurisdiction to register a second F.I.R. and re-investigate the case in respect of the same offence for which the case was already investigated by the police and a charge-sheet was submitted.

5. I have carefully considered the facts and circumstances of the case. In her second complaint, the non-petitioner No. 2 has clearly stated that she had filed an earlier complaint alleging the commission of offences Under Sections 498A, 406 and 323, IPC and that complaint had been sent to the Police Station, Sumerpur for investigation and F.I.R. No. 5/96 was registered at Police Station, Sumerpur and investigation was conducted in the case, but it is stated by her that the petitioners, in order to deceive, persuaded the non-petitioner No. 2 to enter into a compromise and in consequence, a compromise in writing was got signed by the non-petitioner No. 2 on 17th January, 1996 and on 19th January, the non-petitioner No. 2 went to her husband's house with the accused persons. For sometime the accused persons did not ill-treat the non-petitioner No. 2, but after the grant of bail to the accused-persons by the Additional District and Sessions Judge, the accused persons started beating and harassing the non-petitioner No. 2. On several occasions she was beaten and was confined in the house and she was not allowed to meet any person. She was also taken to Bombay, where she was beaten and she was forced to give in writing that whatever ornaments are kept in the locker be handed over to Manak Chand. It was further alleged in the complaint that the non-petitioner No. 2 (complainant) was asked to pay the expenses of the case and a sum of Rs. 5,00,00/- and she was made to sign three blank papers after she was confined in a room. It was also alleged in the complaint that on 29th January, 1996, the non-petitioner No. 2 contacted her father on telephone and asked him to come and on 1st March, 1996 the parents of the non-petitioner No. 2

went to the place she was in confinement and they took the non-petitioner No. 2 with them. In para No. 11 of the complaint the non-petitioner No. 2 (complainant) was alleged the commission of offences under Sections 498A, 406 and 327, IPC and prayed that action be taken against the accused-persons.

6. A bare perusal of the second complaint on basis of which F.I.R. No. 78/96 was registered, shows that the second complaint contains additional allegations to the effect that subsequent to 19th Jan. 1996, she was given a beating, she was harassed, kept in confinement and forced to sign three papers against her will and that a sum of Rs. 5,00,00/- as well as the expenses of litigation were demanded from her and she was also asked to give in writing that the ornaments which were in locker be handed over to Manak Chand. These additional allegations were not alleged in the first complaint, on the basis of which F.I.R. No. 5/96 was registered. In these circumstances, it is not possible to say that the second complaint on the basis of which F.I.R. No. 78/96 was registered could not be legally filed in Court, nor it can be said that the learned Judicial Magistrate committed any mistake by sending the complaint to the police under Section 156(6), Cr.P.C. The allegations relating to the period subsequent 19th January, 1996, do constitute the offences under Sections 326 and 498A as well as 406, IPC and the police officer, who is investigating the case is entitled to conduct the investigation in accordance with law.

7. For the reasons mentioned above, the F.I.R. No. 78/96 registered at Police Station, Sumerpur cannot be quashed by this Court under Section 482, Cr.P.C. However, it must be pointed out that it would be unjust and illegal if the accused-petitioners are Arrested on the same allegations, which were the subject-matter of F.I.R. No. 5/96. It is, therefore, proper to direct that during the investigation of F.I.R. No. 78/96, the Station House Officer of the Police Station, Sumerpur shall not arrest the accused petitioner for the offences, which are alleged to have been committed prior to the registration of F.I.R. No. 5/96. In case the evidence collected during investigation proves that the accused petitioners have committed any offence subsequent to 19th January, 1996 as alleged in the second complaint, the police officer would be within his powers to act in accordance with law in the matter of making arrest of the accused, if there be justification for the same and for

filing report under Sub-section (2) of Section 173 Cr.P.C .

8. With above observations the petition is hereby dismissed.

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