

Tarun Das and ors. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Jul-11-2008

Reported in : 2009(1)CHN164

Judge : Arunabha Basu, J.

Acts : Hindu Marriage Act - Section 13B; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(2), 156(1), 156(3), 173, 198, 198(1), 468 and 482; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 120B, 420, 493, 494 and 495

Appeal No. : C.R.R. No. 228 of 2008

Appellant : Tarun Das and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : Krishna Ghosh, Adv.

Advocate for Pet/Ap. : Kallol Mondal, Adv.

Judgement :

Arunabha Basu, J.

1. The revisional application under Section 482 of the Code of Criminal Procedure is directed to quash the proceeding in connection with G.R. Case No. 60 of 2007 arising out of Bantra Police Station Case No. 3 of 2007, now pending before the

Court of learned Judicial Magistrate, 5th Court, Howrah.

2. In this case after conclusion of investigation, chargesheet is submitted against the petitioners for commission of offence punishable under Section 493/420/120B/34 of the Indian Penal Code.

3. Opposite party No. 2 filed a petition of complaint before the Court of learned Chief Judicial Magistrate, Howrah against five accused persons (accused Sabita Das is non-petitioner in this revisional application).

4. The direction was passed by the learned Court below for registration of the case and to initiate investigation in terms of provision under Section 156(3) of the Code of Criminal Procedure.

5. The allegation against the petitioners mainly rests on the ground that there was love affairs between the complainant (opposite party No. 2) and petitioner No. 1. The complainant left with petitioner No. 1 in the month of August, 1996 and started residing with petitioner No. 1 in his house along with the other family members of petitioner No. 1, such as, brother, brother's wife, sister and mother of petitioner No. 1. There was no marriage between the complainant (opposite party No. 2) and petitioner No. 1, however, opposite party No. 2 was given assurance about the marriage by petitioner No. 1. During her stay, opposite party No. 2 faced demands of money and she was also asked to give her golden ornaments. Opposite party No. 2 handed over a sum of Rs. 70,000/- along with 40 bhories of golden ornaments. Due to relationship between petitioner No. 1 and opposite party No. 2, a male child was born on 27th August, 1997. After the birth of child, the opposite party No. 2 faced more demands from the accused persons. Opposite party No. 2 became aware that petitioner No. 1 was already married even though initially it was disclosed to her that petitioner No. 1 is an unmarried person.

6. The opposite party No. 2 being driven out on 6.10.2006, came back to her parents' house along with her child. Subsequently, she lodged G.D. at the police station on 8.10.2006. Thereafter on 23rd October, 2006, petition of complaint was filed before the Court.

7. In this case, on conclusion of investigation, chargesheet is submitted against five accused persons, including the four petitioners herein, for commission of offence punishable under Section 493/420/120B/34 of the Indian Penal Code.

8. It is the contention of the learned Advocate for the petitioner that there is inordinate delay in filing the petition of complaint before the learned Court below, as because the recital in the petition of complaint discloses that the offence was committed on and from August, 1996. It is also the contention of the learned Advocate for the petitioner that the opposite party suppressed material fact in the petition of complaint about her' earlier marriage, which ended in divorce in connection with MAT Suit No. 386 of 1995. The suit was instituted by the opposite party No. 2 against her husband and ultimately the suit was decreed by learned District Judge, Howrah on 22.1.1997.

9. It is also the contention of the learned Advocate for the petitioner that relationship between the petitioner No. 1 and opposite party No. 2 developed on mutual consent and the opposite party No. 2 on her free will cohabited with the petitioner No. 1. Petitioner No. 1 was not aware that opposite party No. 2 is already married and the said marriage was subsisting when she with her consent, came and started living with petitioner No. 1.

10. So far as the offence under Section 493 of the Indian Penal Code is concerned, it was argued by the learned Advocate for the petitioners that no police case can be registered in view of bar prescribes under Section 198 of the Code of Criminal Procedure. It is also contended that there is no ingredient to attract the offence under Section 420 of the Indian Penal Code, and as such the entire prosecution is not maintainable and may be quashed.

11. During the course of hearing and in terms of direction passed by this Court, case diary was produced by the learned Advocate for the State. It is the contention of the learned Advocate for the State that delay, by itself cannot be a ground to quash the proceeding particularly when the offence under Section 420 of the Indian Penal Code is punishable with imprisonment for seven years and as such there is no period of limitation in order to initiate prosecution in connection with the said offence.

12. The inherent power of this Court in terms of provision under Section 482 of the Code of Criminal Procedure is exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist.

13. In *R.P. Kapur v. State of Punjab* reported in : 1960 CriLJ1239 , the Supreme Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) Where the allegations in the First Information Report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

14. In *State of Haryana v. Bhajan Lal* reported in AIR 1992 SC 604, the Supreme Court indicated some illustrative categories of cases where the power should be exercised by the High Court under Section 482 of the Code of Criminal Procedure. These are as follows:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. So far as the offence under Section 493 of the Indian Penal Code is concerned, it may be pointed out that Section 493 deals with offence in relation to cohabitation caused by a man deceitfully inducing a belief of lawful marriage. The essence of an offence under this section consists of the deception practised by a man upon a woman as a result of which the woman is led to believe that she is lawfully married to him whereas in fact she is not lawfully married to him.

16. In order to attract the offence under that provisions of Section 493 of the Indian Penal Code, it must be disclosed in the petition of complaint that such cohabitation took place with the belief that she is lawfully married to the accused and such cohabitation must take place only on the basis of such belief.

17. So far as the present case is concerned, on perusal of FIR it appears that due to love affairs between the petitioner No. 1 and opposite party No. 2 and believing that petitioner No. 1 is unmarried, there was cohabitation between petitioner No. 1 and opposite party No. 2.

18. It is categorically stated in the petition of complaint that there was no marriage between the parties and the parties are living together. The element of deception is totally absent in this case.

19. In the FIR it is categorically stated that opposite party No. 2 was in love with petitioner No. 1 and left with him with the belief that petitioner No. 1 will marry her.

20. The recital in the FIR does not show that such cohabitation took place by misrepresentation that opposite party No. 2 is lawfully married to petitioner No. 1. The very ingredient to attract Section 493 of the Indian Penal Code is totally absent.

21. It may also be pointed out in this context that Section 198 of the Code of Criminal Procedure deals with prosecution for offences against marriage.

22. Sub-section (1) to Section 198 of the Code of Criminal Procedure runs as follows:

198. Prosecution for offences against marriage.-(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of Sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court, by any other person related to her by blood, marriage or adoption.)

23. The offence under Section 493 of the Indian Penal Code falls under Chapter XXII and as such the cognizance can only be taken by the Court below upon a petition of complaint. So far as the present case is concerned, cognizance is taken on the basis of the police report submitted in terms of provision under Section 173 of the Code of Criminal Procedure and as such the order taking cognizance passed by the learned Court below, so far as the offence under Section 493 of the Indian Penal Code is concerned, must be held to be bad in law.

24. With regard to offence under Section 420 of the Indian Penal Code, the following ingredients must be present:

1. There should be fraudulent or dishonest inducement of a person by deceiving him;

a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

b) The person so induced to do anything which he would not do or omit if he were not so deceived, and

c) In cases covered by second part of Clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

25. So far as the present case is concerned, the recital in the FIR does not disclose that money and gold ornaments were parted with consequent to the deception practised by the petitioners. On the contrary a case of dowry demand or torture as sought to have been advanced in the petition of complaint but as it is admitted by the opposite party No. 2 that there is no valid marriage between petitioner No. 1 and opposite party No. 2, the question of dowry demand or torture

does not arise at all.

26. It may be pointed out in this context that by filing supplementary affidavit, petitioners have produced a copy of the order passed by the District Judge, Howrah in connection with MAT Suit No. 386 of 1995, which shows that initially the opposite party No. 2 filed a suit for divorce against her husband In the year 1995 and subsequently the parties filed a joint petition for decree of divorce in terms of provisions under Section 13B of the Hindu Marriage Act and the learned District Judge by his order dated 22.1.1997 decreed the suit.

27. It is evident that the opposite party No. 2 was the legally married wife of one Subir Kumar Banerjee and the marriage was subsisting on August, 1996. The opposite party No. 2 being in love with petitioner No. 1 started residing with petitioner No. 1 on her free will. The materials collected in the case diary does not even prima facie show that the relationship developed between the petitioner No. 1 and opposite party No. 2 with the belief that the opposite party No. 2 is married to petitioner No. 1. Such belief cannot be in existence so far as the present case is concerned.

28. It may be pointed out that opposite party No. 2 is an adult and matured lady and the subsistence of the said marriage with her earlier husband was known to the opposite party No. 2 as because she filed a suit for divorce against her former husband. The relationship between the petitioner No. 1 and opposite party No. 2 developed during the subsistence of earlier marriage of opposite party No. 2. This fact can be gathered from the recital in the petition of complaint as well as from the order passed by the learned District Judge in connection with the matrimonial suit. In the petition of complaint, it is stated that due to alleged love affairs between the petitioner No. 1 and opposite party No. 2, she started residing with him in the year 1996. The divorce suit was filed in the year 1995 and the same was decreed by the learned District Judge by his order dated 22.1.1997. She being a married lady left with petitioner No. 1 on her free will and started residing and cohabiting with him. Petition of complaint does not disclose any element of deception and inducement on the part of any of the petitioners and as such in my view there is no basis in the petition of complaint to attract either the offence under Section 493 of

the Indian Penal Code or under Section 420 of the Indian Penal Code.

29. In *State of Haryana v. Bhajan Lal* case (supra), the Supreme Court took into consideration that when the criminal prosecution is instituted maliciously or with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge; then the Court shall interfere and quash such proceeding in exercise of its power under Section 482 of the Code of Criminal Procedure.

30. So far as the present case is concerned, there is inordinate delay in filing the petition of complaint. Even though law of limitation in terms of provision under Section 468 of the Code of Criminal Procedure has no application as because the offence under Section 420 of the Indian Penal Code is punishable with imprisonment for seven years. But at the same time this Court cannot ignore the actual state of affairs that there is inordinate delay which remains totally unexplained, while lodging the petition of complaint before the learned Magistrate. It may be a case where the relationship between the petitioner No. 1 and opposite party No. 2 soured due to their misunderstanding but the same by itself cannot be a ground to lodge criminal prosecution. A criminal prosecution deals with commission of offence and if no offence is committed then continuation of the same will be an abuse of the process of Court.

31. In view of my above discussion, I am of the view that the present prosecution so far as the petitioners herein are concerned; having no basis, cannot continue and as such the prosecution in connection with G.R. Case No. 60 of 2007, now pending before the Court of learned Judicial Magistrate, 5th Court, Howrah stands quashed, so far as the petitioners are concerned.

32. Criminal Section is directed to forward a copy of the order to the learned Court below.

33. Criminal Section is also directed to supply urgent certified copy of the order to the parties as and when applied for. Case diary be returned.