

Upinder Singh Sudan Vs. State of J. and K. and ors.

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Court : Jammu and Kashmir

Decided On : Nov-27-1998

Reported in : 2000CriLJ1165

Judge : Arun Kumar Goel, J.

Acts : Dowry Restraint Act, 1960 - Sections 3 and 5; ;Hindu Marriage Act - Section 15; ;Ranbir Penal Code (IPC) - Sections 34, 120B, 405, 406 and 498A; ;Code of Criminal Procedure (CrPC) , 1989 Smvt. - Section 156(3) and 497A; ;Jammu and Kashmir Hindu Marriage Act - Section 15

Appeal No. : W.P. No. 63 of 1997, (561-A,Cr.P.C.)

Appellant : Upinder Singh Sudan

Respondent : State of J. and K. and ors.

Advocate for Def. : P.C. Sharma, Govt. Adv. (for Nos. 1, 3 to 5) and; K.S. Johan, Adv. (for No. 2)

Advocate for Pet/Ap. : B.D. Nayyar, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Arun Kumar Goel, J.

1. This is a petition filed by the petitioner for quashing the investigation as well as F.I.R. No. 63 of 1997. Matter is pending before SDPO, Bakshi Nagar, Jammu, on the basis of said FIR.

2. In order to properly understand the controversy involved in this case certain facts need to be noticed. Petitioner Upinder Singh was married to respondent No. 2-Sukhmeet Kaur on 8-3-1995 at Jammu. There is no child out of this wedlock. It appears that a complaint came to be filed by Sukhmeet Kaur on 13-4-1997 against the petitioner with the Crime Branch, Jammu. Allegations made in the complaint were regarding petitioner's being threatened and dowry having been demanded from her. The matter came to be examined by the Deputy Superintendent of Police, Crime Branch and it appears that when none came forward to support the same, it was likely that the report was about to be made that no case is made out. Further case of petitioner is that having smelt the consequences of the complaint before Crime Branch, the wife-respondent No. 2 preferred a complaint before Chief Judicial Magistrate, Jammu, under Sections 405, 406 read with 34/120-B, Ranbir Penal Code. This complaint was forwarded to Police Station, Nowabad, for necessary action under Section 156 of the Code of Criminal Procedure. This led to registration of FIR No. 63 of 1997 under Sections 405, 406/34, 120-B, 498-A, Ranbir Penal Code and Sections 3 and 5 of the Dowry Restraint Act, 1960, which is sought to be quashed in the present proceedings.

3. In the case that was registered besides the petitioner, his father-Onkar Singh, his mother-Rasan Kour and his brother-Jatinder Singh were arrayed as the accused persons. All four of them applied for grant of bail under Section 497A, Criminal Procedure Code in the Court of Session and have granted the relief.

4. Record shows that notice was issued to Government Advocate who filed objections. Strangely enough according to prosecution notices were issued to respondent No. 2 and the witnesses of the case on 2-7-1997 through Docket but nobody came forth despite having been served. Bail order passed by the Sessions Judge further mentions that notices were issued on a number of occasions but none appeared as such investigation could not proceed. Copy of the report of the

Crime Branch (where respondent No. 2 had earlier lodged the complaint on identical facts) was also produced during the course of bail proceedings. This report indicated that there is no case against the petitioner. Thus it is obvious that till the date when the bail was granted there was no material, much less legal evidence collected by the prosecution so as to indicate that there did exist a case on the basis of the materials on record of investigating agency.

5. Another development that had taken place during the pendency of the present proceedings is that on a petition under Section 15 of the Hindu Marriage Act having been filed for dissolving the marriage by a decree of Divorce with mutual consent of petitioner and respondent no. 2, came to be filed before the Additional District Judge (Matrimonial Cases), Jammu, and the same has been allowed thereby the marriage between the parties stands dissolved. Whether the said decree is legal or not in the face of Section 15 of the J. & K. Hindu Marriage Act or not is another matter. Reason for this observation is that petition was filed on 4-9-1998 and had been disposed of on 7-9-1998, just within three days of its being filed.

6. In the face of the aforesaid circumstances, it appears that respondent No. 2 was not interested in prosecuting her case once she had decided to part company with her husband as well as to call it a day. Even otherwise from the materials on record so far examined it cannot be said that prima facie case as alleged against the petitioner or for that matter at his father-Onkar Singh, his mother-Rasan Kour muchless against his brother-Jatinder Singh, is made out so as to permit the investigation of the case.

7. Another reason for taking the aforesaid view is that on identical facts Crime Branch had already reported that no case had been made out against the petitioner as well as his father, mother and or brother who all four were petitioners when the application for grant of bail was considered by the Court below.

8. In the face of the aforesaid facts, this petition is allowed and FIR No. 63/97 registered at Police Station, Nowabad, against the petitioner and his father Onkar Singh, mother-Rasan Kour as well as his brother-Jatinder Singh, together with all consequential proceedings before the SDPO Bakshi Nagar, Jammu, arising out of

the said FIR, are ordered to be quashed.

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