

Manish Kumar and ors. Vs. the State of Jharkhand and anr.

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Court : Jharkhand Ranchi

Decided On : Apr-07-2011

Judge : D.K. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 202; Indian Penal Code (IPC) - Sections 498A, 323, 379; Dowry Prohibition Act - Sections 3, 4; Hindu Marriage Act - Sections 13(1)(a)(b)

Appeal No. : Cr.M.P. No. 1049 of 2010.

Appellant : Manish Kumar and ors.

Respondent : The State of Jharkhand and anr.

Advocate for Def. : Mr. S.K. Srivastava; Mr. Anju Mishra, Adv.

Advocate for Pet/Ap. : Mr. Sanjay Kumar, Adv.

Judgement :

1. Petitioners have invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashment of the entire criminal proceedings arising out of C.P. Case No.215 of 2010 and the order dated 14.6.2010 by which Sri S.D. Tripathi, Judicial Magistrate, 1st Class, Bokaro having been satisfied with the materials collected in course of inquiry under Section 202 of the Code of Criminal Procedure, found a prima facie offence against the petitioners under Sections 498A/323/379 of the Indian Penal Code as also under Sections 3/4 of the Dowry Prohibition Act.

2. Petitioner No.1 Manish Kumar is the husband, petitioner No.2 Dr. Rajendra Kumar Singh is the father-in-law and petitioner No.3 Mukesh Kumar is the elder brother of the husband of the complainant-opposite party No.2 Sangeeta.

3. The complainant Sangeeta alleged in the C.P. Case No.215 of 2010 that she was married with the petitioner No.1 Manish Kumar on 20.4.2008 and huge amount in cash was given to the father-in-law of the complainant besides, utensils and further cash in different heads. After the marriage was solemnized at Bokaro Steel City, she was taken to her matrimonial home, situated at village Fatehpur in the district of Siwan (Bihar) where she was tortured in various ways during her stay for six days and the accused had demanded Rs.40,00,000/- (Forty Lakhs) for purchasing an apartment in Delhi, Hero Honda motorcycle, wrist watch and gold rings. The complainant though tried to explain the financial incapacity of her father to oblige them but the accused persons including the petitioners abused and maltreated her. It was alleged that her co-sister Madhuri Devi compelled her to keep all her ornaments in almirah at her matrimonial home, which was later on stolen by Madhuri Devi. The complainant went to Delhi with her husband and in August 2008 all the accused persons went to Uttam Nagar, Delhi and there also they all tortured to the complainant mentally and physically. Her husband Manish Kumar also used to assault her in a drunken condition. Her pregnancy, which she was bearing, was terminated without her consent by administering certain homoeopathic medicine mixing it in fruit-juice. Consequently, she became seriously ill, but since no proper medical aid was given, she informed her father, who came there and provided medical aid and only then her life could be saved. She alleged that her in-laws had been saying that her marriage was performed for money and not for bearing child. On being tortured constantly at the hands of the accused persons, she came to Bokaro on 14.10.2009 and narrated her suffering to her father and other witnesses. Yet, she had to resume her duty in Delhi, so she returned to Delhi on 31.10.2009. Her father tried to pacify the matter through mediation but no fruitful result could come out and finally, it was alleged that she was brought to Bokaro by her husband Manish Kumar on 28.2.2010 where she was brutally assaulted by him who returned back alone extending threats to the complainant that he would solemnize second marriage with another girl if she would come to Delhi without fulfilling the demands and she was finally deserted by

her husband on 28.2.2010. Complaint was filed when her father failed in his last attempt to resolve the dispute. After inquiry, a prima facie case was found only against the petitioners and not against the accused viz. Baby Kumari, Bikrama Singh, Pushpa Devi and Prabhunath Singh. In that manner the learned court partly disbelieved the allegations after enquiry as levelled by the complainant.

4. Learned counsel submitted that no specific overt act has been attributed against the petitioner Nos. 2 and 3, who are father-in-law and elder brother of the husband of the complainant and from the plain reading of the complaint case between the lines, it would be evident that no part of the occurrence took place within the jurisdiction of Bokaro court and therefore, the cognizance of the offence as against other accused was barred by jurisdiction and the learned Judicial Magistrate, Bokaro was not within his competence to issue summons to the petitioner Nos. 2 and 3 herein though, the other accused persons were exonerated. As a matter of fact, the petitioner No.1-husband Manish Kumar had filed a matrimonial suit before the court of Principal Judge, Family Court, Siwan vide Divorce Case No.70/10 under Section 13(1) (a,b) of the Hindu Marriage Act seeking a decree of divorce as against the opposite party- wife who had deserted him and was declined to join the society of her husband for years together and on many other grounds related to her ill behaviour.

5. The counsel for the petitioners has tried to convince this Court by taking the plea of alibi on behalf of the petitioner-husband that on the given date, he was on duty in Delhi and had not visited Bokaro on 28.2.2010 i.e. the date on which it was alleged that he had assaulted his wife and deserted her.

6. Opposite party No.2-complainant has entered appearance by executing vakalatnama.

7. Heard the learned counsel on behalf of the opposite party No.2. The learned counsel strongly controverted the contentions and submitted that the Judicial Magistrate, Bokaro was within his competence to take cognizance of the offence upon having been satisfied with the materials, which entail prima facie case against the petitioners and thereby, issued summons to them.

8. Having regard to the facts and circumstances of the case, perusal of the complaint petition as well as the statement of the complainant recorded on solemn affirmation, I find that no specific overt act has been attributed against the other two petitioners viz. petitioner No.2 Dr. Rajendra Kumar Singh and petitioner No.3 Mukesh Kumar and no part of the offence has been alleged against these two petitioners that they had visited Bokaro and demanded dowry or even extended torture to the complainant at Bokaro. From paragraph-13 of the complaint petition, I find that it was the petitioner No.1-husband Manish Kumar, who had visited Bokaro with the complainant where he assaulted her at her parental home and returned back by extending threat that he would marry another girl if the demand made by him could not be fulfilled.

9. In the circumstances, I find that it is the husband alone i.e. the petitioner No.1 Manish Kumar against whom there is direct allegation for the alleged offence in which the cognizance was taken and the learned Judicial Magistrate was within his competence to issue summons to him, but in the facts and circumstances, cognizance taken and summons issued against the petitioner No.2 Dr. Rajendra Kumar Singh and the petitioner No.3 Mukesh Kumar is barred by territorial jurisdiction and hence, the entire criminal proceeding in the instant case as against Dr. Rajendra Kumar Singh and Mukesh Kumar is quashed. The learned Judicial Magistrate is directed to proceed against the petitioner-husband Manish Kumar in accordance with law.

10. This petition is allowed in part in the manner indicated above.

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