

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 257 of 2012

1. Umesh Kumar
 2. Deepti Srivastava
 3. G.C. Sinha (Gopal Chandra Sinha)
 4. Archana Sinha
- ... Petitioners**

-Versus-

1. The State of Jharkhand
 2. Monika Srivastava
- ... Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Rajesh Kumar, Advocate
 For O.P. No.2 : Mr. Lalan Kumar Singh, Advocate
 For the State : Mr. Shailesh Kumar Sinha, A.P.P.

12/06.07.2023 Heard Mr. Rajesh Kumar, learned counsel for the petitioner, Mr. Lalan Kumar Singh, learned counsel for opposite party no.2 and Mr. Shailesh Kumar Sinha, learned counsel for the State.

2. This petition has been filed for quashing of the entire criminal proceedings including the order taking cognizance dated 29.09.2011 passed in connection with P.C.R. No.123 of 2010, pending in the court of the learned Chief Judicial Magistrate, Sahibganj.

3. The complaint case was filed by the complainant-opposite party no.2 alleging therein that her marriage was solemnized with one Piyush Srivastava on 19.02.1999 at Jhanshi (U.P.) and after her marriage, she along with her husband was living peaceful conjugal life for several years, but suddenly the behaviour of her husband changed towards her and he used to quarrel with her on flimsy ground and some time, he used to assault her with fists and slaps. The reason behind such behaviour of her husband was cleared when he demanded a sum of Rs.5 Lakhs for giving her decent living in his house. The complainant's family members already paid Rs.2,50,000/- on his demand and at the time of her marriage, her family

members had also given her golden ornaments of 25 Bhari.

It was further alleged that other accused persons always visited Sahibganj alongwith others and instigated him to demand that amount from her family and in the event of refusal to pay that amount they even told him to divorce her by legal process. They lastly visited Sahibganj on 11.04.2010.

The complainant and her family members tried their level best to reconcile the matter, but other accused persons always instigated her husband to cut-off all relation with her and even divorce her and on the basis of this statement, P.C.R. Case No.123 of 2010 was registered.

4. Mr. Rajesh Kumar, learned counsel for the petitioners submits that the learned court has earlier taken cognizance only against the husband of the complainant vide order dated 08.09.2010. He further submits that the said order was challenged by opposite party no.2 in Cr. Revision No.71 of 2010 and the learned Sessions Judge by way of setting aside the said order, remanded the matter to the learned court for deciding the same afresh.

He also submits that so far as these petitioners are concerned, they are brothers-in-law and sisters-in-law of the complainant, who are residing at Lucknow. He further submits that general and omnibus allegations are there against the petitioners and the learned court has taken cognizance, that too on remand order of the learned Sessions Judge.

He further submits that the learned court was not having any option as the learned revisional court has directed to pass a fresh order after observing that prima facie case is made out against the petitioners.

On these grounds, he submits that entire criminal proceedings may kindly be quashed.

5. On the other hand, Mr. Lalan Kumar Singh, learned counsel for opposite party no.2 submits that there is direct allegation against the petitioners and learned trial court has erred in taking cognizance only against the petitioners and therefore that order was challenged before the learned Sessions Judge, which was set aside by the learned Sessions Judge and the matter was remanded back for deciding afresh and, thereafter the learned court has taken cognizance against the petitioners. He submits that there is no illegality in the order taking cognizance.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on the record including the complaint petition as well as solemn affirmation and finds that so far as these petitioners are concerned, only general and omnibus allegations are there and in spite of that the learned court has taken cognizance against the petitioners. What are the nature of torture made by these petitioners, has not been disclosed in the complaint petition as well as in the solemn affirmation. The learned court has taken cognizance against the husband of opposite party no.2 only vide order dated 08.09.2010 and only after remand of the matter by the learned Sessions Judge, the learned court has further taken cognizance against all the accused made in the complaint petition.

7. Section 498-A of the Indian Penal Code was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives, however, nowadays, the said Sections is being misused which has been observed by several High Courts and the Hon'ble Supreme Court. When the relatives are unnecessarily made accused under the said Section, that was considered by the Hon'ble Supreme Court in ***Arnesh Kumar v. State of Bihar & another; [(2014) 8 SCC 273]***.

8. How the case are lodged under Section 498-A of the Indian Penal Code at the heat of the moment, that was considered by the Hon'ble Supreme Court in ***Preeti Gupta & another v. State of Jharkhand & another; [(2010) 7 SCC 667]*** . Paragraphs 32, 33, 34, 35 and 36 of the said judgment are quoted herein below:

"32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the

relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

9. The concern of the Court was further there in the cases on the general and omnibus allegations where the family members are roped in case arising out of Section 498-A of the Indian Penal Code, which was considered by the Hon'ble Supreme Court in ***Geeta Mehrotra & another v. State of UP & another'* [(2012) 10 SCC 741]**.

10. The cases related to distant relatives was further subject matter before the Hon'ble Supreme Court in ***K. Subba Rao v. The State of Telangana; [(2018) 14 SCC 452]***.

11. The above mentioned cases clearly demonstrate that the Court at numerous instances expressed concern over the misuse of Section 498-A of the Indian Penal Code and increase of tendency of implicating relatives of the husband in matrimonial dispute without analyzing the long term ramification of a trial on a complaint.

12. Coming back to the facts of this case, it appears that the petitioners who happened to be brothers-in-law and sisters-in-law, there are general and omnibus allegations against them and the learned court has taken cognizance after remand of the matter by the learned Sessions Judge and the learned Sessions Judge has also observed that prima facie case is made out against the petitioner and the learned court was not having any option and he has taken cognizance against the petitioners.

13. So far as husband of the opposite party no.2 is concerned, this petition is not on behalf of the husband.

14. Considering that general and omnibus allegations are there, so far as these petitioners are concerned, for the reasons and analysis, as stated hereinabove, the Court finds that it is a fit case to exercise power under Section 482 Cr.P.C.

15. Accordingly, so far as these petitioners are concerned, the entire criminal proceedings including the order taking cognizance dated 29.09.2011 passed in connection with P.C.R. No.123 of 2010, pending in the court of the learned Chief Judicial Magistrate, Sahibganj is quashed.

16. It is made clear that this Court has not interfered with the complaint case as well as the order taking cognizance so far as husband of the complainant is concerned and trial against the husband will proceed, in accordance with law.

17. Accordingly, this petition is allowed in above terms and disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/