

Manju Paul Vs Mousumi Das @ Sumi Das And 2 Ors

Court: Gauhati High Court

Date of Decision: Jan. 18, 2023

Acts Referred: Indian Penal Code, 1860 " Section 34, 120B, 193, 195, 199, 200, 211, 340, 354B, 498A, 500
Code Of Criminal Procedure, 1973 " Section 164, 195, 195(1)(b)(i), 200, 202, 340, 397, 401, 482
Dowry Prohibition Act, 1961 " Section 4

Hon'ble Judges: Robin Phukan, J

Bench: Single Bench

Advocate: B. Dutta, A K Gupta

Final Decision: Allowed

Judgement

1. Heard Mr. B. Dutta, learned counsel for the petitioner and also heard Mr. A.K. Gupta, learned counsel for the respondent.

2. In this petition, under Sections 397/401 read with Section 482 Cr.P.C., the petitioner - Smti. Manju Paul, has challenged the legality, propriety and

correctness of the order, dated 28.07.2022, so passed by the learned Judicial Magistrate 1st Class, Tinsukia, in connection with C.R. Case No.

01c/2020. It is to be noted here that vide impugned order, the learned Court below has taken cognizance of the offence under section 500/120B IPC

against the accused Smti. Mausumi Das @ Sumi Das and under section 120B IPC against the accused Smti. Seema Das and issued summon to them

to appear before the learned court below and to stand trial under the said sections of law.

3. The factual background, leading to filing of the present petition, is briefly stated as under:-

“The respondent No.1 -Smti. Mousumi Das Paul got married with Shri Bishal Paul, the son of the petitioner on 18.06.2018. On the

date of marriage the members of her in-laws house involved quarrel with her family members regarding the quality of her stridhans.

And from the first day of her marriage her husband and brother in law Mishu Paul, Father in law Rabi Paul and mother in law Smti.

Manju Paul started subjecting her to both physical and mental cruelty so as to coerce her to meet their unlawful demand of dowry. On

30.04.2019, she was assaulted by her husband and ousted her from the matrimonial home and since then she has been residing in her

uncle's house. On 14.07.2019, at about 10 AM she with her uncle and aunt and 10 others of that locality went to her husband's house

house and brother-in-law Mishu Paul, Father-in-law Rabi Paul and mother-in-law Smti. Manju Paul started hue and cry and damaged her

household articles and asked her to live in a separate room but she protested the same. Thereafter her mother-in-law and brother-in-

law have assaulted her and her brother-in-law has outraged her modesty and by touching different parts of her body and later on her

uncle and aunts rescued her. She then lodged one FIR with the O/C Tinsukia P.S. and upon the same the O/C Tinsukia P.S. has

registered a case being Tinsukia P.S. Case No. 1010/19 under section 498(A)/354(B)/34 IPC read with section 4 of the D.P. Act and

after investigation laid charge sheet against the petitioner and her son Mishu Paul to stand trial in the court under section aforesaid

sections of law. Upon the said charge sheet the learned Judicial Magistrate 1st class has taken cognizance and issued process to the

petitioner and her son to appear before it and to stand trial.

The case of the petitioner is that respondent No.1 has filed a false and fabricated case against her and her family members and she and her son Mishu

Paul was arrested by police in the said case and forwarded to jail hazoot and they were in custody for 35 days. The house of the petitioner was under

CCTV coverage and police seized the same. And DVR of the CCTV footage was sent to Truth Lab, Kolkata for authentication and then to Truth

Lab, Bangaluru for forensic examination and the image of the same show that respondent No.1 caused scratch on her person own self with the help

of respondent No.3 and respondent No.1 lied on oath under section 164 Cr.P.C. and there by compelled her and her son to remain behind the bar for a

period of 32 days. Thereafter, the petitioner has filed a complaint case being C.R. Case No. 01c of 2020 in the court of learned Chief Judicial

Magistrate, Tinsukia against the three respondents, but, the learned court below has taken cognizance against respondent No.1 and 2, vide order dated

08.01.2020, but did not take cognizance against respondent No.2 though he is directly involved in the offence.

4. Being aggrieved, the petitioner approached this Court by filing the present petition on the grounds that:-

(i) despite availability of sufficient materials under sections 193/195/199/200/500/120B & 34 IPC, against all the three respondents the learned court

below has taken cognizance against respondent No.1 and 3 only, which is bad in law and liable to be interfered with;

(ii) there is prima-facie materials under sections 193/ 195/199/200/500/120B & 34 IPC, against respondent No.2 and as such not taking cognizance

against him is illegal;

(iii) the respondent No.1 has misled the court as well as investigating agency and got her and her son arrested on false charge and learned court

below has ignored the same while passing the impugned order;

(iv) the learned court below has ignored the video footage while taking cognizance;

(v) despite being able to make out a prima-facie case 193/195/199/200/500/120B & 34 IPC, by her statement under section 200 Cr.P.C and video

footage, against all the three respondents, the learned court below has taken cognizance against respondent No.1 and 3 and let-off respondent No.2,

and therefore, it is contended to allow the petition.

5. Mr. Dutta, the learned counsel for the petitioner, submits that the impugned order passed by the learned Judicial Magistrate 1st Class, Tinsukia,

suffers from manifest illegality and impropriety and the same is not sustainable in law. Mr. Dutta further submits that the learned court below has

taken cognizance against the respondent No. 1 u/s 500/120B IPC and against the respondent No.3 under section 120B IPC despite availability of

materials under section 193/195/199/200/500/120B & 34 IPC, and did not take cognizance against respondent No.2. And as such, according to Mr.

Dutta the impugned order dated 08.01.2020, suffers from manifest illegalities and therefore, it is contended to allow the petition. Alternatively, Mr.

Dutta, referred one case law- Abdul Rehman and Others vs. K.M. Anees-UI-Haq, reported in (2011) 10 SCC 696, submits that the learned court

below may be directed to treat the complaint as an application for filing a complaint u/s 193/195/199/200/211 IPC and to pass necessary order for

disposal at the final conclusion of trial, having regard to the provision of section 340 Cr.P.C., giving a liberty to the petitioner to proceed with the

complaint in so far it relates to commission of the offence under section under section 500 IPC.

6. On the other hand, Mr. A.K. Gupta, the learned counsel for the respondent, submits that the impugned order suffers from no infirmity or illegality

and the same requires no interference of this court. Therefore, it is contended to dismiss this petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and

also perused the impugned order, dated 08.01.2020, passed by the learned Judicial Magistrate, 1st Class, Tinsukia. Also, I have gone through the case

law referred by Mr. Dutta, the learned counsel for the petitioner.

8. A careful perusal of the impugned order dated 08.01.2020, passed by the learned court below, in the light of the complaint petition and the statement

of the petitioner recorded under section 200 Cr.P.C and also the statement of witnesses, under section 202 Cr.P.C. as well as the report of the CCTV

footage, it cannot be said that the impugned order suffers from any illegality or infirmity, requiring any interference of this court.

9. It also appears that the petitioner and her son Mishu Paul has already been charge sheeted under sections 498(A)/354/34 IPC and upon the said

charge sheet the Smti. P. Konwar, learned Judicial Magistrate 1st Class, Tinsukia has taken cognizance and issued process to the petitioner and her

son, fixing the matter on 25.02.2020, for consideration of charge. The trial in the said case not yet commenced. Had the trial been completed and the

petitioner and her son been acquitted and it is established that the complaint filed with police by the respondent No.1 is false, and then the position

would have been different. But, that staged has not yet been arrived.

10. I have considered the submission of Mr. Dutta the learned counsel for the petitioner and also gone through the case law -Abdul Rehman & Ors

vs. K.M. Anees-Ul-Haq reported in (2011) 10 SCC 696, referred by him. It is to be noted here that in the said case Hon'ble Supreme Court has

held as under:-

"Applying the above principles to the case at hand, there is no gainsaying that the bail proceedings conducted by the Court of

Additional Sessions Judge, Karkardooma, Delhi, in connection with the case which the appellants had lodged with CAW Cell were

judicial proceedings and the offence punishable under Section 211 IPC alleged to have been committed by the appellants related to the

said proceedings. Such being the case the bar contained in Section 195 of the Cr.P.C. was clearly attracted to the complaint filed by the

respondent. The Metropolitan Magistrate and the High Court had both failed to notice the decision of this Court in Kamlapati

Trivedi's and SK. Bannu's cases (supra) and thereby fallen in error in holding that the complaint filed by the respondent was

maintainable. The High Court appears to have also failed to appreciate that the real question that fell for consideration before it was

whether the bail proceedings were tantamount to judicial proceedings. That question had been left open by this Court in M.L Sethi's

case (supra) but was squarely answered in Kamalapati Trivedi's case (supra). Once it is held that bail proceedings amounted to judicial

proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape

from the conclusion that any offence punishable under Section 211 IPC could be taken cognizance of only at the instance of the Court in

relation to whose proceedings the same was committed or who finally dealt with that case.

11. It is to be noted here that in the case of Kamlapati Trivedi v. State of West Bengal [1980 (2) SCC 91] Hon'ble Supreme Court has held as

under:-

33. The points requiring determination therefore are: -

(a) Whether the SDJM acted as a Court when he passed the orders dated May 6, 1970 and July 31, 1970 or any of them?

(b) If the answer to question (a) is in the affirmative, whether the offence under Section 211 of the Indian Penal Code attributed to Trivedi could be

regarded as having been committed in relation to the proceedings culminating in either or both of the said orders?

12. Answering the questions in the affirmative this Court observed:

60. As the order releasing Trivedi on bail and the one ultimately discharging him of the offence complained of amount to proceedings before a Court,

all that remains to be seen is whether the offence under Section 211 of the Indian Penal Code which is the subject-matter of the complaint against

Trivedi can be said to have been committed ""in relation to"" those proceedings. Both the orders resulted directly from the information lodged by Trivedi

with the police against Pathak and in this situation there is no getting out of the conclusion that the said offence must be regarded as one committed in

relation to those proceedings. This requirement of clause (b) aforementioned is also therefore fully satisfied.

61. For the reasons stated, I hold that the complaint against Trivedi is in respect of an offence alleged to have been committed in relation to a

proceeding in Court and that in taking cognizance of it the SDJM acted in contravention of the bar contained in the said clause (b), as there was no

complaint in writing either of the SDJM or of a superior Court. In the result, therefore, I accept the appeal and, setting aside the order of the High

Court, quash the proceedings taken by the SDJM against Trivedi.

12. In the case in hand the petitioner has alleged that the complaint lodged with police, upon which police registered a case under section

498(A)/354(B)/34 IPC read with section 4 of the D.P. Act and submitted charge sheet against the petitioner and her son u/s 498(A)/354(B)/34 IPC

and upon which the learned court below has taken cognizance and issued process to the petitioner and her son, is false. As such the respondents have

committed the offence in relation to the proceeding of Tinsukia P.S. Case No. 1010/19, under section 498(A)/354(B)/34 IPC, pending before the court

of Smti. P. Konwar, learned Judicial Magistrate 1st Class, Tinsukia. The said case is in the trial stage. If at the end of trial it is established that the said

complaint is false, then the offence punishable under section 500/120B IPC or under section 211 IPC could be taken cognizance only at the instance

of the court in relation to whose proceeding the same was committed or who finally dealt with the case or its superior court. There is expressed bar

under section 195(1)(b)(i) Cr.P.C. in taking cognizance by the learned court below in C.R. Case No. 01c/2020, filed by the petitioner, upon which the

learned court below has taken cognizance of the offence under section 500/120B IPC against the accused Smti. Mausumi Das @ Sumi Das and

under section 120B IPC against the accused Smti. Seema Das.

13. In the result this petition stands disposed of by directing the learned Judicial Magistrate, 1st Class, Tinsukia to transfer the complaint filed by the

petitioner, upon which C.R. Case No. 01c/2020 is registered, to the Court of Smti. P. Konwar, learned Judicial Magistrate, 1st Class, Tinsukia, dealing

with the charge sheet filed against the petitioner, as the complaint is anterior in point of time and premature at this stage and barred by section 195(1)

(b)(i) Cr.P.C. The said court shall treat the complaint as an application for filing of a complaint under Section 211 of the IPC to be considered and

disposed of at the final conclusion of the trial; having regard to the provisions of Section 340 of IPC and the finding regarding guilt or innocence of the

respondent as the case may be recorded against him. The petitioner shall also have the liberty to proceed with the complaint in so far as the same

relates to commission of the offence punishable under Section 500 of the IPC depending upon whether there is any room for doing so in the light of

the findings which the court may record at the conclusion of the trial against her.

14. In the result the petition is allowed to the extent indicated above. The parties have to bear their own costs.