

(2014) 05 AHC CK 0053

Allahabad High Court (Lucknow Bench)

Case No: Criminal Revision No. 363 of 2007

Sunder Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 209, 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 107, 109, 306, 309, 323

Citation: (2014) 86 ALLCC 497 : (2015) 1 Crimes 515

Hon'ble Judges: Arvind Kumar Tripathi (II), J

Bench: Single Bench

Advocate: Nadeem Murtaza, Advocate for the Appellant; Akhilesh Chauhan, Jai Pratap Singh and Salil Kumar Srivastava, Advocate for the Respondent

Judgement

Arvind Kumar Tripathi (II), J.

Heard Shri Nadeem Murtaza, learned Counsel for revisionist and learned Counsel for the opposite parties. This criminal revision has been filed challenging the order dated 17.5.2007 passed by learned Session Judge, Barabanki by which the Session Judge has rejected the application for not framing charge under sections 306/511 I.P.C.

2. As per factual matrix of the case Vimla Devi is wife of Sunder Lal, Pradeep @ Lalla is son and Anju is unmarried daughter of Sunder Lal and Vimla Devi, Shiv Shankar is the nephew of Sunder Lal and Vimla Devi. Marriage of Dr. Shiv Kumar was solemnized with Dr. Kiran Singh on 20.5.2005. It was a love marriage. Virender Kumar Verma was against the marriage and after marriage according to revisionists, started creating pressure upon Dr. Kiran Singh to take divorce from her husband. In the month of May, 2006 and 8.12.2006 a First Information Report was

registered by Dr. Kiran Singh against the revisionist in P.S. Mohammadpur Khala, District Barabanki as Case Crime No. 212 of 2006 under sections 498-A, 323, 504, 506, 306 and 511 I.P.C. and sections 3/4 of the Dowry Prohibition Act.

3. After investigation charge-sheet was submitted. The Magistrate took cognizance and committed the case for trial and at the time of framing of charge, an application was moved for discharging them from sections 306/511 I.P.C. That application was rejected. Hence this criminal revision.

4. It was submitted by learned Counsel for the revisionist that section 511 I.P.C. relates to attempt to commit an offence and where attempt itself constitute an offence under I.P.C. then section 511 I.P.C. is not attracted. Learned Counsel for revisionist referred to the decision of this Court in [Shiv Prasad Pandey Vs. State of U.P. and Another](#), and also a decision of Hon"ble Apex Court in case of [Satvir Singh and Others Vs. State of Punjab and Another](#),

5. A perusal of the impugned order and also the statement of witnesses annexed with the revision reveals that Dr. Kiran Singh has not yet committed suicide and is alive. In view of this offence u/s 306 I.P.C. is not made out.

6. Section 511 I.P.C. which deals with punishment for attempt to commit offence punishable with imprisonment for life and other imprisonment read as follows:--

"511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.--Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both."

7. Section 511 I.P.C. make attempt to commit an offence punishable. The offence attempted should be one punishable by the Indian Penal Code with imprisonment. The condition stipulated in the provision for completion of the said offence:

(i) The offender should have done some act towards commission of the main offence.

(ii) Such an attempt is not expressly covered as a penal provision elsewhere in the I.P.C. This attempt on the part of the accused is the sine qua non for the offence u/s 511 I.P.C.

8. It is worth noting that abetment to commit suicide is punishable u/s 109 I.P.C. and abetting is defined u/s 107 I.P.C. Both the sections are reproduced herein below:--

"109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.--Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.--An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

"107. Abetment of a thing.--A person abets the doing of a thing, who First, Instigates any person to do that thing; or Secondly, Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, Intentionally aids, by any act or illegal omission, the doing of that thing."

9. The offence of abetment or attempt is only made out when the offence abetted, is committed in consequence of the abetment. The Apex Court has in case of Satvir Singh and others (supra) has held that:

"It is a unique legal phenomenon in the Indian Penal Code that only act, the attempt of which alone will become an offence, the person who attempts to commit suicide his guilty of the offence u/s 309 I.P.C., whereas the person who committed suicide can not be reached at all. Section 306 renders person who abets the commission of suicide punishable for which condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet the mere attempt to commit suicide. It would be preposterous of law could afford to penalise and abetment to the offence of mere attempt to commit suicide."

10. In view of the above, the order for framing charge u/s 306/511 I.P.C. is erroneous and against law. The impugned order is liable to be quashed.

11. The approach of learned Magistrate in this case can also not be appreciated as he was required to commit the offence, if it appears to him that offence exclusively triable by the Court of Session was made out. No offence punishable u/s 306 I.P.C. is made out, if the victim is alive. The Magistrate is not expected to act blindly on the direction of the Investigating Officer. He had to see whether the ingredients of the offence shown in the charge-sheet are present. It is true that the jurisdiction of the Magistrate u/s 209 Cr.P.C. is not to scrutinize and assess the evidence collected during investigation but he must satisfy that "It appears to him that the offence is triable exclusively by the Court of Sessions." He should not be misguided by mentioning wrong section by the Investigating Officer.

12. As a result, this criminal revision is liable to be allowed and is hereby allowed.

13. Impugned order dated 17.5.2007 is quashed. Learned Court below is directed to decide afresh the application for discharge in the light of observation made above. As there is a petition u/s 482 Cr.P.C. connected with this criminal revision also. The petition is delinked. List the petition separate before appropriate Bench in the next week.