

(2011) 10 DEL CK 0031

Delhi High Court

Case No: Criminal Rev. P. 109 of 2010 and Criminal M.A. 2602 of 2010

Ajay Kumar @ Lalu and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Oct. 13, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 340
- Penal Code, 1860 (IPC) - Section 304B, 34, 498A

Citation: (2011) 10 AD 701

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Devinder Singh Khatana and Ms. Meenakshi, for the Appellant; C.L. Gupta, APP, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.

By these petitions the Petitioners seek quashing of the impugned order dated 27th January, 2010 directing framing of charge and the order on charge u/s 498A/304B/34 Indian Penal Code against the Petitioners.

2. At the outset it may be noted that the Petitioners Ajay Kumar and Kamlesh were Petitioners in Criminal Revision Petition No. 109/2010. When the petition came up for hearing on 12th April, 2010 the Learned Counsel stated that he was not pressing the petition qua these two Petitioners. Despite that a fresh Criminal Revision Petitioner No. 183/2010 has been filed stating that the petition qua these Petitioners was withdrawn inadvertently. No notice was issued in Criminal Revision Petition No. 183/2010, however it was tagged with connected matters for hearing.

3. Learned Counsel for the Petitioners contends that the Petitioners have been falsely implicated in the present FIR and there is no evidence against them warranting framing of the charge. The FIR has been registered on an omnibus

statement of the mother of the deceased wherein vague and general allegations have been leveled. The diary of the deceased has been recovered and as per the diary written by her there is no allegation of demand of dowry against the Petitioners. Petitioner No. 2 Suman in CrI.Rev.P. 110/2010 is the married sister-in-law who was married even prior to the marriage of the deceased with Ajay Kumar and has no connection with the matrimonial home. Further the Petitioner Jhabbar Singh aged about 70 years is the uncle of the husband of the deceased and is living separately at a distance and has no connection with the matrimonial house. No specific allegation as to who demanded dowry has been made. Further the falsity of the prosecution case is borne out from the fact that to support their allegation that they had paid a sum of Rs. 1 lakh after selling their ancestral house in the village, forged and fabricated sale-deed has been prepared by the complainant and her family members. Reliance is placed on Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. 2008 1 AD (CrI.)(S.C.) 437 , [Ramesh and Others Vs. State of Tamil Nadu](#), Dilawar Balu Kurane v. State of Maharashtra 2002 (1) JCC 172 , [Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others](#), Sunil Bansal and Ors. v. The State of Delhi 2007 IV AD (Cr.) (DHC) 402, Raman Kumar and Anr. v. State (Govt. of NCT of Delhi) 2009 (109) DRJ 305.

4. Learned APP on the other hand contends that the allegations as set out in the FIR by the complainant and in the statements recorded u/s 161 Code of Criminal Procedure. clearly show that there was a constant demand of dowry. The deceased had stayed at her parental home for a period of around 5-6 months as there was demand of dowry. Further the uncle Jhabbar Singh was the person instrumental in arranging the marriage. The marriage took place at his instance. There are specific allegations against Jhabbar Singh for demand of dowry. The deceased was sent on the assurance given by Jhabbar Singh and Suman that the complainant's daughter will be kept safely and no harassment would be caused to her. Despite the assurance given to the mother and the family members of the deceased, the deceased was harassed resulting in her committing suicide. There is no infirmity in the impugned order and the present Petitions deserve to be dismissed.

5. I have heard Learned Counsel for the parties. Briefly the case of the prosecution is that Sarita daughter of the complainant Krishna was married to Ajay Kumar, Petitioner No. 1 in CrI.Rev.P. 183/2010 on 3rd February, 2005 as per Hindu rites. According to the complainant, the marriage of complainant's daughter was finalized through Jhabbar Singh, the uncle of Ajay Kumar. This finalization of marriage had taken place at the residence of the in-laws of Suman, the sister-in-law. Around 6 lakhs were spent in the marriage, however the in-laws of the deceased i.e. Ajay Kumar her husband, Kamlesh, the mother-in-law, Karan Singh Besoya the brother-in-law, Jhabbar Singh, the uncle and Suman the Sister-in-law, harassed and used to beat the deceased for demand of money. On this the complainant gave a sum of Rs. 1 lakh to in-laws of the deceased. However, still they were not satisfied. Thereafter they demanded that half share in the property of the complainant should

be given to the deceased. When Manoj Kumar the brother of the deceased spoke to the Petitioner Jhabbar Singh along with the elders of the family, he demanded Rs. 1 lakh more and assured that thereafter Sarita would be settled at her matrimonial home. On this the complainant sold her house and gave Rs. 1 lakh to them. On receipt of the money Petitioners Jhabbar Singh and Suman assured and thus the deceased was sent to the matrimonial home. Despite assurance the in-laws of the deceased harassed her on account of demand of dowry and finally she committed suicide on 4th January, 2007. The fact that the in-laws were asking for a share in the property was told by Sarita to one Sanjeev her cousin, statement of Sanjeev Kumar was also recorded in this regard.

6. A perusal of the FIR and statement of witnesses shows that there are clear allegations of demand of dowry against the Petitioners. The Petitioners who are stated to be residing separately i.e. Jhabbar Singh and Suman have also demanded dowry and only after receiving the same they assured that the deceased would not be harassed. However, despite payment of money and assurance the harassment continued.

7. A perusal of the contents of the diary though does not say that there was any harassment on account of demand of dowry, however the diary clearly shows that despite the fact that the deceased did not cause any grievance the Petitioners harassed her. The deceased has expressed herself in the diary and has stated that though she has never hurt anybody, however people left no stone unturned to harass her and trouble her. She has gone to the extent of saying that perhaps her husband enjoys in grieving the other persons.

8. The contention that Rs. 1 lakh was paid to the Petitioners by selling the house is falsified by the fact that the alleged sale-deed produced by the complainant allegedly shows that the sale transaction took place on 30th October, 2006 though the document is purchased subsequently thereafter and in the original document filed the date of execution i.e. 30th October, 2006 has been destroyed cannot be adjudicated at this stage. The Petitioners have already filed application u/s 340 Code of Criminal Procedure. before the Learned Trial Court for taking action against the complainant for filing forged and fabricated documents before the Court. This issue will have to be gone into at the stage of trial. Suffice it is to note that at this stage even after ignoring the sale deed the evidence on record raises strong suspicion of the offences charged having been committed by the Petitioners. This is not a case of sifting of evidence but requires appreciation of evidence. At this stage it would not be appropriate for this Court to assess the probative value of the evidence. All that has to be seen is whether there is a strong suspicion against the Petitioners for having committed the offence. Further it is contended that the Petitioner Jhabbar Singh was in Haridwar from 19th November, 2006 to 21st November, 2006. This plea of alibi of the Petitioner Jhabbar can only be looked into at the stage of trial wherein it will be tested on adducing evidence in this regard.

9. The reliance of the Petitioner on Niranjana Singh Karam Singh Punjabi (*supra*) is misconceived. Their Lordships in the said decision have clearly laid down that evaluation of the material and the documents on record at the stage of framing of charge is only with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. The shifting of the evidence at this stage is very limited. In the garb of sifting of the evidence this Court cannot evaluate it and come to the conclusion that the version of the complainant and the other family members that Rs. 1 lakh was paid after selling the ancestral property is false. In *Dilawar Balu Kurane* (*supra*) also their Lordships held that where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court would be justified in framing a charge. The Judge cannot merely act as a post-office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and documents produced before the Court, however should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was concluding the trial.

10 The reliance on *Ramesh and Ors.* (*supra*) is also misconceived. Their Lordships in the said decision were dealing with the issue whether the cognizance taken was barred by limitation and secondly whether the allegations in the FIR constitute the ingredients of the offence or not. In the said case no act of abatement was alleged against the sister-in-law and so it was held that the imputations therein did not amount to harassment with a view to coercing informant or her relation to meet unlawful demand for any property or valuable security. The allegations in the said case were that she was asked to wash W.C. and remarks such as "even if you have got much jewellery, you are our slave" were passed. This was held not amounting to harassment with a view to coerce informant or her relations to meet an unlawful demand for any property or valuable security. Even in *Onkar Nath Mishra* (*supra*) their Lordships laid down that at the stage of framing of charge the Court is not expected to go deep into the probative value of the material on record.

11. In view of the aforesaid discussions and keeping in view the facts of the case, I find no merit in the present petitions. *Prima facie* strong suspicion arises against the Petitioners which is sufficient at the stage of framing of charge. Petitions and applications are accordingly dismissed.