

Sandip Kar and Others Vs Pampy Kar

Court: Gauhati High Court

Date of Decision: Aug. 25, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 155(2), 156(1), 482, 561A
Penal Code, 1860 (IPC) â€” Section 406, 498A

Citation: (2009) 1 GLR 329 : (2009) 1 GLT 663

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: G.M. Paul, for the Appellant; B.B. Gogoi, for the Respondent

Final Decision: Dismissed

Judgement

I.A. Ansari, J.

With the help of this application made u/s 482, Code of Criminal Procedure, the Petitioners, who are accused in Complaint

Case No. 3737/2008, pending in the court of Judicial Magistrate, 1st Class, Kamrup, have sought for quashing of the entire complaint proceeding.

2. Broadly speaking, the ground of challenge to the maintainability of the proceeding is that the complaint, in question, when examined in the light of

the other materials available on record, does not disclose commission of offence u/s 498A and/or 406, IPC and, hence, taking of cognizance by

the learned court below of the offences aforementioned and its direction to issue processes against the present accused-Petitioners are wholly

without jurisdiction and not sustainable in law.

3. I have heard Mr. G.M. Paul, learned Counsel for the accused- Petitioners, and Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam.

4. Before entering into the merit of the Petitioner's case, it is necessary to point out that the law with regard to the quashing of criminal complaint or

FIR is no longer res integra. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of

R.P. Kapur Vs. The State of Punjab, wherein the question, which arose for consideration was whether a first information report can be quashed

u/s 561A of the Code of Criminal Procedure, 1898. The court held, on the facts before it, that no case for quashing of the proceeding was made

out; Gajendragadkar, J., speaking for the court, however, observed that though, ordinarily, criminal proceedings, instituted against an accused,

must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the court can and should be

exercised for quashing the proceedings. One such category, according to the court, consists of cases, where the allegations in the FIR or the

complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question

of appreciating evidence arises and it is a matter merely of looking at the FIR or the complaint in order to decide whether the offence alleged is

disclosed or not. In such cases, said the court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the

process of the criminal court to be issued against the accused. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a

mere look into the contents of a complaint or FIR shows that the contents thereof, even if taken at their face value and accepted to be true in their

entirety, do not disclose commission of offence, the complaint or the FIR, as the case may be, shall be quashed.

5. As a corollary to what, has been discussed above, it is also clear that if the contents of a complaint or an FIR constitute offence, such a

complaint or FIR cannot be quashed except where the complaint or the FIR is, otherwise also, not sustainable in law.

6. Laying down the scope of interference by the High Court in matters of quashing of FIR or complaint, the Apex Court, in the leading case of

State of Haryana and others Vs. Ch. Bhajan Lal and others, observed as follows:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers u/s

482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration, wherein such

power could be exercised either to prevent abuse of the process of the any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines of rigid formulae and to give an exhaustive list

of myriad kinds of cases, wherein such power should be exercised:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable

offence justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4). Where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned act (under which criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act

providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive

for wreaking vengeance of the accused and with a view to spite him due to private and personal grudge.

(emphasis is added)

7. In the case of Bhajan Lal (supra), the Apex Court gave a note of caution on the powers of quashing of criminal proceeding in the following

words:

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or

genuineness of otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent, power, do not confer an

arbitrary jurisdiction on the court to act according to, its whim or caprice.

(emphasis is added).

8. It is clear from a close reading of the principles laid down in the case of R.P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking,

quashing of a First Information Report or a complaint is possible (a) when the allegations made in the First Information Report or the complaint,

even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the

accused; (b) when the uncontroverted allegations made in the, FIR or complaint and evidence collected in support of the same do not disclose the

commission of any offence and/or make out a case against the accused; and (c) when the allegations made, in the FIR or complaint are so absurd

and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

9. It is, thus, clear that in a quashing proceeding, it is not, within the ambit of the powers of the High Court, u/s 482, Code of Criminal Procedure,

to determine the truth, veracity, correctness or otherwise of the accusations made in the FIR or a complaint. In the case at hand too, therefore, this

Court has to proceed on the assumption that the allegations made in the complaint are true and, then, determine whether the contents of the

complaint, if assumed to be true, disclose commission of any offence under the Indian Penal Code.

10. In the present case, there is no dispute that the complainant is the wife of the accused-Petitioner No. 1, namely, Sandeep Kar and the

remaining accused are his relatives. In order to appreciate as to whether the complaint discloses commission of any offence u/s 498A, IPC, the

relevant portion of the complaint is reproduced hereinbelow:

7. That the complainant begs to state that from and shortly after the marriage the accused Nos. 1, 2, 3 and 4 habitually and very few exceptions

conducted themselves towards the complainant with severe harshness and cruelty and at times abused her in most filthy language of the point of

dowry. On 11.5.2007, the accused No. 4 pressed hard his finger on her cheek and warned her that if she could not fulfill their demand, she could

have to face all the torture inflicted upon her.

8. That the complainant begs to state that on 17.6.2007 at 12.10 PM the accused No. 2 caught hold of the complainant's hair and assaulted the

complainant as because the accused Nos. 2 and 4 invited some guests and asked her to cook food. The accused No. 2 secretly pour, extra salt on

the food in order to humiliate her in front of the guest. Thereafter when the food was served the guest could not eat food. The accused Nos. 2 and

3 beaten her severely. When the accused No. 1 returned home she reported the matter to the accused No. 1 but the accused No. 2 slapped her

by saying that this is the prize for not bringing Rs. 1,00,000 (Rupees one lakh) from her parents.

9. That the complainant begs to state that after her marriage, not a single day she lived peacefully and for dowry either she was beaten up or

confined in a room without a food. The accused No. 2 always addressed to the complainant and beggar, schedule caste or prostitute and all the

torture inflicted upon the complainant at the behest of accused No. 2. The accused No. 3 frequently pressed hard to the complainant to bring

money from her parents; otherwise, he will compel the accused No. 1 to divorce her. As the complainant's father is a retired person, and in his

best capacity tried to satisfy the accused person and when she could not bring money, the accused persons inhumanly tortured her. In spite of all

the complainant tried to satisfy and accused person by paying the money in installment.

10. The complainant begs to state that the accused No. 2 is desperate arrogant and cruel by nature. The accused No. 1, 3 and 4 inflicted torture

upon her on the advice of accused No. 2. After 2 months of their marriage the complainant became pregnant. The accused No. 1 then took the

complainant to a rented house but after one month of staying in the rented house, the accused No. 2 came again and took them to the matrimonial

house and then the accused No. 1 disclosed her that accused No. 2 does not want baby and without the permission of the accused No. 2, the

baby has come. And, hence, the complainant should abort the baby thereafter the accused Nos. 1 and 3 took the complainant to the doctor for

abortion of the child which the doctor refused. After returning home from the doctor, the accused persons tortured her by kicking at her abdomen,

scratching safety pin on her body and kept her in a room for several days without food. The accused persons tried their best to abort the child, but

failed due to the timely action of the child care, Ulubari.

11. That the complainant begs to state that on 6.11.2007, the accused No. 2 again started abusing her in filthy language, the accused No. 2 caught

hold of her hair and threatened her that since the baby is unwanted, she should face the torture. Thereafter pushed the complainant's head with

wall several times and accused Nos. 1, 2 and 3 and 4 kicked at her abdomen several times to kill the, baby but the complainant finding no way, lie

down in floor to save the baby.

12. That on the same day at about 10 AM again the accused person started torturing upon the complainant and accused No. 3 bought one stamp

paper and dictated her to write that the baby does not belong to the accused No. 1 and she should relinquish all her claim from the baby, which the

complainant refused. Then the accused Nos. 1, 2 and 3 physically assaulted her. But the complainant managed to escape from there and reached

to her parent's house. Finding no way out the complainant lodged and FIR before the Udalbakra OC and OC referred to counselling center,

Ulubari, in which the case is registered as Application Case No. Fee/CID/PHQ/469, but the council failed to compromise this case and, hence,

advised her to take legal help for necessary action.

13. That the complainant begs to state that on 27.2.2008, the complainant delivered baby at Kalicharan Das Nursing Home. It is submitted that at

the time of birth of the child the accused persons demanded money from the complainant's father for her medical treatments and threatened him

that the baby along with complainant would be killed if the complainant's father refused to bear medical expenses, then the complainant's father

borrowed some money from his friend and provided treatment to his daughter.

14. That the complainant begs to state that on the request of the accused No. 1 on 2.3.2008, complainant along with the baby returned to his

matrimonial home with the purpose to lead a normal life. After two days, accused Nos. 1, 2 and 3 started inflicting torture upon her physically and

mentally. On 13.3.2008, on receiving the complain consellers of family counselling center (FCC) along with Indian Child Line, Guwahati, rescued

the complainant along with the baby from the hands of the accused person and since then she is staying in her parents home.

15. That the complainant tolerated the torture inflicted upon her with the hope that after birth of child everything would be normal all her efforts

went in vain. Thus, the accused person accordingly made themselves liable to be punished u/s 498A, IPC. The witnesses cited will prove he case

of the compliance.

11. From a close, cautious and dispassionate reading of the complaint, it becomes clear that the compliant, in question, does contain accusation of

torture having been heaped on the complainant and, according to the complainant, the complainant was, on many occasions, subjected to cruelty

due to non-fulfilment of demands for money. Whether such demands for money will or will not fall within the definition of dowry, as given under the

Dowry Prohibition Act, is not material, for, the fact of the matter remains that when a woman is subjected to cruelty in connection with demand for

money, whether such demand would amount to demand for dowry or not, the act of subjecting the woman to cruelty would amount to an offence

u/s 498A, IPC. Cruelty, in the light of Explanation appended to Section 498A, IPC, means any willful conduct, which is of such a nature as is

likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or

harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any

property or valuable security is on account of failure by her or any person related to her to meet such demand.

12. From a careful reading of the Explanation to Section 498A, it becomes clear that cruelty, which Section 498A speaks of, may arise out of

harassment of the woman, which she may be subjected to, in consequence of her failure to meet any unlawful demand for any property or valuable

security. Thus, even when a woman is harassed with a view to coercing her or any person related to her to meet any unlawful demand for money,

such harassment would constitute cruelty. This apart, a willful conduct, which is of such a nature as is likely to drive a woman to commit suicide or

to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman would amount to cruelty.

13. In the present case, even if the word dowry, appearing in the complaint, is not attributed any importance, the fact remains that according to the

contents of the complaint, the complainant was being harassed continuously for her failure and the failure of her parents to meet the demand for

money, which her husband had raised, and other accused persons, named in the complaint, had aided the alleged illegal acts of the complainant's

husband. This systematic torture, which the complainant alleged to have been subjected to, would, ordinarily, drive a woman to commit suicide of

cause, at least, grave injury or danger to life, limb or health (whether mental or physical) of the woman. In such circumstances, it cannot be said

that the complaint, in question, does not disclose commission of any offence u/s 498A, IPC.

14. Though it has been insisted, on behalf of the accused Petitioners, that the accusations of the complainant that she had been subjected to cruelty

are wholly false, suffice it to point out that as far as contents of the complaint, in question, are concerned, they do constitute, as already pointed out

above, commission of an offence u/s 498A, IPC. In such circumstances, it is not open to this Court, in this quashing proceeding, u/s 482, Code of

Criminal Procedure, to examine, at this stage, the correctness or veracity of the accusations so made in the complaint and the complaint, in

question, cannot, therefore, be quashed.

15. Because of what have been discussed and pointed out above, I do not find that the Petitioners have been able to make out any case warranting

this Court's interference in exercise of its power u/s 482, Code of Criminal Procedure. This criminal petition, therefore, fails and the same shall

accordingly stand dismissed.