

(2009) 02 JH CK 0022

Jharkhand High Court

Case No: Criminal M.P. No. 448 of 2008

Deo Mohan Malviya

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Feb. 9, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 406, 498A

Citation: (2011) 2 JCR 84

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

Heard the parties.

2. In this application, the Petitioner, who being the father-in-law of the complainant has been arrayed as accused No. 2 in the complaint petition, has prayed for quashing of the order dated 14.2.2008 taking cognizance for the offence under Sections 498-A/ 406 of the Indian Penal Code as well as the entire criminal prosecution in Complaint Case No. 5 of 2008, pending before the learned Judicial Magistrate 1st Class at Jamshedpur.

3. Mr. P.C. Tripathy, learned Sr. counsel appearing for the Petitioner read out the whole complaint petition before me and submitted that except in paragraph 2 of the complaint petition wherein it is alleged only that a Demand Draft of Rs. 1,90,000/- was handed over to this Petitioner, there is absolutely no allegation at all against him in the complaint petition. It is not even alleged that he in any manner ill treated or tortured the complainant for non-fulfillment of demand of dowry or he ever demanded any dowry either from her or from her parents. It is also pointed out that

even according to the allegations made in the complaint petition, the complainant stayed at her laws house at Varanasi for about a week i.e., from 21.2.2006 to 1.3.2006 and thereafter she left for U.S.A. to join her husband.

4. It appears that the learned Judicial Magistrate at Jamshedpur has taken cognizance for the offence under Sections 498-A/ 406 of the Indian Penal Code vide order dated 14.2.2008 as against all the accused persons named in the complaint petition except one Rekha Choubey whose name has been mentioned as accused No. 5 in the complaint petition.

5. After carefully going through the allegations made in the complaint, I find the submission of the learned Counsel for the Petitioner to be correct. There is no allegation in the complaint petition against this Petitioner constituting even prima facie case for the offence under Sections 498-A and 406 of the Indian Penal Code.

6. In view of the facts stated herein above, in my view, the order taking cognizance suffers from non-application of mind, so far as this Petitioner is concerned. Therefore, in my view, the continuation of the criminal prosecution against this Petitioner is concerned, would be absolutely an abuse of the process of the Court.

7. Accordingly, this application is allowed. The order dated 14.2.2008 taking cognizance against this Petitioner for the offence under Sections 498-A/ 406 of the Indian Penal Code as well as the entire criminal prosecution/proceeding so far as against this Petitioner is concerned, in Compliant Case No. 5 of 2008 pending before the Judicial Magistrate 1st Class at Jamshedpur is hereby quashed.