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Deo Mohan Malviya Vs State of Jharkhand and Another

Criminal M.P. No. 448 of 2008

Court: Jharkhand High Court

Date of Decision: Feb. 9, 2009

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 406, 498A

Citation: (2011) 2 JCR 84

Hon'ble Judges: Amareshswar 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.