

(2012) 07 JH CK 0082

Jharkhand High Court

Case No: Criminal MP No. 638 of 2011

Ayushman Pandey

APPELLANT

Vs

State of Jharkhand and Another
Opp. parties

RESPONDENT

Date of Decision: July 19, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 498A, 504, 506
- Protection of Women From Domestic Violence Act, 2005 - Section 12
- Special Marriage Act, 1954 - Section 25

Citation: (2012) 4 JCR 442

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: D. Jerath, Rajesh Kr. and A. Kr, for the Appellant; Moti Gope, APP, for the State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner and learned counsel for the opposite parties. This application has been filed for quashing of the order dated 28.02.2011, passed by learned S.D.J.M., Ranchi, in Complaint Case No. 1887 of 2010 (T.R. No. 587 of 2011) whereby and whereunder, cognizance of the offence punishable under Sections 498-A, 323, 504, 506 of the Indian Penal Code has been taken against the petitioner.

2. It is the case of the complainant that the complainant being a Muslim girl married a Hindu boy (petitioner) on 8.12.2008. On that day itself, the petitioner did force her to part with her entire personal savings of Rs. 1,50,000/- on the plea that they will

have to take better accommodation as his parent would not be agreeing with the marriage. In the late evening of 8.12.2008, the accused left for other place, but he started to torture the complainant mentally over the telephone. That apart his relatives or associates also started putting forth demand of the money for the purpose of having office for starting consultancy services.

3. Subsequently the petitioner, started putting pressure on her to agree for annulment of the marriage as the father of the petitioner wanted the petitioner to marry another girl. When the complainant did not agree to it, she was subjected to threat and then was humiliated and was intimidated for physical hurt. The other day, when a case which was pending before the Purulla Court was transferred under the order of the Hon"ble Supreme Court to Family Court, Ranchi, the complainant and her father were assaulted and abused. On such allegation, a case was registered as Complaint Case No. 1887 of 2010. The Court after holding enquiry took cognizance of the offences punishable under Sections 323, 504, 506 and 498-A of the Indian Penal Code, That order is under challenge in this application.

4. Mr. Anil Kumar, learned counsel appearing for the petitioner submits that it is the case of the complainant that she got married on 8.12.2008, and on the same evening, it is said that the petitioner got himself separated from her and in such a situation, any allegation of subjection her to mental cruelty or even of subjection her to assault would be probably false rather the case would be of improbability.

5. It was further submitted that since wife and husband were not in good term, the petitioner did file an application being Title Suit No. 35 of 2009 u/s 25 of the Special Hindu Marriage Act for annulment of the marriage. Subsequent to that the complainant did lodge a case first u/s 12 of the Protection of Women from Domestic Violence Act, 2005 on 6.5.2010, and then lodged the instant Complaint case i.e. Complaint Petition No. 772 of 2010 on 2.11.2010.

6. Thus it is quite evident that this complaint case has been lodged with an ulterior motive so that the petitioner may be pressurized not to pursue the case which has been lodged for annulment of the marriage and if it has been lodged for an ulterior purpose, the order taking cognizance is fit to be quashed.

7. I earned counsel further submits that so far allegation relating to the demand is concerned, that would be falsified from the letter written to the Chief Secretary, Government of Jharkhand, Ranchi on 14.09.2009, wherein no such allegation regarding illegal demand is there and hence, the order taking cognizance is fit to be set aside.

8. However, Mr. Jerath, learned counsel appearing for the opposite party No. 2 submits that there has been allegation in the complaint petition not only with respect to illegal demand rather subjection to mental cruelty and physical assault and thereby the court did not commit any illegality in taking cognizance of the offences under Sections 323, 504, 506 498-A of the Indian Penal Code.

9. The prayer for quashing of the case on the plea of case being lodged with ulterior purpose never appears to be tenable for simple reason that cause of action for bringing matrimonial case is quite different which is having no bearing on the allegation upon which the complaint case was lodged and as such, it cannot be said to be a case of malicious prosecution.

10. So far the other submission, that no offence is made out u/s 498-A of the Indian Penal Code as the demand which has been alleged to have been made by the petitioner cannot be said to be illegal demand is concerned, I am not proposing to adjudicate upon this issue at this stage rather the petitioner would be at liberty to raise this issue at an appropriate stage.

11. Accordingly, the order under which cognizance of the offences has been taken never warrants to be quashed. Thus, this application stands dismissed.