(2004) CriLJ 1920 : (2004) AIR Jhar HCR 1121 : (2004) 1 DMC 175 : (2003) 3 EastCriC 340

Jharkhand High Court

Case No: Cr.M.P. No. 4934 of 2001

Frank Henary		APPELLANT
	Vs	
State of Jharkhand and Another		RESPONDENT

Date of Decision: July 17, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202
- Dowry Prohibition Act, 1961 - Section 3
- Penal Code, 1860 (IPC) - Section 323, 498A

Citation: (2004) CriLJ 1920 : (2004) AIR Jhar HCR 1121 : (2004) 1 DMC 175 : (2003) 3 EastCriC 340

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: K.M. Verma, Sanjay Kumar and Lalan Kumar Singh, for the Appellant; Assistant Public Prosecutor, R. Krishna and Nidhi Jaiswal, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vikramaditya Prasad, J.
Heard both the sides.

2. The petitioner has filed this Criminal Miscellaneous petition for quashing the order dated 4-8-2000 passed by the learned Sub-Divisional Judicial Magistrate, Jamshedpur, whereby he has taken the cognizance under Sections 498A, 323 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, in C/1 Case No. 569 of 2000.

3. The complainant opposite party No. 2 herein was married with the petitioner accused No. 1, Frank Henary and accused No. 2 is the mother-in-law.

4. It transpires on perusal of Annexure that the trial is in progress. The examination in chief before framing of charge has taken place and the prayer for discharge of the petitioner is pending. The petitioner assailed the order taking cognizance on the ground that the marriage of the complainant with the petitioner her husband was solemnized without her will and, therefore, from the very beginning the relationship of husband and wife became tense. Consequently, the complainant filed this motivated complaint before the Court of the learned Chief Judicial Magistrate, Jamshedpur, which was registered as C/1 Case No. 569 of 2000. He insists that the learned Court below at time of taking cognizance did not take into consideration this aspect of the matter and took cognizance, which according to him should have been considered by the Court below.

5. Complaint petition, statement, of the complainant recorded on S.A. as also the evidence of other witnesses, who were examined during the enquiry proceeding, have been perused. The complaint petition discloses the case of torture for or in connection of demand of Rs. 50,000/- for construction of First storied house and also for one motorcycle but her father was not in a positition to fulfill their demand because he was a retired company employee and, therefore, the complainant was tortured. When she was pregnant at that time, measures were taken by the husband for illegal termination of the pregnancy an many other times she was assaulted too by the husband, brother-in-law. As it appears from the statement on S. A. and the evidence if the witnesses that the mother-in-law, who was in wheel chair, used to instigate the husband of the complainant for such torture.

6. The learned counsel for the petitioner has pointed out that so far giving of dowry is concerned, the complainant has said in her S.A. that dowry was given at the time of marriage whereas the mother of the complainant has admitted that at the time of marriage as per prevailing Christian Customs the ornaments and other articles which were given were the Stri Dhan. Therefore, whatever was given at the time of marriage was not the dowry rather that was the Stri Dhan of her daughter. There was some cash, gold ornaments and furniture etc. having been given at the time of marriage amounts to dowry or not, this can very well be thrashed out at the time of trial.

7. So far the offence under Sections 498A, 323 of I.P.C. and 3/4 of the Dowry Prohibition Act is concerned, from the above facts and circumstances of the case a prima facie case under the aforesaid section is made out and I do not find any reason to interfere with the order taking cognizance by the Magistrate and accordingly I find no merit in the argument of the learned counsel for the petitioner that the Court below should have considered the motive behind the case. The scope of the enquiry u/s 202 of the Cr.P.C. is very limited and the evidence cannot be weighed in the manner in which it is weighed during the course of trial, when the motive and criminal intention has to be seen with greater appreciation of evidence. This Cr.M.P. is dismissed at the stage of admission itself.

8. The petitioner will be at liberty to raise all these questions at the time of moving of his discharge petition which is pending in the Court below and the Court below will pass a reasoned order without being prejudiced by this order because this order has been passed against the order taking cognizance and nothing else.