

(2013) 07 JH CK 0087

Jharkhand High Court

Case No: Criminal Revision No. 940 of 2012

Basudeo Yadav and Others

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: July 26, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 120(B), 302, 304(B), 306, 498A

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Rajesh Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioners and learned counsel for the State. The petitioners are aggrieved by order dated 17.9.2012 passed by learned Additional Judicial Commissioner-XVIII, Ranchi, in S.T. No. 106 of 2012, whereby the application filed by the petitioners u/s 227 of the Cr. P.C., for discharge, has been rejected by the Court below.

2. The petitioners were earlier made accused in Sadar P.S. Case No. 285 of 2007 corresponding to G.R. No. 4719 of 2007 for the alleged offences under Sections 498-A, 306 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, on the allegation that the accused persons, who were the husband and in-laws of the deceased, had subjected her to cruelty and torture for demand of dowry and had caused her death by burning. It is stated in the FIR that the marriage had taken place on 23.4.2000 and the occurrence of burning the deceased took place on 22.11.2007. It is stated in the FIR that the deceased, while she was injured, had

informed the informant, who is her brother, that she was burnt by her husband and other in-laws. On the basis of the said written application, the case was instituted u/s 498-A, 306 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. After investigation, it appears that the police had submitted final form, which was accepted by the Court below.

3. The informant had filed a protest-cum-complaint petition and it appears from the impugned order that at the inquiry stage, the informant complainant had examined seven inquiry witnesses. On the basis of the statements of the witnesses, the Court below found a prime facie case u/s 304(B) and 120(B) of the Indian Penal Code. Even in the complaint petition, it is stated that the marriage was solemnized on 23.4.2000 and the occurrence had taken place on 22.11.2007.

4. After taking cognizance, the case was committed to the Court of Session, where, the petitioners filed their application u/s 227 of the Cr. P.C., for discharge, in which, the petitioners had taken the point that the occurrence had taken place after seven years of the marriage and upon investigation by the police, the final form was submitted in their favour. The Court below took into consideration the materials available against the petitioners during inquiry of the protest-cum-complaint petition and found that that the marriage had taken place on 23.4.2000 and the date of occurrence is 22.11.2007, which shows that the occurrence had taken place after seven years of the marriage. The Court below taking into consideration the cause of death of the deceased and the allegation against the accused-petitioners to have burnt the deceased to death, has found that there are sufficient materials against them to frame charge under Sections 302 and 498-A of the Indian Penal Code and has rejected the application filed by the petitioners.

5. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch as, the matter was investigated by the police and the police had submitted the final form in favour of the petitioners. It has also been submitted that admittedly the deceased had a child, whose statement was not recorded, and has also submitted that from the report of the doctor, it would appear that the doctor had not found the smell of kerosene oil either at the time of treatment or at the time of the postmortem examination. Learned counsel has accordingly, submitted that the impugned order cannot be sustained in the eyes of law and it is a fit case for discharge.

6. Learned A.P.P. for the State, on the other hand, has submitted that the impugned order clearly shows that the same has been passed upon consideration of the statements of the inquiry witnesses, on the basis of which, the offence is made out against the petitioners.

7. After having heard learned counsels for the parties and upon going through the record, I find that apart from the allegation that the accused petitioners used to subject the deceased to cruelty and torture for demand of dowry, there is also

allegation that she was burnt to death by the accused petitioners. Even the earlier FIR clearly shows that the informant was informed by the deceased, while she was injured, that her husband and other in-laws had put her to fire. In that view of the matter, it is surprising as to how the case was instituted for the offence u/s 306 of the Indian Penal Code.

8. Be that as it may. After investigation, the police had the submitted final form and in that view of the matter, the case does not depend upon the police case, rather it now depends on the protest-cum-complaint petition, in which, there are more or less, the same allegations against the accused persons and the witnesses examined by the complainant during inquiry have also supported the case of the complainant, as it appears from the impugned order passed by the Court below. Taking into consideration the fact that the occurrence of burning the deceased had taken place after seven years of marriage, in my considered view, the Court below has rightly found that there are materials for framing charge against the accused persons for the offences under Sections 302 and 498-A of the Indian Penal Code. I do not find any illegality and/or irregularity in the impugned order passed by the Court below, worth interference in the revisional jurisdiction. There is no merit in this revision application and the same is, accordingly, dismissed.