

(2008) 02 DEL CK 0261

Delhi High Court

Case No: Criminal M.C. 4739-43 of 2006 and Criminal M.A. 8023 of 2006

K.M. Anees-Ul-Haq and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Feb. 26, 2008

Citation: (2008) CriLJ 4611

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: G.D. Gulati and Anshu Bhanot, for the Appellant; M.N. Dudeja, APP and Abdul Rehman, Respondent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

S. Muralidhar, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1973 ("CrPC") seeking quashing of the FIR No. 260 of 2001 under Sections 406/420/34 read with Section 3 & 4 of the Dowry Prohibition Act registered at P.S. Mayur Vihar, Delhi and all proceedings consequent thereto.

2. The Petitioner No. 1 states that he retired as a Deputy Director General in Delhi Doordarshan. Petitioner No. 1 approached the Respondent No. 2 Abdul Rehman, an Advocate, for legal advice in connection with a defamatory publication in the Indian Express on 15th August 1999. Respondent No. 2 advised him to file a suit for damages to the tune of Rs. 1 crore against the Indian Express and its editor and publisher. Respondent No. 2 assured Petitioner No. 1 that he would be successful in the suit. On the basis of this assurance, the Petitioner No. 1 paid Respondent No. 2 Rs. 7.27 lakhs towards his fee, court fees and other expenses. It is stated that despite this, the suit was not filed and the amount paid was also not refunded. Petitioner No. 1 then filed a suit against the Respondent No. 2 for recovery of Rs. 10.57 lakhs i.e. Rs. 7.27 lakhs towards the principal amount and Rs. 3.30 lakhs towards interest. A complaint u/s 35 of the Advocates Act 1961 was also filed against the Respondent No. 2 and was pending before the Disciplinary Committee of the

Bar Council of India.

3. Petitioner No. 1 further states in this petition that Respondent No. 2 filed a false and frivolous complaint in the Crime Against Women ("CAW") Cell alleging that the daughter of the Respondent No. 2 was engaged to be married to the nephew of Petitioner No. 1. It was falsely alleged in the said complaint that the Petitioner No. 1 and other family members induced the Respondent No. 2 into parting with Rs. 8 lakhs towards the expenses for the engagement ceremony; that the brother of Petitioner No. 1, i.e. the father of the prospective bridegroom demanded a sum of Rs. 25 lakhs as dowry for starting business and that on this score the engagement broke on 24th June 2002 and the marriage was called off. It is stated that without making enquiries the police registered the FIR, following which a challan was filed and the summoning order dated 10th November 2003 was passed by the learned Metropolitan Magistrate ("MM"), Delhi.

4. In the petition it is stated that the engagement ceremony had taken place in the lawns of Asia House on 16th January, 2000 expenses for which were borne by the Petitioner No. 1 and who had arranged for the place being a highly placed official in the Delhi Doordarshan. It is stated that the family of Respondent No. 2 gave very ordinary and customary gifts such as one ring and one suit to the boy. It is contended that the allegations in the FIR of incurring expenses of the engagement ceremony and demand of car and money by the Petitioner's family are totally false.

5. It is then contended that in Crl Writ No. 374 of 1999 filed in this Court an application Crl Misc No. 1569 of 2000 was filed by the Respondent No. 2 on 7th August, 2000 in which he stated that the engagement has been broken on 3rd August, 2000. This contradicted the version of Respondent No. 2 in the FIR. Reliance has been placed upon the judgment in *State of Karnataka v. M. Devendrappa* 2002 I AD (SC) 217 and [Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others](#), to contend that the dismissal of an earlier petition u/s 482 CrPC on technical grounds will not preclude a subsequent one being decided on merits. Reliance was also placed on [State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew](#), .

6. A preliminary objection has been raised by Respondent No. 2, who appeared in person, that the present petition is not maintainable since an earlier petition u/s 482 CrPC had already been dismissed by this Court. The SLP filed thereafter was dismissed by the Supreme Court. It is then submitted that much progress had taken place in the trial. 26 witnesses had been examined after the charge sheet had been filed. Reliance is placed on the judgments in [M.N. Damani Vs. S.K. Sinha and Others](#), and [M. Narayandas Vs. State of Karnataka and Others](#), .

7. This Court is unable to agree with Respondent No. 2 that the present petition is not maintainable on account of the dismissal of the earlier petition u/s 482 CrPC. Initially this Court passed the following order on 11th August 2006:

11.8.2006

Present: Mr. G.D. Ganhi for the Petitioner.

Crl M No. 8024/2006

Allowed subject to just exceptions.

Crl. M.C. 4738-43/20056 & Crl. M No. 8023/2006

The petitioner had filed petition u/s 482 of the Code of Criminal Procedure seeking quashing of FIR No. 262/01 with Police Station Mayur Vihar u/s 406/420/34 read with Section 3 and 4 of the Dowry Prohibition Act. This petition was dismissed by this Court vide order dated 31st March, 2006. The petitioner challenged this order by filing SLP in the Supreme Court. In the Supreme Court one of the contentions raised was that the High Court in the impugned judgment dated 31st March, 2006 had not considered the question that no case is made out even if the complaint given is accepted at its face value and taken to be correct in its entirety. The Supreme Court, in these circumstances, observed that "We are of the opinion that the remedy of the petitioners is to move the high court, if the said contention of the learned Counsel is correct." On this the petitioners withdraw the SLP in the Supreme Court stating that appropriate application shall be filed before the High Court. Armed with the aforesaid order, the petitioner has filed this petition u/s 482 of the CrPC seeking quashing of the same FIR. I am of the view that fresh petition is not maintainable and the remedy for the petitioners is to file application seeking review of the order dated 31st March, 2006 passed in Crl M C No. 1950/2004 application on the aforesaid ground and that would be the "appropriate application" in the circumstances of this case. While giving the aforesaid opportunity, this petition is dismissed as not maintainable.

8. Thereafter a petition being Crl. M.C. 10034 of 2006 was filed by the Petitioners for recalling of the said order. The said petition was placed before the learned Single Judge who had passed the said order dated 11th August 2006. By the following order dated 19th January 2007 the earlier order was recalled:

Crl. M.A. No. 10034/2006

Learned Counsel for the petitioner place reliance on the judgment of the Supreme Court in the case of [State of Orissa Vs. Ram Chander Agarwala and Others](#), and submits that in view of the law laid down in the said case, the petition filed by the petitioner u/s 482 of the CrPC should be considered on merits. Having regard to that, order dated August 11, 2006 is recalled. This application is disposed of.

Crl. M.C. 4739-40/2006

List the matter for consideration before the regular Bench on 25.1.2007.

9. It may be recalled here that in the SLP filed by the Petitioner the Supreme Court had passed the following order:

Learned Counsel for the petitioners submits that apart from the question of limitation which has been dealt by the High Court in the impugned order, several other questions, including the question that no case is made out even if the complaint given is accepted at its face value and taken to be correct in its entirety, have not been considered. We are of the opinion that the remedy to the petitioners is to move the High Court, if the said contention of the learned Counsel is correct.

Learned Counsel for the petitioners seeks permission to withdraw this petition stating that appropriate application shall be filed before the High Court. The SLP is dismissed as withdrawn.

10. The Supreme Court having permitted the Petitioner to raise other points apart from the question of limitation, it cannot be said that the present petition is barred on the principle of res judicata. It is true that this Court had passed an order on 31st March, 2006 dismissing the petition filed by the Petitioner u/s 482 CrPC. This Court had proceeded on the basis that the only point urged by the Petitioner was the one concerning limitation. However, the other points having been permitted to be raised by the aforementioned order of the Supreme Court, this petition has to be necessarily heard on merits.

11. On a perusal of the FIR as a whole, this Court is unable to agree with the contention of the learned Counsel for the Petitioners that not even a prima facie case is made out against the petitioners for the offence referred to therein. Whether in fact the statement made in the FIR is inconsistent with any statement made in an application filed by the Respondent No. 2 in this Court can be determined only at the trial by leading evidence.

12. The judgments cited by learned Counsel for the Petitioner turned on their facts. It is not possible for this Court to agree with the learned Counsel for the petitioner that on the face of it the FIR does not disclose the commission of any offence by the Petitioners.

13. There is no merit in this petition u/s 482 CrPC and it is dismissed as such with no orders as to costs.