

[2014] 7 S.C.R. 437

SWAPNIL AND OTHERS

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 1144 of 2014)

MAY 9, 2014

[SUDHANSU JYOTI MUKHOPADHAYA AND
KURIAN JOSEPH, JJ.]

Penal Code, 1860 – ss.498A and 506 Part II – Dowry Prohibition Act, 1961– s.4 – Police complaint dated 02.05.2012 filed by wife against husband and in-laws (appellants) making allegations of dowry harassment, and of criminal intimidation on 30.04.2012 – Charges framed against appellants u/ss.498A, 506 Part II IPC and s.4 of the Dowry Prohibition Act, 1961 – High Court declined to exercise jurisdiction u/s.482 CrPC for quashing the proceedings – On appeal, held: The wife was living separately since April, 2011 and hence, no question of any beating by the appellants as alleged by her – Even application filed by first appellant-husband for restitution of conjugal rights having been withdrawn on 16.04.2012 as the wife was not interested to live together, it is difficult to believe that there was still a demand for dowry on 30.04.2012 coupled with criminal intimidation – Allegations vague and bereft of the details as to the place and the time of the incident – Materials before Judicial Magistrate not sufficient for presuming that appellants committed offence under the charged Sections – Sessions Court and High Court missed these crucial points while considering the petition filed by appellants u/s.397 and s.482 CrPC respectively – Veiled object to harass the appellants – Impugned prosecution wholly unfounded – To secure the ends of justice and for preventing abuse of the process of the criminal court, charges framed against the appellants quashed – Appellants discharged – Code of Criminal Procedure, 1973 – s.482.

A The first appellant filed an application under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights against his wife, the second respondent. During pendency of the proceedings, the second respondent, on 07.09.2011, lodged a police complaint
B against the appellants and others, whereafter the parties were called before the Police Station and “suggested to rehabilitate their domestic life by court proceeding.”

Subsequently however, the first appellant withdrew the application filed under Section 9 of the Hindu Marriage Act, 1955, since according to the first appellant the second respondent was not inclined to resume cohabitation. It was thereafter, the police complaint dated 02.05.2012 leading to the impugned prosecution was filed
C by the second respondent, on which FIR dated 02.05.2012 under Section 498A, 506 and 34 of IPC was registered. It was alleged in the complaint that two months after her marriage with the first appellant, the appellants and the sister of the first appellant started demanding dowry. In the complaint dated 02.05.2012, there was also a grave
D allegation of intimidation to kill on 30.04.2012.
E

The Judicial Magistrate framed charges against the appellants. Revision petition filed by the appellants before the Sessions Court was dismissed. By the impugned
F order, the High Court declined to exercise its jurisdiction under Section 482 CrPC for quashing the proceedings and charges framed against the appellants under Section 498A, 506 Part II IPC and Section 4 of the Dowry Prohibition Act, 1961.

G Allowing the appeal, the Court

HELD:1. If the intervening developments and the two complaints dated 7-9-2011 and 2-5-2012 are analysed carefully, it can be seen that except for the improvement
H with regard to the alleged intimidation on 30.04.2012, the

allegations in the earlier complaint dated 07.09.2011 are exactly the same. After the second respondent lodged the complaint on 07.09.2011, the same was duly enquired into and it was closed stating that the dispute is actually between the families which are to be otherwise settled in legal proceedings. If there are such differences between families which are to be settled in legal proceedings, how such differences would constitute and give rise to a successful prosecution under Sections 498A or 506 IPC or under Section 4 of the Dowry Prohibition Act, 1961, is the crucial question. [Paras 8, 10] [444-A, B, D-F]

2. The second respondent has been living separately since April, 2011 and hence, there is no question of any beating by the appellants as alleged by her. The relationship having got strained ever since April, 2011, even application for restitution of conjugal rights having been withdrawn on 16.04.2012 as the second respondent was not interested to live together, it is difficult to believe that there is still a demand for dowry on 30.04.2012 coupled with criminal intimidation. The allegations are vague and bereft of the details as to the place and the time of the incident. The materials before the Judicial Magistrate First Class, are not sufficient to form an opinion that there is ground for presuming that the accused appellants have committed the offence under the charged Sections. The Sessions Court and the High Court missed these crucial points while considering the petition filed by the appellants under Section 397 and Section 482 of the Cr.PC respectively. The veiled object behind the lame prosecution is apparently to harass the appellants. Hence, the impugned prosecution is wholly unfounded. Therefore, to secure the ends of justice and for preventing abuse of the process of the criminal court, the charges framed by the Judicial Magistrate against the accused appellants are quashed. The accused appellants are discharged. [Para 11] [444-G-H; 445-A-D]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1144 of 2014.

From the Judgment and Order dated 02.09.2013 of the High Court of M.P. at Indore in MCRC No. 3300 of 2013.

B Sunil Kumar Jain for the Appellants.

Vijay Panjwani, Madhu R. Panjwani for Respondent.

The Judgment of the Court was delivered by

C **KURIAN, J.:** 1. Leave granted.

D 2. The appellant is aggrieved by the order dated
02.09.2013 passed by the High Court of Madhya Pradesh
Bench at Indore. As per the impugned order, the High Court
declined to exercise its jurisdiction under Section 482 of the
Code of Criminal Procedure, 1973 (hereinafter referred to as
E 'Cr.PC') for quashing the proceedings and charges framed
against the appellants under Section 498A, 506 Part II of the
Indian Penal Code (45 of 1860) (hereinafter referred to as
F 'IPC') and Section 4 of the Dowry Prohibition Act, 1961. The
appellants 2 and 3 are his father and mother respectively. The
Respondent No. 2 is the wife of the first appellant. She lodged
a complaint with Mahila Thana, Indore Police Station on which
FIR No. 50 dated 02.05.2012 under Section 498A, 506 and
G 34 of IPC was registered. It was alleged in the complaint that
the marriage between the first appellant and second
respondent was performed on 24.06.2009 and after two
months of the marriage, the appellants and the sister of the first
appellant started demanding dowry. It is seen from Annexure-
P3-application filed by the first appellant on 14.07.2011 under
Section 9 of the Hindu Marriage Act, 1955 seeking restitution
of conjugal rights that the second respondent had left the
matrimonial house on 23.04.2011 and thereafter she had not
gone back. On 23.05.2011, a lawyer notice had also been
H 02.06.2011. During the pendency of the proceedings for

restitution of conjugal rights; the second respondent, on 07.09.2011, lodged a complaint before Mahila Thana, Indore Police Station raising allegations against the appellants, the maternal uncle, maternal aunt and the sister of the first appellants. Paragraph 4 of the complaint –Annexure-P4 reads as follows:

“4. The accused persons yesterday on 06.09.2011 having common intent collectively came to my parental house and while hurling abuses as Madarchod, Bahanchod etc. said that if you want life of your mother, father, brother and sister then you come within one month with Rs.1 lac cash balance 5 tola gold, Wagner Car which is purchased after your marriage and money for Maruti car otherwise your mother-father, sister and brother will be kidnapped and they will be killed. They gave threat to take over possession on my house and said that what wrong you have caused to us by sending copies in police in reply of our notice, you do not know us yet. When your mother, father, brother and sisters would be sent behind jail in false allegations then see govt. job of your father will be loosed and you would start begging on road and gave threat that do not dare to go in police, nobody would give evidence against us in colony because we have approach with big leaders and officers and gundas elements. If you go in police then proceeding will be done against you not against us.”

3. Annexure-P5 is the Record of Proceedings dated 12.12.2011 when parties were called before Mahila Police Station. The same is extracted below:

“Sir;

In connection with enquiry of reference application both the parties appeared in women police station and statement of both were recorded which are enclosed with enquiry. Applicant told that her husband Swapnil does not do any work/business and other members of in-laws house by

A putting demand of dowry cause physical and mental harassment. Let family counseling be done with husband so that domestic life may remain peaceful.

B Non applicant told in his statement that my domestic life could not run peacefully due to intervention of members of parental house of Kirti.

C Family counseling of both parties was done. There are certain family differences between both the parties hence both the parties were suggested to rehabilitate their domestic life by court proceeding.

Report is submitted in your goodself.”

D 4. The first appellant on 16.04.2012 withdrew the application filed under Section 9 of the Hindu Marriage Act, 1955, since according to the first appellant the second respondent was not inclined to resume cohabitation. It was thereafter, the complaint dated 02.05.2012 leading to the impugned prosecution was filed by the second respondent. She also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on 17.05.2012. It seems another application under Section 125 of Cr.PC was also filed by her.

F 5. The gist of the complaint dated 02.05.2012 reads as follows:

G “... On 30.04.2012 they said if you do not fulfill our demand then we would kill you, thus my husband, father in law, mother in law and sister in law gave threat for life on the issue of demand of 10 tola gold, maruti car and 1 lac rupees cash in dowry and have subjected me on physical and mental harassment now I have been harassed from cruelty of members of in laws house and I do not want to enter into any compromise rather I want legal proceeding.

H ...”

6. The learned Judicial Magistrate First Class Magistrate, Indore framed the following charges: A

"I, Sarmesh Singh Judicial Magistrate First Class Indore hereby frame following charge against you Anil S/o Ramdas R/o 73 Laxmipuri Colony, Indore: B

1. You being husband of complainant Kirti subjected her to mental and physical torture and harassment from 24.06.2009 to 30.04.2012 in 73 Laxmipuri Colony Indore, making illegal demand of Rs.1,00,000/-, car and 10 tola gold as dowry and by beating her caused cruelty? C
2. You on 30.04.2012 with intention to intimidate complainant Kirti gave threat to cause her death, as such by intimidating her caused criminal intimidation? D
3. You being husband of complainant Kirit put illegal demand of Rs.1,00,000/-, car and 10 tola gold as dowry on various intervals from 24.06.2009 to 30.04.2012 from complainant Kirti and her relatives? E

By doing such you have committed offence which is punishable under section 498A, 506 Part-2, IPC and section 4 of Dowry Prohibition Act, which is in my cognizance. I by this report order that you be tried in above mentioned crimes." F

7. The appellants filed Criminal Revision No. 85 of 2013 before the Sessions Court which was dismissed by Order dated 14.03.2013 by the Additional Sessions Judge, Indore. It is significant to note that even according to the learned Additional Sessions Judge "it is possible that accused Swapnil was taking care of his wife..." G

8. If the intervening developments referred to above and H

A the two complaints are analysed carefully, it can be seen that
 except for the improvement with regard to the alleged
 intimidation on 30.04.2012, the allegations in the earlier
 complaint dated 07.09.2011 are exactly the same. As a matter
 of fact, there was an allegation with regard to criminal
 • intimidation in the complaint dated 07.09.2011 as well, as can
 B be seen from the extracted portion of the complaint. However,
 in the complaint dated 02.05.2012, there is a grave allegation
 on intimidation to kill, made on 30.04.2012.

C 9. The first appellant and second respondent had in fact
 solemnized their marriage at Arya Samaj Mandir on 16.06.2007
 privately, as they were stated to be in love with each other for
 sometime. Thereafter only, in the presence of the family
 members, marriage was solemnized on 24.06.2009.

D 10. It has to be seen that admittedly the second respondent
 has been living separately since April, 2011. Thereafter, she
 had lodged a complaint on 07.09.2011 before the very same
 police station. The same was duly enquired into and it was
 closed stating that the dispute is actually between the families
 E which are to be otherwise settled in legal proceedings. If there
 are such differences between families which are to be settled
 in legal proceedings, how such differences would constitute and
 give rise to a successful prosecution under Sections 498A or
 506 IPC or under Section 4 of the Dowry Prohibition Act, 1961
 F is the crucial question.

G 11. The second respondent has been living separately
 since April, 2011 and hence, there is no question of any beating
 by the appellants as alleged by her. The relationship having got
 strained ever since April, 2011, even application for restitution
 of conjugal rights having been withdrawn on 16.04.2012 as the
 second respondent was not interested to live together, it is
 difficult to believe that there is still a demand for dowry on
 30.04.2012 coupled with criminal intimidation. The allegations
 are vague and bereft of the details as to the place and the time
 H of the incident. We had called for the records and have gone

through the same. The materials before the learned Judicial Magistrate First Class, Indore are not sufficient to form an opinion that there is ground for presuming that the accused appellants have committed the offence under the charged Sections. The Additional Sessions Court and the High Court missed these crucial points while considering the petition filed by the appellants under Section 397 and Section 482 of the Cr.PC respectively. The veiled object behind the lame prosecution is apparently to harass the appellants. We are, hence, of the view that the impugned prosecution is wholly unfounded. Therefore, to secure the ends of justice and for preventing abuse of the process of the criminal court, the charges framed by the Judicial Magistrate First Class, Indore in Criminal Case No. 10245 of 2012 against the accused appellants are quashed. The accused appellants are discharged. However, we make it clear that nothing contained in this judgment shall have a bearing on any proceedings between the parties regarding their matrimonial disputes before the Family Court, since our observations are only for the purpose of this judgment.

12. The appeal is allowed as above.

Bibhuti Bhushan Bose

Appeal allowed.