

MANU/JH/0401/2004

Equivalent/Neutral Citation: 2004CriLJ4397, [2004(3)JCR425(Jhr)]

IN THE HIGH COURT OF JHARKHAND

Cri Revision No. 446 of 2002

Decided On: 19.07.2004

Raj Kishore Roy and Ors. **Vs.** State of Jharkhand and Ors.

Hon'ble Judges/Coram:

M.Y. Eqbal, J.

Counsels:

For Appellant/Petitioner/Plaintiff: A.K. Das, Adv.

For Respondents/Defendant: APP

Case Note:

Criminal - Discharge - Offence committed under Sections 498A, 406, 313, 506, 109/34 of the Indian Penal Code, 1860 (IPC) read with Section 3/4 of Dowry Prohibition Act - Order rejecting application for discharge - Hence, present revision - Held, in the instant case, there was no specific allegation in the complaint petition against the Petitioner Nos. 3 to 5 - Sessions Judge found that although in the complaint petition allegation of miscarriage due to torture was made but the complainant in her statement under Section 161 of the Code of Criminal Procedure, 1973 CrPC, had not stated such thing nor does the father of the complainant had stated so - On this ground the Sessions Judge held that there was no sufficient material to consider the case so far Section 313 of the IPC was concerned - Sessions Judge also failed to take into consideration the fact that even no specific allegation of torture and assault were made in the complaint against Petitioner Nos. 3 to 5 - In absence of specific allegation supported by evidence the Court below ought to have atleast discharge Petitioner Nos. 3 to 5 as no prima facie case had been made out against them - Revision allowed.

ORDER

M.Y. Eqbal, J.

1. This revision application is directed against the order dated 30.7.2002 passed by Sessions Judge in Session Trial No. 545 of 1995 whereby he has rejected the application of the petitioners under Section 227 of Cr PC wherein prayer was made to discharge them from the case.

2. The opposite party No. 2 complainant Smt. Srita Roy filed complaint case in the Court of C.J.M. Jamshedpur alleging inter alia that she was married to petitioner No. 2 Ravi Shankar Roy on 4.3.1988 and after marriage she was subjected to assault and torture on account of demand of dowry as the same was not fulfilled. It was further alleged that due to sporadic torture and physical assault, miscarriage of the pregnancy was caused twice and during the period of gestation of pregnancy, the accused husband cohabited against her will, as a result of which premature baby was begotten and that she was driven out alongwith her baby, of the house and the accused persons kept all

the golden ornaments, wearing apparels and other necessary articles, the complainant therefore alleged that the petitioners who are the accused persons committed offence under Sections 498A, 406, 313, 506, 109/34 of the IPC read with Section 3/4 of Dowry Prohibition Act.

3. The complaint petition was sent to the concerned police station and accordingly a case was instituted being Sakchi P.S. Case No. 263 of 1991 and after investigation police submitted charge-sheet. Consequently, cognizance of the offence was taken and the case was committed to the Court of Session.

4. The Court below considering the application filed by the petitioner under Section 227 of the Cr PC and after hearing learned counsel, rejected the same by the impugned order.

5. I have heard learned counsel appearing for the parties.

6. Before appreciating the submission of the learned counsels. I would like to refer para 6 and 7 of the impugned order passed by Sessions Judge rejecting the application of the petitioners under Section 227 of the Cr PC which reads as under :

"I do find force in the submission made on behalf of the State. It be stated that it is true that the case of the complainant has been supported by her father only and none other has come forwarded to support the case of the complainant. However, I may say that it is the settled principle of criminal jurisprudence that even if one witness is found to be trust- worthy, conviction can be sustained and this is not the stage to look for corroboration rather it has been well-settled by the Hon'ble Supreme Court that the Court at the stage of Section 227 of Cr PC should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as it he was conducting a trial. In this regard, I may refer to a decision reported in 1979 (3) SCC 5. Therefore, taking into consideration the statement of the complainant, her father and the documents referred to above, I do find that there has been sufficient material to proceed with the case so far offence under Sections 498A, 406 and 506 of the IPC is concerned. In the aforesaid situation, I may say that the decision, referred to above, on behalf of the accused-petitioners are not applicable in the facts and circumstances of the case.

Now, coming to the question as to whether there has been sufficient material to proceed with the case, so far offence under Section 313 of the IPC is concerned. I may say that the complainant, though in her complaint petition, has stated that due to torture, miscarriage was caused twice, but the complainant in her statement under Section 161 of Cr PC has not stated such thing nor does the father of the complainant has stated so and that it is the case of the complainant that subsequently she begotton a prematured baby and therefore, I am of the view that there has been no sufficient material to proceed with the case so far offence under Section 313 of IPC is concerned, 228 of Cr PC let the case be remitted to the Court of C.J.M. for framing charge and to proceed with the trial. Accordingly, the petition filed under Section 227 of Cr PC is disposed of."

7. A copy of the FIR and complaint petition has been annexed as Annexure-1 to the instant application. From bare perusal of the complaint, it appears that so far petitioner Nos. 3 to 5 are concerned no specific allegation of torture or assault has been made against them. Except against husband, petitioner No. 1 the allegation is that the accused

persons assaulted the complainant for the cause of dowry. The Sessions Judge in his order has taken notice of the fact that the case of the complainant was supported only by her father and none other came forward to support the case of the complainant. It is true that the Court at the stage of Section 227 of the Cr PC should not make roving enquiry into the pros and cons of the matter and weigh the evidence as if he is conducting a trial. But at the same time while exercising jurisdiction under Section 227, Cr PC the Court cannot act merely as a Post Office box or as a mouth piece of the prosecution but has to consider the broad probability of the case, the total effect of the evidence and documents produced, any basic infirmities and find out whether a prima facie case against the accused has been made out. The Court is bound to discharge the accused if he thinks that there is no sufficient ground for proceeding against the accused persons.

8. In the instant case, as noticed above, there is no specific allegation in the complaint petition against the petitioner Nos. 3 to 5. The Sessions Judge found that although in the complaint petition allegation of miscarriage due to torture was made but the complainant in her statement under Section 161, Cr PC has not stated such thing nor does the father of the complainant has stated so. On this ground the Sessions Judge held that there is no sufficient material to consider the case so far Section 313, IPC is concerned. In my view the Sessions Judge also failed to take into consideration the fact that even no specific allegation of torture and assault were made in the complaint against petitioner Nos. 3 to 5. In absence of specific allegation supported by evidence the Court below ought to have atleast discharge petitioner Nos. 3 to 5 as no prima facie case has been made out against them.

9. For the reasons aforesaid this application allowed in part and the impugned order is modified to the extent that the trial shall proceed against petitioner Nos. 1 and 2 and petitioner Nos. 3 to 5 shall stand discharged from the prosecution.

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