

MANU/JH/1023/2011

Equivalent/Neutral Citation: 2011(106)AIC413, 2011CriLJ4745, I(2012)DMC438, 2012(1)HLR713

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. Nos. 1075, 1035 and 1112 of 2010

Decided On: 13.06.2011

Shobha Devi and Ors. **Vs.** The State of Jharkhand and Ors.

Hon'ble Judges/Coram:

Dilip Kumar Sinha, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Ramesh Kumar Singh, Ajit Kumar and Amrita Banerjee, Advs. in Cr. Rev. Nos. 1075 and 1112 of 2010, A.K. Sahni and Neelanjan Chatterjee, Advs. in Cr. Rev. No. 1035 of 2010

For Respondents/Defendant: Mukesh Kumar, A.P.P. in Cr. Rev. No. 1075 of 2010, S.N. Rajgarhia, A.P.P. in Cr. Rev. No. 1035 of 2010, A.B. Mahto, A.P.P. in Cr. Rev. No. 1112 of 2010 Vikas Pandey, Adv. in Cr. Rev. No. 1035 of 2010 for the O.P. Nos. 2 to 8

For Informant: Ajit Kumar and Amrita Banerjee, Advs. in Cr. Rev. Nos. 1075 and 1112 of 2010

Case Note:

Criminal - Liability for offence - Sections 341, 323, 313, 316, 498A and 506 of Indian Penal Code, 1860 (I.P.C.) - Section 4 of Dowry Prohibition Act, 1961 - Additional Judicial Commissioner held that Section 313 of I.P.C. was attracted only against Petitioner's husband and mother-in-law and found sufficient material to proceed against Petitioners under Sections 498A/323/34/506 and 379 of I.P.C. and prima facie offence under Section 4 of Act was found against all six Accused but father of Accused was discharged from all charges - Hence, this Revision Petition - Whether, there was prima facie materials to proceed against all six Accused Persons - Held, there was prima facie allegation against Petitioner's husband and mother-in-law to proceed against them for proposed charge under Sections 498A, 323, 34, 506 and 379 of I.P.C. as also under Section 313 of Indian Penal Code besides proposed charge under Section 4 of Act - However, there was no specific overt act was attributed against other Petitioner except that they used to side with their mother i e mother-in-law of informant in extending cruelty in various ways - No offence under Section 316 was attracted against any of Petitioners - Moreover, proposed charge under Section 313 of I.P.C. against Petitioner's husband and mother-in-law was entirely based on materials to be produced on record in course of their trial as question of fact was involved therein - Allegations against 4 Petitioners, who were married and unmarried Nandads of informant and younger brother of husband of informant, were shaddled with omnibus allegations of siding their mother without specific attribution in demand of dowry or extending torture to informant - Hence, it could not be said to be prima facie materials to proceed against them as against proposed charge - However, there were prima facie materials to proceed against husband and mother-in-law for proposed charge - Thus, impugned order was

modified by recording discharge of Petitioners - Revision Petition disposed of.

Ratio Decidendi

"To determine criminal liability of offence against several accused person there shall be some prima facie materials against each of accused persons."

JUDGMENT

Dilip Kumar Sinha, J.

1. All the three Criminal Revisions referred to here-in-before in the cause title of this order is directed against the common order dated 28.10.2010 recorded by the Additional Judicial Commissioner, FTC.-II, Ranchi in Sessions Trial No. 291 of 2010 by which the petition filed on behalf of the Petitioners aforesaid under Section 227 Code of Criminal Procedure for their discharge of the alleged offence under Sections 341/323/313/316/498A/506 of the Indian Penal Code as also under Section 4 of the Dowry Prohibition Act was dismissed with the modification in the proposed charge. It was held by the impugned order dated 28.10.2010 that Section 313 of the Indian Penal Code was attracted only against the Petitioner-husband Dr. Kumar Niraj Prakash and the mother-in-law. It was further held that no offence could be made out under Section 316 of the Indian Penal Code against any of the accused Petitioners but the Court found sufficient material to proceed against the Petitioners of all the three Criminal Revisions under Sections 498A/323/34/506 and 379 of the Indian Penal Code who are Niraj Prakash, Devika Lal, Shailesh Prakash, Shobha Devi @ Kiran, Vibha Kiran and Nibha Kiran. Further prima facie offence under Section 4 of the Dowry Prohibition Act was found against all the six named accused but at the same time by the impugned order the father of the principal accused Dr. Parmeshwar Lal was discharged from all charges.

2. The case of the informant-Opposite Party No. 2 herein was that she was married to the Petitioner Dr. Kumar Neeraj Prakash on 05.12.2007 and many items including jewellerys were gifted on the eve of her marriage. It was stated that at the time of engagement with the Petitioner Dr. Kumar Neeraj Prakash that cash was also given according to their demand but after few days of their marriage her mother-in-law and sister-in-law created trouble to her and on the protest there being raised she was beaten by them and was not even served food. Upon complaint made by her, the Petitioner husband also took the side of his mother and sister and then put a demand of Rs 10,00,000.- (Ten lakh) to be brought from her parental home. In the meantime, she conceived which put the Petitioner husband under depression. When her mother-in-law came to learn about the bearing of her pregnancy, she started abusing and extending physical assault to her. Her mother-in-law wanted that she be aborted because she could not be able to fetch Rs. 10,00,000/- (Ten lakh). She further narrated that after two months of her pregnancy she developed gas and indigestion to which she complained about it to her husband who delivered two pills but within two hours of consuming such pills, her stomach developed pain with mild bleeding. On the next morning her husband-Petitioner No. 1 and the mother-in-law with the other accused persons took her to Capital Hospital and 'Research Centre, Ranchi where she was made to undergo abortion and there she could learn from the Doctor attending that her abortion had started in her house itself. Her brother was called in there in the Hospital to whom a demand of Rs. 10,00,000/- (Ten lakh) was made lest, he was cautioned that his sister i.e. the informant would not be accepted in her matrimonial home as the Petitioner husband had to marry his sister Bibha Kumari from such amount. They left the informant Nutan Kumari there with his brother. On 05.07.2009 the informant with

her brother and some respectable persons went to her husband quarter at Tipudana but he refused to keep her with him, however, she was called on 06.09.2009 to his house at Kokar where demand of Rs. 10,00,000/- (Ten lakh) was reiterated but when she expressed inability of her brother and mother to meet out, she was beaten in the room and all her jewellerys were seized by them'. Her brother was insulted and ultimately she was driven out with the caution that she would be accepted only on bringing Rs 10,00,000/- (Ten lakh) and a big vehicle for them. Thereafter, she was living at her matrimonial home for the last three months, but on 5th July, 2009 her husband came to her but became furious when called upon as to when she would be taken away by him to her matrimonial home and then he returned back She attached the medical certificate dated 03 07 2008 with her written report which gave rise to Bariyatu P.S Case No. 226 of 2009 on 15.09 2009 for the alleged offence.

3. It was submitted on behalf of the husband-Petitioner and mother-in-law of the informant Opposite Party No. 2 that no specific overt act was attracted against either of two so as to attract charge under Sections 498A/323/34/506/379 and 313 of the Indian Penal Code as also under Section 4 of the Dowry Prohibition Act. Neither in her statement recorded under Section 161 nor under Section 164 Code of Criminal Procedure the informant alleged anything specifically with regard to the alleged demand of dowry as well as physical and mental torture perpetrated to her The alleged miscarriage of the Informant at the instance of husband and the mother-in-law has not been supported by any other independent witness. It was not the allegation against the mother-in-law-Devika Lal that she had at any point of time delivered pills to the informant which caused abortion after consuming it This allegation was directed against only the husband, as such, the proposed charge under Section 313 of the Indian Penal Code could not be attracted against the mother-in-law. The reason of miscarriage could not be assigned by the Doctor who attended the informant in the Hospital and therefore, the allegation of miscarriage could not be substantiated The case was lodged by the informant after 14 months of the alleged incident of miscarriage and no plausible explanation could be given by her of such inordinate delay. The allegations were malicious and frivolous against her husband and the mother-in-law and it was admitted that the brother of the informant was very much present in the Hospital and virtually had managed all the affairs of abortion at the relevant time He did not allege in his statement recorded under Section 161 Code of Criminal Procedure that either any pill or pills whatsoever was administered to his sister and thereby forceful abortion was made. The statement of mother-in-law was recorded in paragraph No. 28 of the case diary wherein she was silent as to the cause of abortion of the informant. As a matter of fact, the informant after solemnization of her marriage with the Opposite Party No. 2 Dr. Kumar Niraj Prakash, she never accepted him as her husband on account of his physical appearance, economical condition and family atmosphere and he was disliked by her It was the specific case of the Petitioner-husband in Matrimonial Title Suit No. 221 of 2010 filed by the husband Dr Kumar Niraj Prakash under Section 13(1)(ia)] of the Hindu Marriage Act, 1956 seeking decree of divorce that the marriage was never consummated and that she had totally deserted him and that she was carrying extra marital relationship with another person with whom she had affairs much prior to her marriage The Petitioner-husband had sought for decree of divorce on the counts of cruelty, desertion and her extra marital relationship.

4. Assailing the order impugned passed by the Additional Judicial Commissioner, Ranchi learned Counsel asserted that without discussing the prima facie material if at all found against the Petitioners charges were proposed for the defence under Sections 323/34/313/498A/379/506 of the Indian Penal Code as also under Section 4 of the

Dowry Prohibition Act

5. Learned Counsel Mr. Ramesh Kumar Singh appearing on behalf of the husband and the mother-in-law (Criminal Revision No. 1112 of 2010) submitted on the point of law that in the given facts and circumstances no offence under Section 313 of the Indian Penal Code could be attracted against them. Reliance has been placed on a decision, reported in A.I.R. 1987 Kerala 184. The Full Bench of the Kerala High Court interpreted the provisions of Section 313 of the Indian Penal Code and held,

Section 313 I.P.C. penalises voluntary causing of miscarriage of a woman with child without her consent while miscarriage with consent is dealt with under Section 312. Under Section 313 the person procuring the abortion alone is liable to punishment whereas under Section 312 the woman is also liable for punishment. The only allegation in the complaint on that side is on hearing that she is pregnant the Petitioner took her to a Doctor who caused the abortion. There is no case that it was without her consent. On the other hand the averments show that she willingly submitted herself to abortion and even thereafter she had sexual intercourse with the Petitioner. There is nothing to show that abortion was at his instance. Whether he was only accompanying the lady at her request and whether he even made a request to the Doctor to have abortion, are not clear from the allegations. The Doctor who conducted the abortion is not made an accused which means she has no complaint against him. It is clear that an offence under Section 313 is also not made out from the allegations.

6. Concluding his argument, learned Counsel submitted that the Supreme Court of India in "*Kans Raj v. State of Punjab and Ors.*", reported in MANU/SC/0296/2000 : AIR 2000 SC 2324 while dealing with the case related to dowry death expressed anguish upon the present trend of prosecution and observed,

A tendency has however developed for roping in all relations of the in laws of the deceased wife in the matter of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their own enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.

7. The other Petitioners-accused of Criminal Revision No. 1075 of 2010 were not at all concerned with the alleged offence and proposed charge. The Petitioner No. 1 Shobha Devi @ Kiran @ M.S Kiran was the married Nanad, Petitioner No. 2 Nibha Kiran Amanda @ Nibha Kiran was also the married Nanad, Petitioner No. 3 Vibha Kiran is the unmarried Nanad and Petitioner No. 4 Shailesh Prakash @ Shailej Prakash is the younger brother of the husband of the informant and he was also unmarried.

8. The learned Counsel added that there was no prima facie material against these Petitioners to be proceeded for the charge under Section 498A of the Indian Penal Code or under any other Sections thereof and that the petition for their discharge under Section 227 Code of Criminal Procedure was mechanically dismissed without discussing the individual allegation and the materials collected in course of investigation of the case

9. Advancing his argument, learned Counsel submitted that the Petitioner-Shobha Devi

@ Kiran @MS. Kiran was living with her husband Arbind Kumar Singh at Telco Colony, Jamshedpur whereas the Petitioner No. 2 Nibha Kiran Anand @ Nibha Kiran is residing with her husband Devanand at Dhanbad The Petitioner-Bhibha Kiran being the younger sister and the Petitioner No. 5 Shri Shailesh Prakash being the younger brother of the husband had nothing to do with the family affairs of the husband of the informant Nutan Kumari and all these 4 Petitioners have been implicated by her to wreck vengeance against her husband and all the members of his family and in that manner these four Petitioners have been maliciously prosecuted without specific overt act attributed against any of them and therefore, their criminal proceeding would tantamount to miscarriage of justice, who were innocent and have become prey of malicious prosecution The learned Court without discussing the specific allegation proposed 'he charge as also against these Petitioners with the observation,

I do not want to discuss the same at length and accepting the allegation in its totality held that it is sufficient to frame charges under Section 498A/323/34/506 and 379 of the Indian Penal Code against remaining six accused persons namely Dr. Kumar Niraj Prakash, Smt. Devika Lal, Shri Shailesh Prakash, Shobha Devi @ Kiran @ M.S. Kiran, Vibha Kiran and Nibha Kiran Ananda @ Nibha Kiran and under Section 4 of the Dowry Prohibition Act against each of them.

10. *Separate charge was proposed under Section 313/34 of the Indian Penal Code against the husband and mother-in-law. it is settled that whenever a petition is filed under Section 227 Code of Criminal Procedure for discharge what the Trial Court is required to do is to place some prima facie materials against each of the accused in his order but in the instant case the petition under Section 227 Code of Criminal Procedure was dismissed by a common order without distinguishing the specific allegation against these four Petitioners. The offence under Section 379 I P.C. is not attracted against these four Petitioner's It is well accepted with exceptions that unmarried Nanads had no role to play in the alleged demand of dowry. It is relevant to mention that the informant Nutan Kumari had preferred Criminal Revision No. 1035 of 2010 challenging the impugned order dated 28.10.2010 passed by the A.J.C F.TC-II in Sessions Trial No. 291 of 2010 by which all the accused were discharged from the offence under Section 316 of the Indian Penal Code as also under Section 3 of the Dowry Prohibition Act and I was further stated that a strong prima facie case was made out against father-in-law Shri Parmeshwar Lal but without appreciation of materials on the record he was discharged illegally on erroneous consideration and in that manner the Petitioner-informant was prejudiced since material were yet to be collected in course of trial There we example materials, the Learned Counsel added, to suggest that at the instance of all the accused persons, the husband administered pills which resulted into abortion or the informant and it was requested for setting aside the impugned order dated 28 10 2010 in so far as it related to discharge of the Opposite Party No. 4 Shri Parmeshwar Lal and the discharge of the other accused Shri Shailesh Prakash, Nibha Anand, Bibha Kiran and Sobha Devi for the offence under Section 313 of the Indian Penal Code.*

11. *Having regard to the facts and circumstances of the case, appreciating the rival contortions made on behalf of the parties, I find prima facie from the entire materials including the order impugned that there was prima facie allegation against the husband and mother-in-law to proceed against them for the proposed charge under Sections 498A/323/34/506 and 379 of the Indian Penal Code as also under Section 313 of the Indian Penal Code besides proposed charge under Section 4 of the Dowry Prohibition Act. As regards complicity of the other Petitioners Shri Shailesh Prakash, Shobha Devi @ Kiran @ M.S. Kiran, Vibha Kiran and Nibha Kiran Ananda @ Nibha Kiran was concerned,*

no specific overt act was attributed against any of them except that they used to side with their mother i e the mother-in-law of the informant in extending cruelty in various ways and in that manner omnibus allegations have been made against them I do not find any illegality or irregularity in discharging the father-in-law of the informant Shri Parmeshwar Lal from the alleged offence and the learned Additional Judicial Commissioner meticulously dealt with the grounds for discharge which needs no interference I further appreciate that in the facts and circumstances no offence under Section 316 is attracted against any of the Petitioners. As regards the proposed charge under Section 313 of the Indian Penal Code against the husband and mother-in-law is concerned it entirely based on the materials to be produced on the record in course of their trial as the question of fact was involved herein as to whether the abortion of the informant was carried out without her consent or with her consent on administrate on of pills which could be the cause of her abortion.

12. In the given facts and circumstances of the case and relying upon the decision of *Kans Raj v. State of Punjab and Ors.*, reported in MANU/SC/0296/2000 : AIR 2000 SC 2324 (supra) I subscribe the view that " tendency has been developed for roping in all relations of the in-laws of the deceased wife in the matter of dowry deaths" but a step ahead, such false implication is very much frequent alleged under Section 498A I P C which if not discouraged was likely to create menace in the civil society. There cannot be a straight jacket formula to exonerate the other in-laws being married and unmarried Nanad of the informant from their criminal liability for the alleged offence under Section 304B or under Section 498A of the Indian Penal Code but in some cases their defined roles in extending torture in connection with demand of dowry found to be pivotal and in that case rule of caution shaft prevail. But in the instant case I find that the allegations against 4 Petitioners who are the married and unmarried Nanads of the informant and the younger brother of the husband of the informant are shaddled with omnibus allegations of siding their mother without specific attribution in demand of dowry or extending torture to the informant which cannot be said to be the prima facie materials to proceed against them as against the proposed charge For the reasons discussed above I find merit in the Criminal Revision No. 1075 of 2010 observing that no prima facie material could be found against any of them to proceed against them for the proposed charge referred to in the impugned order 28 10.2010 accordingly, impugned order dated 28 10 2010 is modified by recording discharge of the Petitioners Shobha Devi @ Kiran @ M S Kiran, Nibha Kiran Ananda @ Nibha Kiran, Vibha Kiran and Shailest Prakash @ Shailej Prakash. Accordingly, Cr. Revision No. 1075 of 2010 is allowed In so far as the prayer of the discharge of the husband and the mother-in-law is concerned, I subscribe the view taken by the learned Additional Judicial Commissioner, Ranchi that there were prima facie materials to proceed against them for the proposed charge and therefore the Criminal Revision No. 1112 of 2010 is dismissed.

13. In so far as the Criminal Revision No. 1035 of 2010 filed on behalf of the informant Nutan Kumari is concerned, I do not find merit so as to call for interference in the order impugned dated 28.10.2010 passed by the learned Additional Judicial Commissioner, F.T.C.-II, Ranchi in view of the contention of the Criminal Revision Petition and the submissions made on her behalf.

14. Accordingly, Criminal Revision No. 1035 of 2010 is dismissed and all the three Revisions are disposed of by this common order in the manner indicated above.

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