

Dhanalakshmi

Vs

R. Prasanna Kumar and Others

Criminal Appeal No. 672 of 1989

(E. S. Venkataramiah, K. N. Singh, Smt. M. S. Fathima Beevi JJ)

15.11.1989

JUDGMENT

M. FATHIMA BEEVI, J. –

1. Special leave granted.
2. The appellant married the first respondent on April 29, 1979. They lived together until 1982 and have two children. They separated and the legal battle commenced in 1983. The first respondent moved the city civil court for divorce. The appellant instituted criminal complaint in the Court of the Metropolitan Magistrate. The complaint was taken cognizance of for the offences under Sections 494, 496, 498-A, 112, 114, 120, 120-B and 34 IPC against the respondents. It was alleged that the first respondent married the second respondents while the proceedings for decree of divorce were still pending, the marriage the second respondent while the proceedings for the decree of divorce were still pending. The marriage was performed secretly in the presence of the respondents 3 to 6. On the application of the first respondent the High Court by the impugned order quashed the proceedings before the Metropolitan Magistrate. Hence the appeal.
3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant of the that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.
4. The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. state of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complaint in the light of the all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegation in

complaint disclosing the ingredients of the offence taken cognizances of. It is for the complainant to substantiate to substantiate to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

5. We, therefore, allow the appeal, set aside the impugned order and direct that the proceedings before the Magistrate shall be restored and disposed of in accordance with the law.

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