SUPREME COURT OF INDIA

Priya Vrat Singh

Vs.

Shyam Ji Sahai

Crl.A.No…..of 2008

(Dr. Arijit Pasayat and P. Sathasivam JJ.)

05.08.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court dismissing the application filed in terms of Section 482 of the *Code of Criminal Procedure, 1973* (in short the `Cr.P.C'). Appellants have filed the petition for quashing criminal proceeding against them in Complaint Case No. 896 of 1994 subsequently numbered as Criminal Case No. 931 of 1995 relating to alleged commission of offences punishable under Sections 494, 120B and 109 of the *Indian Penal Code, 1860* (in short the `IPC') and Sections 3 & 4 of the *Dowry Prohibition Act, 1961* (in short the `Dowry Act') pending in the Court of Special Chief Judicial Magistrate, Varanasi. The prayer was rejected by the High Court being of the view that the trial court can be directed to conclude the trial expeditiously and at the time of framing charges, the appellants can raise such points as has been raised in the present dispute. Liberty was also granted to appear within one month from the date of order before the trial court and to obtain bail.

3. Background facts in a nutshell are as under:

> "Daughter of the respondent namely Madhulika Singh was married to appellant No.1 Priya Vrat Singh. According to the appellants, Madhulika started behaving rudely with her husband and his family members as Priya Vrat was unemployed. Tension between two reached to such an extent that Madhulika tried to commit suicide on 7.3.1992. She thereafter started giving repeated threats to commit suicide and appellant was seriously harassed. From 16.7.1992 onwards appellant No.1 and Madhulika started living separately in the same house. However, shortly thereafter Madhulika left her matrimonial house and started living in the parental house. In the meantime, appellant No.1 filed a suit in Original Suit No. 188 of 1992 in the Civil Court at Barabanki for dissolution of marriage between him and Madhulika on the

ground of cruelty and harassment meted out to him by Madhulika. The said suit was decreed on 1.1.1993 ex parte in favour of appellant No.1. Time for filing appeal against the ex-parte decree dated 1.1.1993 under Section 28(4) of the *Hindu Marriage Act, 1956* (in short the `Marriage Act') expired on 31.1.1993. On 21.2.1993 after dissolution of marriage, No.1 re-married one Neha alias Sunita at Jalgaon in Maharashtra on 2.3.1993. On 6.12.1994 respondent filed a private complaint before the Chief Judicial Magistrate, Varanasi wherein all the appellants were arrayed as accused persons. It was alleged that in 21.2.1993 appellant No.1 had re married in Sankat Mochan Mandir, Varanasi. Allegations of dowry harassment were also made. It was submitted that the marriage attracted punishment under Sections 494, 120B and 109 IPC and Sections 3 & 4 of the Dowry Act. On 1.6.1995 learned Special CJM, Varanasi issued summons. Long thereafter, on 9.7.1996 Madhulika filed a Restoration Petition before the Civil Judge for recalling the order of ex parte. On 9.8.1996, appellants moved an application before the learned Special CJM, Varanasi, and protested to the summoning order. However, the same was rejected by order dated 9.8.1996. On 24.9.1996 petition under Section 482 Cr.P.C. was filed which was numbered as Criminal Misc. Case No. 4501 of 1996. On 2.3.1997 the restoration petition was allowed. On 25.10.2001 the High Court dismissed the Criminal Misc. Case."

4. In support of the appeal learned counsel for the appellant submitted that the marriage of appellant No. 1 with appellant No. 3 is protected under Section 15 of the Marriage Act and therefore, the proceedings under Section 494 IPC are clearly not maintainable. Further it is pointed out that the allegation of alleged demand for dowry was made for the first time in December, 1994. In the complaint filed, the allegation is that the dowry torture was made some times in 1992. It has not been explained as to why for more than two years no action was taken. Further it appears that in the Complaint Petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother in law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February, 1993 when the complaint was filed on 6.12.1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice, none has appeared on behalf of respondent No.1.

5. The parameters for exercise of power under Section 482 have been laid down by this Court in several cases.

6. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely,

"(i) to give effect to an order under the Code,

(ii) To prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing

with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice."

7. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: *Janata Dal v. H. S. Chowdhary*[1], *Raghubir Saran (Dr.) v. State of Bihar*[2] *and Minu Kumari v. State of Bihar*[3].

8. The present case appears to be one where the category 7 of the illustrations given in *State of Haryana v. Bhajan Lal*[4] is clearly applicable.

9. That being so the appeal deserves to be allowed, which we direct. The proceedings in Case No.896 of 1994 pending before the Special CJM, Varanasi stand quashed.

10. Appeal is allowed.

[1]*(1992 (4) SCC 305)* [2]*(AIR 1964 SC 1)* [3]*(2006 (4) SCC 359)* [4]*(1952 (supp.) 1 SCC 335)*