

SUPREME COURT OF INDIA

Ajay Kumar Das

Vs.

State of Jharkhand & Anr.

CrI.A.No.1735 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

06.09.2011

JUDGMENT

Mukundakam Sharma,J.,

SLP(CrI) 10005/2009

1. Leave granted.

2. This appeal is directed against the order dated 19th August, 2009 passed by the Jharkhand High Court dismissing the petition filed by the appellant herein praying for quashing of the entire criminal proceedings of Balumath P.S. Case No. 68 of 2006 (corresponding to G.R. Case No. 445 of 2006) in which cognizance was taken of the offence under Section 304B read with Section 34 of the Indian Penal Code against the appellant and others.

3. The informant filed a First Information Report that his daughter was married to the appellant herein in the year 2002, as per the Hindu rites and custom and that at the time of her marriage, informant had given sufficient dowry. It was stated therein that the informant's daughter complained about the torture meted out to her by the father-in-law and the mother-in-law to her husband, the present appellant who allegedly did not pay any heed. It was also alleged that on 29th September, 2006, father-in-law and the mother-in-law talked to the accused on telephone and in a well-planned conspiracy caused death of the daughter of the informant. On receipt of the aforesaid information a case was registered, thereafter the police started investigation. After the completion of the investigation, a charge sheet was filed on 14th April, 2001. An order was also passed on 17th April, 2007, by the Magistrate taking cognizance which is also assailed in the present case. The appellant was granted bail by the High Court on 10th April, 2007.

4. After submission of the aforesaid charge sheet and passing of the order taking cognizance, the appellant filed a petition under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding in the aforesaid manner. The High Court considered the pleas raised by the parties and thereafter held that the case is a case of dowry death and that the

appellant is the husband. It was also held that the points taken by the appellant before the High Court are rather a defence case and that the same relates to factual dispute. The Court also referred to the decision of this Court in *State of Haryana v. Bhajan Lal reported in¹* and also to the settled position of law that genuineness of the allegations/charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings.

5. Learned counsel appearing for the appellant has challenged the legality of the aforesaid order passed by the High Court on the ground that no case is made out against the appellant either under Section 304B or under Section 34 of the Indian Penal Code as according to him there is no such allegation in the First Information Report specifically against the appellant. He has also submitted that the order taking cognizance is wrong and disclosed non-application of mind by the Magistrate for even prior to passing of the said order charge sheet was already filed. He also took us through the contents of the case diary wherein statements of seven witnesses have been recorded to substantiate his submission as aforesaid.

6. Counsel appearing for the respondents, however, submits that this is not the stage when this Court should embark upon a factual inquiry as regards the materials on record. It is also pointed out to us that in fact the appellant would have such an effective opportunity even at the stage when charges are framed. Counsel also submits that it is possible and also permissible to alter the charges and frame charges under some other provisions of law if it appears to the Court that material for framing such charge under other sections are also available on record.

7. Having heard the learned counsel appearing for the parties, we may appropriately refer to a decision of this Court in *Shanti & Another v. State of Haryana reported in²* What was considered in that case by this Court was a case of dowry death under Section 304B and also a case of 498A of the Indian Penal Code. While dealing with the aforesaid provisions, this Court has held that the two sections are not mutually exclusive. It was also held that a person charged and acquitted under Section 304B could be convicted under Section 498A without charge being there if such a case is made out. This Court, however, hastened to add that to avoid technical defects it is necessary in such cases to frame charges under both the sections and that if the case is established then they can be convicted under both the sections but no separate sentences need be awarded under Section 498A in view of the substantive sentences being awarded for the major offence under Section 304B. In that decision, this Court considered the scope and ambit of Section 304B IPC and also of Section 498A IPC. Reference was also made to provisions of Section 113B of the Evidence Act. It was held that Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry then the Court would presume that such a person has committed the dowry death. It was also held that the meaning of 'cruelty' for the purpose of this Section has to be gathered from the language as found in Section 498A and as per that Section 'cruelty' means 'any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman or harassment of the woman where such harassment is with a view to coercing her or

any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.'

8. Our attention is also drawn to the decision of *Mahbub Shah v. King Emperor*³ In the said decision, it was held that to invoke the aid of Section 34 IPC exclusively it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of common intention of all and if that is shown then the liability for the crime may be imposed on any one of the persons in the same manner as if the acts were done by him alone. It was further held that it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

9. This Court in the decision of *Bengai Mandal alias Begai Mandal v. State of Bihar reported in*⁴ after referring to some allied decisions of this Court held that the position with regard to Section 34 IPC is crystal clear and that the existence of common intention is a question of fact. It was held that since intention is a state of mind it is, therefore, very difficult if not impossible to get or procure direct proof of intention and, therefore, courts in most cases have to infer the intention from the act or conduct of the party or other relevant circumstances of the case.

10. Counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court, i.e. the case of *State of Haryana v. Bhajan Lal and others reported in*⁵ In the said decision, this Court held that it may not be possible to lay down any specific guidelines or water tight compartment as to when the power under Section 482 Cr.P.C. could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In paragraph 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the First Information Report or in the complaint that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

11. Keeping the aforesaid legal principles in our mind, we now proceed to examine the contentions raised by the counsel appearing for the appellant in order to ascertain and find out whether a case for quashing is made out in the facts of the present case. In the First Information Report, there is an allegation that the two other accused persons namely Ishwar Das and his wife Sunita Devi on the fateful day after talking to the present appellant over telephone in a pre-determined manner killed the informant's daughter Bimla Devi by pushing her into a well. Counsel appearing for the appellant even sought to counter the said allegation by referring to a document issued by the Commanding Officer to the appellant dated 19th November, 2006. In the said note, which was sent to the Superintendent of Police, it is mentioned that as per the statement of the appellant his wife Bimla Devi fell inside the well. The aforesaid document is in the nature of a defence and could be looked into by the

appropriate Court at the appropriate stage and not now. What we are required to look at this stage is the allegations made in the complaint and in the First Information Report. He also referred to some of the statements made in the case diary to justify the stand that no case against the appellant is made out.

12. We are, however, unable to accept the said contention at this stage for we find that there was a demand for giving cows, motor cycle and other goods. All these allegations will have to be dealt with by the Court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the Court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge sheet has already been filed against the appellant also holding that a case under Section 304B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant. We are, however, of the considered opinion that on a reading of the First Information Report and the materials that are available in the case file of the appellant that no case is made out so as to quash the entire proceeding. Therefore, while rejecting the contention of the counsel appearing for the appellant so far quashing of the proceedings is concerned we give him the liberty to raise all his defence as may be available to him in accordance with law at the time of framing of the charge and at that stage the Court shall consider the material on record as also the contentions raised by the appellant in proper perspective and decide the matter in accordance with law. We also make it clear that any observation made by us herein would not be in any manner construed as our observations or views with regard to the merit of the case or the defence of the appellant.

13. In terms thereof, we dismiss the appeal but with the aforesaid liberty granted to the appellant. The stay of further proceedings before the trial court granted vide this Court order dated 22nd October, 2010 stands vacated.

Judgment Referred.

¹(1992) Suppl. 1 SCC 0335

²AIR 1991 SC 1226

³(1945) 72 Indian Appeals 0148

⁴(2010) 2 SCC 0091

⁵(1992) suppl. 1 SCC 0335