

# **SUPREME COURT OF INDIA**

Swapnil

Vs.

State of Madhya Pradesh

CrI.A.No.1144 of 2014

(Sudhansu Jyoti Mukhopadhaya and Kurian Joseph JJ.)

09.05.2014

## **JUDGMENT**

### **KURIAN, J.:**

1. Leave granted.
2. The appellant is aggrieved by the order dated 02.09.2013 passed by the High Court of Madhya Pradesh Bench at Indore. As per the impugned order, the High Court declined to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.PC) for quashing the proceedings and charges framed against the appellants under Section 498A, 506 Part II of the Indian Penal Code (45 of 1860) (hereinafter referred to as IPC) and Section 4 of the Dowry Prohibition Act, 1961. The appellants 2 and 3 are his father and mother respectively. The Respondent No. 2 is the wife of the first appellant. She lodged a complaint with Mahila Thana, Indore Police Station on which FIR No. 50 dated 02.05.2012 under Section 498A, 506 and 34 of IPC was registered. It was alleged in the complaint that the marriage between the first appellant and second respondent was performed on 24.06.2009 and after two months of the marriage, the appellants and the sister of the first appellant started demanding dowry. It is seen from Annexure-P3-application filed by the first appellant on 14.07.2011 under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights that the second respondent had left the matrimonial house on 23.04.2011 and thereafter she had not gone back. On

23.05.2011, a lawyer notice had also been served on the second respondent which was replied on 02.06.2011. During the pendency of the proceedings for restitution of conjugal rights, the second respondent, on 07.09.2011, lodged a complaint before Mahila Thana, Indore Police Station raising allegations against the appellants, the maternal uncle, maternal aunt and the sister of the first appellant. Paragraph 4 of the complaint "Annexure-P4 reads as follows:

4. The accused persons yesterday on 06.09.2011 having common intent collectively came to my parental house and while hurling abuses as Madarchod, Bahanchod etc. said that if you want life of your mother, father, brother and sister then you come within one month with Rs.1 lac cash balance 5 tola gold, Wagner Car which is purchased after your marriage and money for Maruti car otherwise your mother-father, sister and brother will be kidnapped and they will be killed. They gave threat to take over possession on my house and said that what wrong you have caused to us by sending copies in police in reply of our notice, you do not know us yet. When your mother, father, brother and sisters would be sent behind jail in false allegations then see govt. job of your father will be loosed and you would start begging on road and gave threat that do not dare to go in police, nobody would give evidence against us in colony because we have approach with big leaders and officers and gundas elements. If you go in police then proceeding will be done against you not against us.

3. Annexure-P5 is the Record of Proceedings dated 12.12.2011 when parties were called before Mahila Police Station. The same is extracted below: Sir, In connection with enquiry of reference application both the parties appeared in women police station and statement of both were recorded which are enclosed with enquiry. Applicant told that her husband Swapnil does not do any work/business and other members of in-laws house by putting demand of dowry cause physical and mental harassment. Let family counseling be done with husband so that domestic life may remain peaceful. Non applicant told in his statement that my domestic life could not run peacefully due to intervention of members of parental house of Kirti. Family counseling of both parties was done. There are certain family differences between both the parties hence both the parties were suggested to rehabilitate their domestic life by court proceeding. Report is submitted in your goodself.

4. The first appellant on 16.04.2012 withdrew the application filed under Section 9 of

the Hindu Marriage Act, 1955, since according to the first appellant the second respondent was not inclined to resume cohabitation. It was thereafter, the complaint dated 02.05.2012 leading to the impugned prosecution was filed by the second respondent. She also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on 17.05.2012. It seems another application under Section 125 of Cr.PC was also filed by her.

5. The gist of the complaint dated 02.05.2012 reads as follows: On 30.04.2012 they said if you do not fulfill our demand then we would kill you, thus my husband, father in law, mother in law and sister in law gave threat for life on the issue of demand of 10 tola gold, maruti car and 1 lac rupees cash in dowry and have subjected me on physical and mental harassment now I have been harassed from cruelty of members of in laws house and I do not want to enter into any compromise rather I want legal proceeding.

6. The learned Judicial Magistrate First Class Magistrate, Indore framed the following charges:

I, Sarmesh Singh Judicial Magistrate First Class Indore hereby frame following charge against you Anil S/o Ramdas R/o 73 Laxmipuri Colony, Indore:

1. You being husband of complainant Kirti subjected her to mental and physical torture and harassment from 24.06.2009 to 30.04.2012 in 73 Laxmipuri Colony Indore, making illegal demand of Rs.1,00,000/-, car and 10 tola gold as dowry and by beating her caused cruelty?

2. You on 30.04.2012 with intention to intimidate complainant Kirti gave threat to cause her death, as such by intimidating her caused criminal intimidation?

3. You being husband of complainant Kirit put illegal demand of Rs.1,00,000/-, car and 10 tola gold as dowry on various intervals from 24.06.2009 to 30.04.2012 from complainant Kirti and her relatives?

By doing such you have committed offence which is punishable under section 498A, 506 Part-2, IPC and section 4 of Dowry Prohibition Act, which is in my cognizance. I by this report order that you be tried in above mentioned crimes.

7. The appellants filed Criminal Revision No. 85 of 2013 before the Sessions Court which was dismissed by Order dated 14.03.2013 by the Additional Sessions Judge, Indore. It is significant to note that even according to the learned Additional Sessions Judge it is possible that accused Swapnil was taking care of his wife.

8. If the intervening developments referred to above and the two complaints are analysed carefully, it can be seen that except for the improvement with regard to the alleged intimidation on 30.04.2012, the allegations in the earlier complaint dated 07.09.2011 are exactly the same. As a matter of fact, there was an allegation with regard to criminal intimidation in the complaint dated 07.09.2011 as well, as can be seen from the extracted portion of the complaint. However, in the complaint dated 02.05.2012, there is a grave allegation on intimidation to kill, made on 30.04.2012.

9. The first appellant and second respondent had in fact solemnized their marriage at Arya Samaj Mandir on 16.06.2007 privately, as they were stated to be in love with each other for sometime. Thereafter only, in the presence of the family members, marriage was solemnized on 24.06.2009.

10. It has to be seen that admittedly the second respondent has been living separately since April, 2011. Thereafter, she had lodged a complaint on 07.09.2011 before the very same police station. The same was duly enquired into and it was closed stating that the dispute is actually between the families which are to be otherwise settled in legal proceedings. If there are such differences between families which are to be settled in legal proceedings, how such differences would constitute and give rise to a successful prosecution under Sections 498A or 506 IPC or under Section 4 of the Dowry Prohibition Act, 1961, is the crucial question.

11. The second respondent has been living separately since April, 2011 and hence, there is no question of any beating by the appellants as alleged by her. The relationship having got strained ever since April, 2011, even application for restitution of conjugal rights having been withdrawn on 16.04.2012 as the second respondent was not interested to live together, it is difficult to believe that there is still a demand for dowry on 30.04.2012 coupled with criminal intimidation. The allegations are vague and bereft of the details as to the place and the time of the incident. We had called for the records and have gone through the same. The materials before the learned Judicial

Magistrate First Class, Indore are not sufficient to form an opinion that there is ground for presuming that the accused appellants have committed the offence under the charged Sections. The Additional Sessions Court and the High Court missed these crucial points while considering the petition filed by the appellants under Section 397 and Section 482 of the Cr.PC respectively. The veiled object behind the lame prosecution is apparently to harass the appellants. We are, hence, of the view that the impugned prosecution is wholly unfounded. Therefore, to secure the ends of justice and for preventing abuse of the process of the criminal court, the charges framed by the Judicial Magistrate First Class, Indore in Criminal Case No. 10245 of 2012 against the accused appellants are quashed. The accused appellants are discharged. However, we make it clear that nothing contained in this judgment shall have a bearing on any proceedings between the parties regarding their matrimonial disputes before the Family Court, since our observations are only for the purpose of this judgment.

12. The appeal is allowed as above.