

SUPREME COURT OF INDIA

Kailash Chandra Agrawal

Vs.

State of U.P.

Crl.A.No.2055 of 2014

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

16.09.2014

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.
2. This appeal has been preferred against the Order dated 2nd May, 2011 of the High Court of Judicature of Allahabad declining to quash the proceedings against the appellants under Section 406 of the Indian Penal Code and Section 6 of the Dowry Prohibition Act, 1961.
3. The case of the complainant in the FIR registered on 4th May, 2010 in the Bhelupur Police Station at Varanasi is that her marriage was solemnised on 30th April, 2005. Her brothers who lived abroad gave lot of dowry and cash in the marriage but her family could not fulfil more demands raised by the elder brother of her husbandTMs father, who was the head of the joint family on account of which family members of her husband were not satisfied and tortured her. On account of torture, she came to her parents house with her child on 1st March, 2009 she gave a complaint on 27th April, 2010 leading to registration of the FIR on 4th May, 2010. She also filed complaint in the Court of Additional Chief Judicial Magistrate, Varanasi. In the said complaint, the appellants were summoned vide Order dated 30th November, 2010.

4. Aggrieved by the said summons, the appellants moved the High Court under Section 482 OF THE Code of Criminal Procedure (Cr.P.C.) with the plea that the summoning was not justified as neither they were named in the FIR got registered by the complainant nor any individual role was attributed to them in the criminal complaint. Their relationship with the husband of the complainant was remote as grand father of the appellant No.1 was brother of grand father of the husband of the complainant. In such remote relationship, the appellants will have no interest in raising any demand for dowry or causing any harassment to the complainant. Their implication was thus, clear abuse of the process of the Court.

5. The High Court dismissed the petition with the observation that the statement of the complainant under Sections 200 and 202, Cr.P.C. disclosed the commission of offence and thus there was no illegality in the order of summoning.

6. We have heard learned counsel for the parties.

7. Learned counsel for the appellants submitted that marriage took place in the year 2005 and a child was born on 15th January, 2009. Complaint was filed in the year 2010 after filing of divorce petition by the husband of the complainant on 24th April, 2010. In the FIR, initially filed, there was no allegation against the appellants but in the subsequent complaint, the appellants were also named as accused without any specific allegation against them. Thus, requiring the appellants to face criminal proceedings was nothing but abuse of the CourtTMs process.

8. On 27th June, 2011, while issuing notice this Court stayed further proceedings in the criminal complaint.

9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In *Kans Raj vs. State of Punjab & Ors.*[1], it was observed:- 5A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over 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 as appears to have happened in the instant case. The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.

10. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of CourtTMs process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. vs. State of Bihar and Anr.[2], Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.[3], State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.[4] and Asmathunnisa vs. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Anr.[5].

11. Applying the above tests, the proceedings in the present case are clearly the abuse of the CourtTMs process.

12. Accordingly, we allow this appeal and quash the proceedings against the appellants, without expressing any opinion about the case of the complainant against the other accused.

[1] (2000) 5 SCC 207

[2] (2000) 8 SCC 547

[3] (1998) 5 SCC 749

[4] (1992) Suppl 1 SCC 335

[5] (2011) 11 SCC 259