

PRIYA VRAT SINGH & ORS.

v.

SHYAM JI SAHAI

(Criminal Appeal No. 1230 of 2008)

AUGUST 5, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – Inherent powers of High Court – Criminal proceedings against husband u/s 494, 120 B and s. 109 IPC and s. 3 and 4 of the Dowry Prohibition Act, 1961 – Appeal u/s 482 for quashing criminal proceedings – Set aside by High Court – On appeal, held: In view of the parameters laid down for exercise of power u/s 482, criminal proceedings pending before the Magistrate quashed – Penal Code, 1860 – ss. 494, 120 B and 109 – Dowry Prohibition Act, 1961 – ss. 3 and 4.

Appellant no. 3 was married to appellant no. 1. The relations between the parties became strained and they started living separately in the same house. Thereafter, appellant no. 3-wife left her matrimonial home and started living with her parents. Meanwhile, appellant no. 1-husband filed suit for dissolution of marriage on the ground of cruelty and harassment meted out to him by wife. The suit was decreed *ex parte*. After the expiry of the limitation period for filing appeal, the appellant no. 1 married N. Two years later, appellant no. 3 filed a complaint against the appellant no. 1 and his family members alleging re-marriage by appellant no. 1, dowry demand and harassment u/s 494, 120 B and s. 109 IPC and s. 3 and 4 of the Dowry Prohibition Act, 1961. Appellant no. 3 also filed restoration petition for recalling the *ex parte* order which was allowed later. Appellant no. 1 filed application before the Special Court of Judicial Magistrate which was dismissed. Appellant no. 1 then filed petition u/s 482 Cr.P.C. High Court dismissed the same. Hence, the present appeal.

A Appellant no. 1 contended that the marriage of ap-
pellant No. 1 with appellant no. 3 is protected u/s 15 of the
Hindu Marriage Act, 1956, thus, the proceedings u/s. 494
IPC are not maintainable; that the allegation of alleged
B demand for dowry was made for the first time in Decem-
ber, 1994 when the complaint was filed; that the dowry
torture was made some time in 1992; that there is no ex-
planation as to why for more than two years no action
was taken; that in the Complaint Petition apart from the
C husband, other relatives were impleaded as party and no
role has been specifically ascribed to them except the hus-
band; and that inspite of service of notice, none appeared
on behalf of respondent No.1.

Allowing the appeal, the Court

D HELD: 1. The powers possessed by the High Court
under section 482 of the Code of Criminal Procedure, 1973
are very wide and the very plenitude of the power requires
great caution in its exercise. The Court must be careful to
see that its decision in exercise of this power is based on
E sound principles. The inherent power should not be ex-
ercised 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
F 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 per-
spective 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. [Para 7] [902-
G F,G, 903-A,B]

H 2. In view of the parameters laid down for exercise of
power u/s 482 of the Code, the proceedings in the crimi-
nal case pending before the Special CJM, Varanasi stand
quashed. [Paras 5 and 9] [901-F, 903-D]

Janata Dal v. H. S. Chowdhary 1992 (4) SCC 305; *Raghubir Saran (Dr.) v. State of Bihar* AIR 1964 SC 1; *Minu Kumari v. State of Bihar* 2006 (4) SCC 359; *State of Haryana v. Bhajan Lal* 1952 (supp.) 1 SCC 335 – relied on. A

Case Law Reference

1992 (4) SCC 305 Relied on. Para 7 B

AIR 1964 SC 1 Relied on. Para 7

2006 (4) SCC 359 Relied on. Para 7

1952 (supp.) 1 SCC 335 Relied on. Para 8 C

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1230 of 2008

From the final Judgment and Order dated 25.10.2004 of
the High Court of Judicature at Allahabad in Criminal Misc. Ap- D
plication No. 4501 of 1996

K.V. Viswanathan, A.S. Rai, Vishal Ranjan Rai and
Devendra Singh for the Appellants.

The Judgment of the Court was delivered by E

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 Crimi- F
nal 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 commis- G
sion of offences punishable under Sections 494, 120B and 109
of the Indian Penal Code, 1860 (in short the 'IPC') and Sec-
tions 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 H

A 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.

B 3. Background facts in a nutshell are as under:

C 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, appellant 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 exer-

A cise 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 pro-
visions of law which are necessary for proper discharge of func-
tions and duties imposed upon them by law. That is the doctrine
B 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
C 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 un-
der the section, the court does not function as a court of appeal
D 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
E 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.
F 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 proceed-
ings would otherwise serve the ends of justice.

7. As noted above, the powers possessed by the High
G Court under Section 482 of the Code are very wide and the
very plenitude of the power requires great caution in its exer-
cise. 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
H 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* (1992 (4) SCC 305), *Raghubir Saran (Dr.) v. State of Bihar* (AIR 1964 SC 1) and *Minu Kumari v. State of Bihar* (2006 (4) SCC 359). A B C

8. The present case appears to be one where the category 7 of the illustrations given in *State of Haryana v. Bhajan Lal* (1952 (supp.) 1 SCC 335) 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. D

10. Appeal is allowed.

N.J.

Appeal allowed.