

Madhya Pradesh High Court

Balram Nigam vs The State Of Madhya Pradesh on 6 May, 2022

Author: Gurpal Singh Ahluwalia

1

THE HIGH COURT OF MADHYA PRADESH

MCRC-12929-2020

Balram Nigam and others Vs. State of MP and another

Gwalior, Dated : 06/05/2022

Shri Ram Kishore Sharma, Counsel for the applicants.

Shri C.P. Singh, Counsel for the respondent No. 1/State.

Shri Sarvesh Kumar Sharma, Counsel for the respondent No. 2. This application under Section 482 of CrPC has been filed for quashment of FIR in Crime No.90/2020 registered at Police Station Mahila Thana, District Gwalior for offence under Sections 498-A, 294, 506, 34 of IPC and Section 4 of Dowry Prohibition Act.

2. It is submitted by the counsel for the applicant that during the pendency of this application, charge-sheet has been filed and the charges have been framed. It is submitted that the order of framing of charges has not been challenged.

3. It is the case of the applicants that respondent No. 2 lodged an FIR on 09.03.2020 that on 09.03.2019 she got married to Pawan Nigam in accordance with Hindu rites and rituals. Her parents had given sufficient dowry as per the demand made by in-laws including an amount of Rs.5,51,000/-. When she came to her matrimonial house, then she was kept properly by her in-laws for few days, but thereafter her husband Pawan Nigam, father-in-law Balram Nigam, mother-in-law Ramshri Bai and sister-in-law Kamlesh started harassing and treating her with cruelty on the ground that her father has given less dowry and, therefore, if she wants to reside in her THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another matrimonial house peacefully, then she should bring additional amount of Rs.4,00,000/- from her father. When respondent No. 2 replied that her father has already spent more than his financial capacity and now he has nothing to give anything more in dowry, then all the four persons started beating her and harassing her physically and mentally. Initially, she was bearing all the atrocities under the hope and belief that with the passage of time, situation would improve and her matrimonial life would be saved, but taking advantage of this weakness, atrocities of the applicants continued. When she informed her harassment to her parents, then her father came to her matrimonial house and tried to convince them, but they stuck to their demand and after beating her, she was ousted from her matrimonial house and also threatened her father that unless and until an amount of Rs.4,00,000/- is given, she should not be sent back to her matrimonial house. Thereafter, she has come back to her parental home. Even reconciliation proceedings were taken up on 01.12.2019, but could not succeed. Accordingly, FIR was lodged.

4. It is submitted by the counsel for the applicants that the applicants No. 1 and 2 are old and infirm persons. The applicant No. 1 is a heart patient. The applicants No. 1 and 2 had given a written

complaint to S.P. as well as SHO, Mahila Thana, District Gwalior with regard to the threatening extended by the respondent No. 2. It was also THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another informed that the applicants No. 1 and 2 have already separated Pawan Kumar Nigam and respondent No. 2 and Public Notice was also published in the newspaper dated 02.02.2020. The husband of the respondent No. 2 has also filed an application under Section 9 of the Hindu Marriage Act and only by way of counterblast, present FIR has been lodged.

5. Per contra, the application is vehemently opposed by the counsel for the complainant. It is submitted by Shri Sarvesh Sharma that the applicant is a heavy drunkard and as per the information of the respondent No. 2, he has remarried and is residing in Bhopal with his second wife. It is further submitted that under the orders of this Court, mediation proceedings had taken place and even in this mediation proceedings, the husband of the respondent No. 2 had admitted that he is in the habit of heavy consumption of liquor.

6. This submission made by the counsel for the complainant was objected by the counsel for the applicants.

7. Heard the learned counsel for the parties.

8. This Court by order dated 12.03.2021 had appointed Shri Sanjay Dwivedi, Advocate as a Mediator and the parties were directed to appear before the Mediator on 25.03.2021. Accordingly, following report has been submitted :-

"Mediation Report

1. On 25.03.2021, Petitioner Shri Balram THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another and Smt. Ramshree (P-1 & P-2) are present petitioners advocate Shri Ramkishore is also present.

Respondent No. 2 Smt. Rajni Nigam is present with her father Shri Amritlal Jatav. Her advocate Shri Sarvesh Sharma is also present.

2. After long conversation it is revealed that in this matrimonial dispute following cases have been filed and are pending :

(a) JMFC Gwalior : MJC 204/2021 (D.V.) Rajni Nigam vs Pawan, Balram Ramshree, Kamlesh, Suresh Pippal, Ajay Nigam and Mukesh Rajoria.

(b) JMFC Gwalior : RCT 3250/2020 Sec 498A, IPC Sec. 34, 506, 294 IPC & Sec. 4 Dowry Prohibition Act State vs Pawan.

(c) Family Court Gwalior 278A/2020 Sec. 9 HMA Pawan vs Rajni.

3. That, the parties discussed their issue with each-other and also with me. I have explained all possible aspects. I counselled both the spouse individually, in presence of each other and also in presence of their parents and their advocates.

4. That, both the spouse expressed their willingness to unite. The terms and conditions and promises by them are mentioned here under :

(i) Pawan shall stop his drinking habit from today, he promised not to touch liquor now onwards. He promised this on the request of his wife and also on encouragement by his father Shri Bairam.

(ii) Father of Rajni (Shri Amritlal Jatav) shall avoid conversation with Shri Pawan however he shall be free to call & talk to his daughter Rajni. Amritlal Ji happily agreed to it.

(iii) Rajni shall take care of the home dutifully and shall avoid altercation and nagging. She happily promised.

(iv) Pawn shall not beat or torture or insult Rajni and she will not insult Pawan and shall respect his parents and relations. Both of them happily promised each other. Both have promised to remain respectful towards each others' relations.

(v) At the instance of Shri Balram it is THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another made clear that Pawan and Rajni are free to live in his House No. BL- 115 D.D. Nagar Shri Balram is living with his wife & other family members in B.M. 201, D.D. Nagar separately from Rajni & Pawan.

(vi) Pawan wishes that Rajni should remain with him and should avoid long (more than one day) stay in her parental home.

(vii) Both the spouse shall be free to take any decision amicably with good conscience for betterment of their life.

(viii) The parties have happily agreed to remain present jointly in the Hon'ble Court every month on the given date for satisfaction of the Court and for their own satisfaction.

5. That, both the spouse and all other present persons have agreed to the terms and conditions mentioned in forgoing paragraphs. The parents and advocates of parties have appreciated both the spouse.

6. That, the parties want that the pending cases between them should also end on the basis of this settlement. Hon'ble Court may kindly keep the matter pending for

reasonable period, for the assessment of parties' seriousness towards the terms and conditions settled during mediation proceedings.

7. Parties have agreed that Pawan shall visit home of Rajni and shall take her with him to his home on 2nd April 21.

8. That, the parties present and Shri Ram Kishore Sharma and Shri J.S. Varma Advocates of the petitioners and Smt. Rajni and her father and her advocate Shri Sarvesh Sharma have assisted me in this successful mediation for reunion of both the spouse."

9. The report, its terms & conditions are subject to approval of the Court."

9. From this mediation report, it is clear that the husband of the respondent No. 2 had promised that he would stop his drinking habit and also promised not to touch the liquor, therefore, it is clear that the allegations made by Shri Sarvesh Sharma during the course of THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another argument that husband of the respondent No. 2 is a drunkard appears to be correct.

10. So far as the medical sickness of the applicant No. 1 is concerned, that cannot be a ground for quashment of the FIR. Further, the stand of the applicants that they have already separated respondent No. 2 as well as her husband, is also a disputed question of fact which cannot be considered at this stage and the applicants shall be free to prove the same before the Trial Court after leading cogent and reliable evidence. Furthermore, from the address given by the applicant in the petition under Section 9 of Hindu Marriage Act, it is clear that the address of husband of the respondent No. 2 and the address of the applicants No. 1 and 2 is same, therefore, it is not clear as to whether they had ever separated the respondent No. 2 and her husband as claimed by them or not.

11. So far as the filing of the application under Section 9 of Hindu Marriage Act by the husband of the respondent No. 2 is concerned, this Court is of the considered opinion that merely on that ground, the FIR cannot be quashed.

12. The Supreme Court in the case of Pratibha Vs. Rameshwari Devi and others reported in (2007) 12 SCC 369 has held as under:-

"14. From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court had relied on extraneous considerations and acted beyond the allegations made THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another in the FIR for quashing the same in the exercise of its inherent powers under Section 482 of the Code. We have already noted the illustrations enumerated in Bhajan Lal's case and from a careful reading of these illustrations, we are of the view that the allegations emerging from the FIR are not covered by any of the illustrations as noted hereinabove. For example, we may take up one of the findings of the High Court as

noted herein above. The High Court has drawn an adverse inference on account of the FIR being lodged on 31st December, 2001 while the appellant was forced out of the matrimonial home on 25th May, 2001.

15. In our view, in the facts and circumstance of the case, the High Court was not justified in drawing an adverse inference against the appellant- wife for lodging the FIR on 31st December, 2001 on the ground that she had left the matrimonial home atleast six months before that. This is because, in our view, the High Court had failed to appreciate that the appellant and her family members were, during this period, making all possible efforts to enter into a settlement so that the respondent No.2-husband would take her back to the matrimonial home. If any complaint was made during this period, there was every possibility of not entering into any settlement with the respondent No.2- husband.

16. It is pertinent to note that the complaint was filed only when all efforts to return to the matrimonial home had failed and the respondent No.2- husband had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955. That apart, in our view, filing of a divorce petition in a Civil Court cannot be a ground to quash criminal proceedings under Section 482 of the Code as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts. Such being the position, we are, therefore, of the view that the High Court while exercising its powers under Section 482 of the Code has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another FIR or by relying on extraneous considerations." 12.1 The Supreme Court in the case of Kamaladevi Agarwal Vs. State of W.B. and others reported in (2002) 1 SCC 555 has held as under:-

"15. We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". A Constitution Bench of this Court, dealing with similar circumstances, in *M.S. Sheriff v. State of Madras* [AIR 1954 SC 397 : 1954 Cri LJ 1019] held that where civil and criminal cases are pending, precedence shall be given to criminal proceedings. Detailing the reasons for the conclusions, the Court held: (AIR p. 399, paras 15-16) "15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

13. It is next contended by the counsel for the applicants that the case of the applicant No. 3 may be considered sympathetically because she is sister-in-law of the respondent No. 2 and has nothing to do with the family affairs of the respondent No. 2 and her husband. It is further submitted that she has been falsely implicated only because of the fact that she is a government servant.

14. Heard the learned counsel for the applicant.

THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another

15. It is true that the applicants have claimed that applicant No. 3 is married sister-in-law of the respondent No. 2, but she is also the resident of City of Gwalior, therefore, it cannot be said that she has no occasion to harass or treat the respondent No. 2 with cruelty. There are specific allegations against the applicant No. 3. It is well established principle of law that near and dear relative of the husband of the complainant should not be compelled to face the ordeal of trial unless and until the allegations are specific. If the FIR as well as statements of the witnesses recorded under Section 161 of CrPC are considered, then it is clear that there are specific allegations against the applicant No. 3.

Merely because applicant No. 3 is a married woman and is residing separately in the same city, does not mean that she cannot interfere in the married life of the respondent No. 2 and her husband.

16. Be that whatever it may.

17. This Court cannot decide the correctness of the allegations at this stage. The Supreme Court in the case of State of MP Vs. Kunwar Singh by order dated 30.06.2021 passed in Cr.A. No.709/2021 has held as under:-

"8.....At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an THE HIGH COURT OF MADHYA PRADESH MCRC-12929-2020 Balram Nigam and others Vs. State of MP and another encyclopedia....."

18. No case is made out for interfering in the matter. Accordingly, the application fails and is hereby dismissed.

(G.S. Ahluwalia) Judge Abhi ABHISHEK CHATURVEDI 2022.05.09 15:53:40 +05'30'