

Priyanka Jaiswal vs The State Of Jharkhand on 30 April, 2024

Author: Aravind Kumar

Bench: Aravind Kumar, B.R. Gavai

2024 INSC 357

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2344 of 2024
(@ SPECIAL LEAVE PETITION (CRL) NO. 10668 OF 2022)

PRIYANKA JAISWAL

...APPELLA

VERSUS

THE STATE OF JHARKHAND AND OTHERS

...RESPOND

JUDGEMENT

Aravind Kumar, J.

1. Heard.

2. Leave granted

3. The complainant/informant is calling in question the order dated 16.06.2022 passed by the High Court of Jharkhand in Cr.M.P No.1291 of 2021 whereby the proceedings initiated against respondent Nos. 3 to 8 herein, for the offences punishable under Sections 323, 498A, 504 and 506 IPC read with Section 3 and 4 of the Dowry Prohibition Act, 1961 (hereafter referred to as 'DP Act') and the non-bailable warrants issued against them came to be quashed.

4. Facts in brief leading to filing of this appeal can be crystallised as under:

5. The marriage between the appellant and the respondent No. 8 came to be solemnised under the Special Marriages Act on 05.10.2018 at Kolkata and as per the prevalent customs on 18.01.2019 at Jamshedpur. As respondent No. 8 was residing at Germany, appellant travelled with her husband to Frankfurt-Germany on 03.02.2019. The grievance of the appellant was that her father-in-law and mother-in-law (respondent Nos. 3 and 4) were complaining of not having brought sufficient dowry and she was abused for the said reason. Though she had returned to India for short stay, she is said

to have travelled back to Germany and on returning back she found her husband behaving strangely. It is the further claim of the appellant that she was badly treated and was abused by the respondent Nos. 6 and 7 when she went back to her in-laws' house at Kolkata and she was forcibly restrained from entering marital home and was physically assaulted. She also claimed that once she entered her matrimonial home, she was locked inside and with the help of her parents she could come out of captivity; she also contended that she was compelled to leave her marital house both at Kolkata and Frankfurt. In this background, appellant lodged a complaint on 04.03.2021 (Annexure P-1) with the respondent No.2 which resulted in FIR No.68 of 2021 being registered against respondents 3 to 8 herein.

6. On account of notices issued to the respondent Nos.3 to 8 by the Jurisdictional Police (respondent No.2) for the purposes of investigation, having not been answered, resulted in the Magistrate issuing non-bailable warrants against all the 6 accused namely respondent Nos.3 to 8 herein. They were unsuccessful in their attempts to seek cancellation of non-bailable warrants and respondent Nos.3 and 4 herein came to be arrested on 17.06.2021. Respondents 3 to 7 filed several applications for grant of bail and were partly successful.

7. For quashing of the non-bailable warrants issued by the Jurisdictional Magistrate and also for quashing of the entire proceedings a petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') came to be filed in Cr.M.P No.1291 of 2021. The High Court by the impugned order quashed the proceedings primarily on the grounds of (i) respondent Nos.3 and 4 herein were arrested without following the due process of law; (ii) the allegations made in the complaint are omnibus; and, (iii) that the Court of Jamshedpur does not have jurisdiction. Hence, the informant/complainant (wife) has filed this appeal.

8. We have heard the learned Advocates appearing for both the parties.

9. It is the contention of the Smt. Anjana Prakash, learned Senior Counsel appearing for the appellant, that the High Court has committed a serious error in quashing the proceedings, that too on the premise that there is non-compliance of Section 41A of Cr.P.C. and even assuming for a moment that there was non-compliance, that itself would not result in the proceedings itself being quashed and at the most the non-bailable warrants issued against accused could have been quashed. Hence, she would contend that the High Court erred in quashing the entire proceedings. She would further contend that on a meaningful reading of the complaint it would clearly disclose the offence being made out and as such the High Court ought not to have interfered with the pending investigation and the High Court should have restrained itself from nipping the proceedings at the bud. She would further contend that, when the Trial Court has passed a well-reasoned order assuming the jurisdiction, the High Court could not have quashed the FIR on the ground of territorial jurisdiction. She would draw the attention of the Court to the complaint lodged by the appellant which had resulted in the FIR being registered against respondent Nos.3 to 8 herein to contend that allegation made therein would disclose the offence and conducting of a mini trial at this preliminary stage by the High Court was impermissible. She would further contend that the High Court erroneously applied the principles laid down by this Court in the matter of *Rupali Devi V. State of Uttar Pradesh & Ors.*, (2019) 5 SCC 384, wherein it has been clearly held that when wife

takes shelter after being thrown out of matrimonial home and starts residing with her relatives, the complaint lodged from the jurisdiction where she resides, would also be 'having jurisdiction' which principle has been followed in the subsequent Judgments and this aspect has been lost sight off by the High Court. She would submit that the High Court has dwelled into the merits of the allegations made in the complaint at a pre-trial stage, where even chargesheet had not been filed and it was at the nascent stage of investigation and as such the exercise undertaken by the High Court was beyond its jurisdiction. She would contend that the High Court cannot conduct 'a mini trial', at the stage of deciding the prayer for quashing of the proceedings. Hence, by relying upon the following Judgments, she prays for the impugned order to be set aside and prays for allowing of the appeal:

i. State Of Haryana vs. Bhajan Lal, 1992 supp(1) SCC 335 ii. Rupali Devi V. State of Uttar Pradesh & Ors., (2019) 5 SCC 384 iii. Ruhi v. Anees Ahmed and Ors., 2020 SCC OnLine SC 1308 iv. Nitika v. Yadwinder Singh and Ors., (2020) 17 SCC 484 v. State of U.P. v. Akhil Sharda, 2022 SCC OnLine SC 820

10. Shri H.K. Chaturvedi, learned Counsel appearing on behalf of respondent Nos. 3 to 8 would support the impugned order and he would contend that the High Court has rightly quashed the proceedings essentially on 3 grounds namely, (i) want of service of notice on respondent Nos.3 to 8 issued under Section 41A of Cr.P.C.; (ii) Jamshedpur Court not having the territorial jurisdiction; (iii) and the allegations in the complaint being general in nature and omnibus against the respondent Nos.3 to 8 herein. Elaborating his submissions on these 3 issues and by supporting the impugned judgment, he would contend that, this Court in Satender Kumar Antil v. CBI reported in (2021) 10 SCC 773 has clearly held that when there is violation of Section 41A of Cr.P.C., proceedings should not be continued. He would contend that respondent Nos.3 and 4 were illegally arrested from Kolkata without serving notice under Section 41A of Cr.P.C. though the purported notices issued to them had been returned with an endorsement 'door lock' and taking note of these utter violations, the High Court has rightly quashed the proceedings. He would submit that alleged incident that has taken place even according to the allegations made in the complaint was at Kolkata or at Germany and that the appellant (wife) is currently residing at Germany and the husband (respondent No.8) having already obtained divorce from the Family Court, Frankfurt, Germany, the Court at Jamshedpur did not possess jurisdiction. By placing reliance on the documents filed before the High Court and contending that the correspondence made by the appellant-wife itself would disclose that she is a resident of Germany and the allegations made in the complaint would also disclose that the alleged incidents had occurred either at Germany or at Kolkata and these facts narrated in detail in the petition filed under Section 482 having not been denied by her had resulted in High Court holding Jamshedpur Court not having jurisdiction. Hence, it was submitted that, it is too late in the day to contend that she is a resident of Jamshedpur and the finding of the High Court that she is a resident of Frankfurt, Germany and no part of cause of action had arisen within the jurisdiction of Court at Jamshedpur is correct. While substantiating and supporting the impugned order whereunder the proceedings have been quashed on the ground of the allegations in the complaint being general and omnibus against respondent Nos.3 to 8, learned counsel would draw the attention of this Court to various portions of the complaint to buttress his argument that they are generic, omnibus, lacking details and as such by relying upon the following Judgments, he prays for dismissal of the appeal:

i. Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 ii. Satender Kumar Antil v. CBI, (2021) 10 SCC 773 iii. Social Action Forum for Manav Adhikar and Anr. Versus Union of India, Ministry of Law and Justice & Ors., (2018) 10 SCC 443 iv. Rupali Devi V. State of Uttar Pradesh & Ors., reported in (2019) 5 SCC 384 v. Abhishek v. State of M.P., 2023 SCC OnLine SC 1083 vi. Priyanka Mishra v. State of M.P., 2023 SCC OnLine SC 978 vii. Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599 viii. Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741 ix. Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 x. Bhaskar Lal Sharma v. Monica, (2009) 10 SCC 604 xi. Neelu Chopra v. Bharti, (2009) 10 SCC 184 xii. State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 xiii. R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21

11. Having heard learned advocates for the parties and on perusal of the case papers we are of the considered view that following point would arise for our consideration:

Whether the impugned order suffers from any infirmity calling for our interference?

OR Whether the High Court was correct and justified in quashing the FIR No.68 of 2021 registered by Jamshedpur Police Station for the offences punishable under Sections 323, 498A, 504 and 506 IPC read with Sections 3 and 4 of the DP Act against respondent Nos. 3 to 8 herein?

12. As already noticed herein above, from the arguments raised on behalf of respondent Nos.3 to 8 that essentially the High Court quashed the proceedings against respondent Nos.3 to 8 on 3 grounds namely (i) respondent Nos.3 and 4 were arrested without following the due process of law, (ii) the allegations made in the complaint is omnibus, (iii) that the Court of Jamshedpur is not having any jurisdiction.

In so far as the primary contention or primary ground on which the High Court interfered for quashing the proceedings, is based on the ground that allegations made in the complaint are omnibus or general in nature, requires to be considered at the outset for the purposes of outright rejection for reasons indicated hereinbelow.

13. We say so for reasons more than one. This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of the probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside. This Court in the case of Akhil Sharda¹ held to the following effect:

“28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of

powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get 2022 SCC Online SC 820 into appreciation of evidence of the particular case being considered.”

14. In the background of rival contentions raised with regard to there being no specific allegation against each of the accused for the offences punishable under Sections 323, 498A, 504 and 506 IPC read with Section 3 and 4 of the DP Act requires to be examined in the background of allegations contained in the complaint itself. Hence, we extract the relevant paragraphs of the complaint which would clearly suggest or indicate the allegation of harassment regarding the demand of dowry being made against the mother- in-law, father-in-law as also the husband viz., respondent 3, 4 and 8 is clear and they are to the following effect:

“(8) On 10.02.2019, I went to my In-laws place at Kolkata after my In-laws asked me to come over at Kolkata, where my mother- in-law Meena Devi and father-in-law Mahesh Chaudhary have stated sarcastically that you haven’t brought anything in dowry, they also stated that your mother father have promised us to give 50 lakhs cash, one car and one flat in Kolkata reason being your parents have to give this.

(14) My Mother-in Law and Father-in-Law along with the whole family started the same misbehaviour with me and for the greed of dowry slowly they harassed me. Once my mother-in-law pushed me and I has a collusion with the wall. In another incident she (i.e. my mother-in-law) stated to me that why don’t I die? Her aggression raised upon my silence and she choked my neck and stated if you don’t die by your own then I will kill you and all this incident took place in the presence of my father-in-law and my brother- in-law Prem Kant Shekhar with their agreement. My father-in-law told me if you don’t get the things (i.e. what has been asked for) then step out of my home.

(16) After attending the function xxx Then on 25.01.2020, I went with my husband to my in-laws house at Kolkata where my mother-in-law and father-in-law again ill-treated me in front of my husband and repeated their demand (i.e. Rs. 50 lacs, one car and a flat in Kolkata) and even threatened me on those days that if these demands are not fulfilled, they will get their son married to someone else for which a party offering Rs. 1 crore is already ready with them.” The aforesaid averments made in the complaint clearly discloses prima facie case made-out against these three accused persons viz, respondents 3, 4 and 8 herein and correctness or otherwise of the same is a matter which requires to be investigated. The High Court erred in entering into the merits of the said allegation by virtually conducting a mini trial which was clearly impermissible. Hence, on this ground also the impugned order cannot be sustained.

15. However, we would take note of the arguments advanced by Shri H.K. Chaturvedi, learned Counsel appearing for respondent Nos.3 to 8 deserves to be partly accepted in so far as respondent

Nos.5 to 7 herein are concerned, since the allegations made against them are not only omnibus but also without any specific allegation of overt act imputed against them. The complainant states that when she was being threatened by her mother-in-law, Shri Prem Kant Shekhar (accused No.5) along with respondents 6 and 7 were present. The vague allegation in the complaint can be traced at paragraphs 14 which would clearly indicate that respondents 5, 6 and 7 were present. Not even an allegation of them having indulged in abusing her can be found. There is no whisper of any demand of dowry made by them and as such the impugned order deserves to be sustained to the extent of quashing of the proceedings against respondents Nos.5 to 7.

16. Turning our attention to the second issue on which the High Court proceeded to quash the proceedings namely on the ground that no part of the offence has taken place at Jamshedpur and the allegations made in the complaint itself disclosing that the alleged offence had taken place either at Germany or at Kolkata requires to be considered for the purposes of rejection. A plain reading of the complaint would clearly indicate that the appellant having been driven out of her matrimonial home had been residing at her father's residence namely paternal home i.e. Jamshedpur and in paragraph 22 of the complaint, she clearly states to the following effect:

“(22) That day at my In-laws xxx outside the house. In this manner my mother father took me back to my home at 55 Jamshedpur and since then I am at my house at Jamshedpur and sometimes I go to meet my mother- father at my mother- father's home at Ghodaling (Chandil).” (Emphasis supplied by us) She has also stated that marriage had taken place on 18.01.2019 at Jamshedpur.

17. The aforesaid averments made in the complaint would suffice to hold that the appellant having been driven out of her matrimonial home continued to reside at her parental home and as such the court at Jamshedpur had jurisdiction. Taking note of these aspects, the learned Magistrate by order dated 07.04.2022 (Annexure P-16) has rightly arrived at the conclusion that the court at Jamshedpur was having jurisdiction. It would be apposite to extract the findings recorded by learned Magistrate and any elaboration of reasoning on this aspect would only burden this Judgment and as such we only extract the said findings:

“A bare perusal xxx jurisdiction. From perusal of the complaint petition filed by the complainant/applicant it transpires that the complainant namely Priyanka Jaiswal has mentioned the present and permanent resident of Flat No. Orient-2, R-631, Anantara, Ashiyana, Pardih, PO & PS Mango, Town-Jamshedpur, District East Singhbhum, Jharkhand. In para 7 of the complaint petition it has been mentioned by the applicant that after registration of their marriage social marriage was solemnized on 18.01.19 at Citi Inn, Jamshedpur within the jurisdiction of this court according to the Hindu rites and rituals. (However the applicant has not filed any document in support of the fact that her marriage was solemnized on 18.01.19 at Citi Inn, Pardih Jamshedpur). Due to the extent of the address mentioned in the complaint petition it has been mentioned that the same is concerned with PO & PS Mango. The petition (in complaint petition) also bears the affidavit which also shows that the applicant/complaint namely Priyanka Jaiswal is present & permanent resident of

Flat No. Orient-2, R-631, Anantara, Ashiyana Pardih, PO & PS Mango, Town-Jamshedpur, District East Singhbhum, Jharkhand. Copy of the Aadhar Card also is available/attached case record shows that Priyanka Jaiswal address shown as Saraikela-Kharsawan but the same merely is not conclusive. The respondent has filed a copy of affidavit of asset and liabilities for non-agrarian deponent filed by the complainant before the Ld. Principal Judge, Jamshedpur in Original Maintenance case no.149/2021, which also shows that the applicant Priyanka Jaiswal, D/o Mr. Pradeep Kumar Jaiswal is the resident of Sendweg, 127, 60316 Frankfurt Am main Germany & permanent resident of Flat No. Orient-2, R-631, Anantara, Ashiyana, Pardih, PO & PS Mango, Town- Jamshedpur, District East Singhbhum, Jharkhand. Though the said document has been filed by the respondent but an inference can be drawn that the applicant resides within the territorial jurisdiction of this court what else is required in when it has been shown that the applicant is permanent resident of Mango and the same has been substantiate also (emphasis supplied earlier). Apart from that the object of the domestic violence Act it is be considered that the legislature has provided the women covered under the Act with such wide option to institute a case against unscrupulous person with an intent that women may opt for the place which best suited for their convenience, comfort and accessibility. Therefore, this court do not find any merit in the petition filed by the a/respondent U/S 27 of the Act.

Accordingly petition stands disposed of as rejected.” The findings recorded by the High Court being contrary to the factual aspects narrated in the complaint, cannot be accepted and accordingly it is set aside.

18. For the reasons afore-mentioned, we allow this appeal in part and set aside the order of quashing passed against respondent Nos.3, 4 and 8 and affirm the order of quashing of the proceedings passed against respondent Nos.5 to 7.

19. Pending application(s), if any, stands consigned to records.

.....J. (B.R. Gavai)J. (Aravind Kumar) J.

(Sandeep Mehta) New Delhi, April 30, 2024