Smt. Chand Dhawan vs Jawahar Lal And Ors on 28 April, 1992

Equivalent citations: 1992 AIR 1379, 1992 SCR (2) 837, AIR 1992 SUPREME COURT 1379, 1992 (3) SCC 317, 1992 AIR SCW 1444, 1992 ALLAPPCAS (CRI) 170, 1992 CRIAPPR(SC) 194, 1992 CALCRILR 160, 1992 SCC(CRI) 636, 1992 CRILR(SC MAH GUJ) 460, (1992) 3 JT 618 (SC), 1992 UP CRIR 438, 1992 (3) JT 618, (1992) 2 SCR 837 (SC), 1992 (2) UJ (SC) 46, (1992) SC CR R 615, (1993) EASTCRIC 15, (1993) MADLW(CRI) 202, (1992) MAD LJ(CRI) 751, (1992) 2 PAT LJR 39, (1992) 2 PUN LR 114, (1992) 2 SCJ 563, (1992) 2 CURCRIR 69, (1992) 2 CRICJ 96, (1992) 2 CRILC 263, (1992) ALLCRIR 274, (1992) 2 ALL WC 938, (1992) 2 CHANDCRIC 171, (1992) 3 ALLCRILR 154, (1992) 19 CRILT 256, (1992) 2 CRIMES 342, (1992) 2 CURLJ(CCR) 187

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, S.R. Pandian

PETITIONER:
SMT. CHAND DHAWAN

Vs.

RESPONDENT:
JAWAHAR LAL AND ORS.

DATE OF JUDGMENT28/04/1992

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
PANDIAN, S.R. (J)

CITATION:
1992 AIR 1379 1992 SCR (2) 837
1992 SCC (3) 317 JT 1992 (3) 618
1992 SCALE (1)996

ACT:
Criminal Law
Code of Criminal Procedure, 1973:
Section 482-Inherent jurisdiction-Exercise of-Criminal proceedings-When could be quashed-Whether High Court justified in quashing the complaint when allegations prima facie constitute an offence.

HEADNOTE:

The appellant was married to the first respondent. After sometime the spouses started living separately. A spurt of litigation followed thereafter. While proceedings for dissolution of the marriage, custody of the minor children and criminal prosecution were pending between the parties, the appellant instituted a complaint before the Chief Judicial Magistrate,for bigamy alleging that the first respondent had subsequently married the second respondent and that the parents of the Respondents No. 1 and 2, in conspiracy intentionally abetted the performance of the second marriage with the full knowledge that the first marriage of the first respondent with the appellant was subsisting. Respondents No. 1 and 2 and their parents were arrayed as accused. After recording the statement on oath of the complainant and two witnesses, the magistrate took cognizance of the complaint for offences under sections 494 and 109 I.P.C., and issued summons to the accused persons. The accused appeared before court and were released on bail. Thereafter on an application moved by the first respondent under Section 482 Cr.P.C., the High Court quashed the complaint and the subsequent proceedings, holding that in view of the contradictions which went to the root of the case including the jurisdiction of the trial court to take cognizance and proceed with the complaint in question, the continuance of the proceedings on the basis of the complaint before the trial court would amount to abuse of the process of the court.

In the appeal, by special leave, before this Court on behalf of the appellant-wife, it was contended that the High Court, in exercising the

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jurisdiction under section 482 Cr.P.C., had made a probe into the truthfulness of the allegations made and proceeded to analyse the evidence which could be produced in support of the allegations overlooking the well-settled principle laid down for guidance in this regard.

On behalf of the respondents it was contended that the circumstances of the case had necessarily to be taken into account to determine whether the allegations made by the complainant were frivolous or vexatious and actuated by oblique motive and that in the facts and circumstances of the instant case, where the factum of the alleged marriage stood disproved by the contradictory statement made earlier to the complainant, the proceedings could not be justified and the High Court had rightly quashed the same.

Allowing the appeal, partly, this Court,

HELD:1.1. The High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary

either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents, in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint. [842 D-F]

1.2. In the present case, the allegations in the complaint are specific and clear that during the subsistence of an earlier valid marriage, respondent Nos. 1 and 2 have entered into a second marriage and have thereby committed an offence falling under section 494 I.P.C. The complainant had affirmed the fact on oath. The two witnesses produced by the complainant before the magistrate have supported that case. Based on the statement on oath of the complainant read along with the evidence of the two witnesses thus recorded and the materials available before the magistrate to get himself satisfied that cognizance should be taken and process issued, the magistrate was satisfied that an offence had been disclosed and accordingly the summons had been issued. The High Court was persuaded

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to take the view that the continuance of the proceedings would be an abuse of the process of the court only on the basis of the additional materials produced by the respondents. The materials thus produced have not been admitted or accepted by the appellant. The truth or otherwise of the allegations in the complaint is a matter for proof. When the materials relied on by the respondent require to be proved, no inference can be drawn on the basis of those materials to conclude that the complaint is false. The High Court was not justified in assuming that the first information report had been lodged by the complainant/appellant solely because she had not filed any reply before the High Court denying the fact. No sufficient opportunity was given to the appellant to do so. The affidavits of one of the persons who is stated to have performed the ceremonies would also be of no assistance in drawing any inference either way. [842 G-H, 843 A-C]

1.3. The High Court has, therefore, clearly erred in reaching the conclusion that the proceedings were liable to be quashed.

1.4. The issue of process to Respondents No. 1 and 2 is proper and the proceedings have to continue against them. But there is no justification to continue the proceedings against Respondents No. 3 to 7 as they had been unnecessarily and vexatiously roped in and the allegations against them are vague and unsupported by any material.

State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.,

[1990] SCR Supp. (3) 259 and State of Bihar v. Murad Ali Khan, AIR 1989 SC 1, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 269 of 1992.

From the Judgment and Order dated 18.3.1991 of the Punjab and Haryana High Court in Crl. Misc. No. 5841-M of 1990.

Gobinda Mukhoty and Mridula Ray for the Appellant. G.L. Sanghi and P.P. Tripathi for the Respondents. The Judgment of the Court was delivered by FATHIMA BEEVI, J. Leave granted.

The appellant, Smt. Chand Dhawan, was married to the first respondent, Jawahar Lal, on 19.9.1972. After three children were born, the spouses started to live separate. The children are left with the father. A spurt of litigation followed thereafter. Proceedings for dissolution of the marriage, custody of the minor children and criminal prosecution are pending between the parties. While so, the appellant instituted a complaint before the Chief Judicial Magistrate, Amritsar, for bigamy alleging that Jawahar Lal married Shashi Arora at Amritsar on 8.2.1989; that the parents of Jawahar Lal and Shashi Arora in conspiracy intentionally abetted the performance of the second marriage with the full knowledge that the first marriage of Jawahar Lal with the appellant, Smt. Chand Dhawan, was subsisting. Jawahar Lal, Shashi Arora, the parents of Jawahar Lal and the parents of Shashi Arora were arrayed as accused. After recording the statement on oath of the complainant and two witnesses, the learned magistrate took cognizance of the complaint for offences under sections 494 and 109, I.P.C., and issued summons to the accused persons. The accused appeared before court and were released on bail. The first respondent, Jawahar Lal, thereafter moved the High Court of Punjab and Haryana under section 482, Cr.P.C., for quashing the complaint. The High Court by the impugned judgment/order dated 18.3.1991 quashed the complaint and the subsequent proceedings. The appellant being aggrieved has filed the appeal on special leave granted.

The High Court in allowing the miscellaneous petition filed by the first respondent has said that in view of the contradictions which go to the root of the case including the jurisdiction of the trial court to take cognizance and proceed with the impugned complaint, the continuance of the proceedings on the basis of the impugned complaint before the trial court at Amritsar would certainly amount to the abuse of the process of the court.

The two grounds for arriving at this conclusion are that (1) the appellant had lodged the first information report before the police on 30.3.1989 and under section 494 of the Indian Penal Code alleging that the marriage between the respondents Nos. 1 and 2 was solemnised at Greater Kailash, New Delhi in February 1989 quite contrary to the allegations under the present complaint and (2) Vijay Bharti, one of the persons, stated to have performed the second marriage has filed an affidavit dated 7.5.1990 before the court stating that he did not perform any such marriage.

The complainant had emphatically stated before the High Court that the documents relied on by the respondents are not genuine, no such first information had been lodged by the appellant before the Police Station, NOIDA, Ghaziabad and that Vijay Bharti has also not sworn the affidavit produced in court. The objection was rejected by the High Court stating that the specific averments made in the petition have not been contradicted by the complainant by filing the reply.

The learned counsel for the appellant contended before us that the High Court in exercising the jurisdiction under section 482, Cr.P.C., has made a probe into the truthfulness of the allegations made and proceeded to analyse the evidence which could be produced in support of the allegations and in so doing had overlooked the well-settled principle laid down for guidance while exercising the inherent power. According to the appellant, the learned magistrate has taken congnizane of the complainant on the basis of the allegations made which clearly reveal the commission of an offence. The materials produced by the complainant to satisfy the magistrate at the initial stage has been duly considered before issuing process and the question whether the case would result in conviction or not is not a matter for consideration at that stage and there was, therefore, no justification for the High Court to quash the proceedings relying on the materials which have not been legally proved. It is vehementaly contended that the copy of the first information report filed before the court is not genuine, that the witness Vijay Bharti had filed an affidavit before this Court denying the genuineness of the affidavit stated to have been filed before the High Court and in this state of the facts it was pre-nature to conclude that it would be an abuse of the process of the court to proceed with the complaint. The learned counsel has also relied on the decision of this Court in State of Haryana and Ors. v. Ch. Bhajan Lal and Ors., JT [1990] 4 SC 650.

The learned counsel for the respondent in supporting the impugned order of the High Court has maintained that the circumstances of the case have necessarily to be taken into account to determine whether the allegations made by the complainant are frivolous or vexatious and actuated by oblique motive and that in the facts and circumstances of the case where the factum of the alleged marriage stands disproved by the contridictory statement made earlier to the complainant, the proceedings could not be justified and the High Court has rightly quashed the same.

The High Court, relying on the decision of this Court in State of Bihar v. Murad Ali Khan, AIR 1989 SC 1, pointed out that when the High Court is called upon to exercise the jurisdiction to quash a proceeding at the stage of the magistrate taking cognizance of an offence, the High Court is guided by the allegations whether those allegations set out in the complaint or the charge-sheet do not in law constitute or spell out any offence and that resort to criminal proceedings within the circumstances amount to an abuse of the process of the court or not. The High Court, has however, in approaching the question misdirected itself in analysing the truth or otherwise of the allegations on the basis of the materials which could not be relied on without legal proof. It is not disputed that the complaint filed by the appellant does disclose an offence under section 494, I.P.C. The allegations made by the complainant in law constitute and spell out an offence. If so, the only question that could have been considered at this stage is whether the continuance of the proceedings would be an abuse of the process of the court. This court has in various decisions examined the scope of the power under section 482, Cr.P.C., and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceedings only when the allegations

made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure to ends of justice. No inflexible quidelines or rigid foumula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint.

In the present case, we have stated that the allegations in the complaint are specific and clear that during the subsistence of an earlier valid marriage the respondents Nos. 1 and 2 have entered into a second marriage and have thereby committed an offence falling under section 494, I.P.C. The complainant had affirmed the fact on oath. The two witnesses produced by the complainant before the magistrate have supported that case. Based on the statement on oath of the complainant read along with the evidence of the two witnesses thus recorded and the materials available before the magistrate to get himself satisfied that cognizance should be taken and process issued, the magistrate was satisfied that an offence had been disclosed and accordingly the summons had been issued. The High Court was persuaded to take the view that the continuance of the proceedings would be an abuse of the process of the court only on the basis of the additional materials produced by the respondents. The materials thus produced have not been admitted or accepted by the appellant. The truth or otherwise of the allegations in the complaint is a matter for proof. When the materials relied on by the respondent require to be proved, no inference can be drawn on the basis of those materials to conclude that the complaint is false. The High Court was not justified in assuming that the first information report had been lodged by the complainant/appellant solely because she had not filed any reply before the High Court denying the fact. It does not appear that the sufficient opportunity was given to the appellant to do so. The affidavits of one of the persons who is stated to have performed the ceremonies would also be of no assistance in drawing any inference either way.

We are, therefore, of the view that the High Court has clearly erred in reaching the conclusion that the proceedings are liable to be quashed. In the light of the allegations made in the complaint and the materials produced in support of those allegations by the appellant before the magistrate, the issue of the process to the respondents Nos. 1 and 2 who are alleged to have solemnised the second marriage during the subsistence of an earlier valid marriage of the appellant is proper and when process has been issued, the proceedings have to continue in accordance with law against these respondents Nos. 1 and 2. so far as other respondents are concerned, it may be said that they had been unnecessarily and vexatiously roped in. The allegations in the complaint so far as these respondents are concerned are vague. It cannot be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting. The explanation of the first respondent that the second respondent has been functioning as a governess to look after his children in the absence of the mother who had left them implies that respondents Nos. 1 and 2 are living together. In this background, the allegations made against respondents 3 to 7 imputing them with guilty knowledge unsupported by other material would not justify the continuance of the proceedings against those respondents.

In our view, the complaint before the learned magistrate is to be proceeded with against respondents Nos. 1 and 2 only.

Accordingly, we allow the appeal to the extent of setting aside the impugned judgment so far as respondents Nos. 1 and 2 are concerned and restoring the complaint to be proceeded with as against these two respondents and to be disposed of in accordance with law.

N.P.V. Appeal partly allowed.