Sheoraj Singh Ahlawat & Ors vs State Of U.P.& Anr on 9 November, 2012

Equivalent citations: AIR 2013 SUPREME COURT 52

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Bench: Fakkir Mohamed Ibrahim Kalifulla, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1803 OF 2012
(Arising out of S.L.P. (Crl.) No.4649 of 2010)

Sheoraj Singh Ahlawat & Ors. …Appellants

Versus

State of Uttar Pradesh & Anr. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. This appeal is directed against a judgement and order dated 6th May, 2010, passed by the High Court of Judicature at Allahabad whereby Criminal Revision No.1241 of 2010 filed by the appellants has been dismissed and order dated 9th March, 2010 passed by the Additional Judicial Magistrate, Bulandshahar dismissing an application for discharge affirmed. The factual backdrop in which the matter arises may be summarised as under:

3. Appellant No.3-Naveen Ahlawat and respondent no.2-Smt. Renu Ahlawat tied the matrimonial knot on 28th September, 1998. Appellant No.3 was, at that time, serving in Indian Army as a Captain. The couple were blessed with a daughter three years after marriage. According to the wife-Smt. Renu Ahlawat, the addition to the family did not make much of a difference in terms of cordiality of her relations with her husband Captain Naveen Ahlawat and appellants No.1 and 2 who happen to be her parents in-law as they kept harassing her for dowry ever since the marriage was solemnised. These demands, according to her, continued even after her father had paid a sum of rupees four lakhs to the appellants. Physical and mental torture of respondent No.2-Renu Ahlawat, it is alleged, also did not stop even after the said payment, for the sake of a luxury car as an

additional item of dowry. Respondent No.2-Smt. Renu Ahlawat's further case is that on 10th December, 2006 she was forced into a car by the appellants who then abandoned her at a deserted place on a lonely road near Sihi village at around 8 p.m. and threatened to kill her if she returned to her matrimonial home. When Jitendar Singh and Brijvir Singh two villagers saw respondent No.2-Renu Ahlawat weeping by the side of the road, besides the car they tried to confront the appellants whereupon appellant No.3-Naveen is alleged to have pulled out a revolver and threatened to shoot them.

4. A complaint about the incident was lodged on 13th December, 2006, by respondent No.2-Renu Ahlawat with SSP, Bulandshahar in which she gave details regarding her marriage with the appellant No.3-Naveen Ahlawat and the mental and physical harassment faced by her at their hands as also repeated demands for dowry. She also accused her sisters-in-law, Neena and Meghna for indulging in such harassment along with the appellants.

5. The jurisdictional police started investigation into the incident, in the course whereof complainant-Smt. Renu Ahlawat came to know about her husband-Naveen Ahlawat having obtained an ex parte decree for divorce against her. A copy of the said judgment and decree was collected by Smt. Renu Ahlawat on 28th November, 2006 and steps taken to have the same set aside. The decree was eventually set aside by the Court concerned.

6. The police, in the meantime, filed a closure report to which Renu Ahlawat filed a protest petition. It was on the basis of the protest petition that Judicial Magistrate, Bulandshahar, took cognizance of an offence punishable under Section 498-A of the I.P.C. against the appellants as also against Neena and Meghna sisters-in-law of the complainant. By an order dated 13th February, 2009 Neena and Meghna were discharged by the High Court of Allahabad on the ground that no specific allegations were made against them. The appellants then filed an application for discharge under Section 239 of the Code of Civil Procedure, 1973 before learned Additional Chief Judicial Magistrate, Bulandshahar in which they alleged that the accusations of dowry harassment levelled against them were false and so was the incident alleged to have taken place on 10th December, 2006 on which date both appellants No.1 and his son appellant No.3 claimed to be otherwise engaged which according to them belied Renu Ahlawat's story of their having abandoned her on a deserted road as alleged by her. The application for discharge was, however, dismissed by the Court by order dated 9th March, 2010 holding that the grounds urged for discharge could be considered only after evidence was adduced in the case and that appellant No.2 could not be discharged on the basis of minor contradictions in the depositions recorded in the course of the investigation.

7. Aggrieved by the order passed by the Trial Court the appellants preferred Criminal Revision No.1241 of 2010 which was dismissed by the High Court on the ground that the same did not make out a case for quashing of the proceedings against the appellants. The present appeal assails the correctness of the said order of dismissal.

8. On behalf of the appellant it was argued on the authority of the decisions of this Court in Preeti Gupta and Anr. v. State of Jharkhand & Anr. (2010) 7 SCC 667, Union of India v. Prafulla Kumar Samal and Anr. (1979) 3 SCC 4, Sajjan Kumar v. Central Bureau of Investigation (2010) 9 SCC 368,

State of Orissa v. Debendra Nath Pandhi (2005) 1 SCC 568, Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. (2008) 2 SCC 561, Shakson Belthissor v. State of Kerala and Anr. (2009) 14 SCC 466, and Rumi Dhar (Smt.) v. State of West Bengal and Anr. (2009) 6 SCC 364, that while considering an application for discharge the Court can examine the evidence on record and discharge the accused persons if there is no possibility of the accused being found guilty on the basis of such evidence specially in cases where the accused produces unimpeachable evidence in support of his defence. It was also contended that while examining whether the Court should or should not discharge the accused, it must be remembered, that Section 498-A of the IPC is a much abused provision and that exaggerated versions of small incidents are often presented to falsely implicate, harass and humiliate the husband and his relatives. Applying the principles set out in the above decisions the appellants were, according to Ms. Geeta Luthra, learned counsel appearing for them, entitled to a discharge not only because there was an inordinate delay in the filing of the complaint by respondent No.1 but also because the statements made under Section 161 Cr.P.C. by the witnesses who were either planted or merely chance witnesses were contradictory in nature. It was argued that two Investigating Officers having investigated the matter and found the allegations to be false, there was no reason for the Court to believe the story set up by the wife who had suffered a decree for divorce in regard to which she had written to the Army Authorities a letter dated 2nd October, 2006 stating that she was not pursuing the matter in any Court. Appellant No.3-Naveen Ahlawat having got re-married on 30th October, 2006 the incident referred in the complaint was a fabrication which aspect the Courts below had failed to consider thus failing to protect the appellants against harassment and the ignominy of a criminal trial.

9. On behalf of respondent No.2, it was per contra argued that her husband had filed a divorce petition against her in the Family Court, Meerut showing respondent No.2 to be residing with her parents at 327, Prabhat Nagar, Meerut, whereas she was actually residing with the appellants along with her daughter at No. 9, Tigris Road, Delhi Cantt, Delhi. It was further argued that appellant No.3 had obtained an ex parte decree order of divorce by fraudulent means and by forging signatures of respondent No.2, acknowledging receipt of the notice which she had never received from the concerned Court. This was conclusively established by the fact that the ex parte decree dated 31st May, 2006 had been eventually set aside by the Court in terms of order dated 28th July, 2007. Allegations regarding physical torture of respondent No.2 and her being abandoned on the road on the date of incident in question as also the allegation about dowry harassment were factually correct and made out a clear case for prosecuting the appellants. Appellant No.3 had, according to the counsel for the respondent, married one Aditi on 30th October, 2006. It was also argued that letter referred to by appellant No.3 as also letter dated 2nd November, 2006 allegedly written by respondent No.2 were forgeries committed by the appellants. The trial Court was, in the light of the available material, justified in refusing to discharge the accused persons and that the grounds for discharge set up by the appellants could be examined only after the case had gone through full-fledged trial. Reliance was placed upon a decision of this Court in Union of India v. Prafulla Kumar Samala and Anr. (1979) 3 SCC 5.

10. The case at hand being a warrant case is governed by Section 239 of the Cr.P.C. for purposes of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:

> "239. When accused shall be discharged.
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> If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. (2008) 2 SCC 561. That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the I.P.C. was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C, holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

> "11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence." (emphasis supplied)

12. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L. Muniswamy 1977 Cri.LJ 1125, State of Maharashtra & Ors. v. Som Nath Thapa and Ors. 1996 Cri.LJ 2448 and State of M.P. v. Mohanlal Soni 2000 Cri.LJ 3504. In Som Nath's case (supra) the legal position was summed up as under:

> "if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage." (emphasis supplied)

13. So also in Mohanlal's case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in Mohanlal's case (supra) is in this regard apposite:

> "8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

14. In State of Orissa v. Debendra Nath Pandhi (2005) 1 SCC 568, this Court was considering whether the trial Court can at the time of framing of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words:

> "18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced...Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression

> 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police...
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> 23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material..." (emphasis supplied)

15. Even in Smt. Rumi Dhar v. State of West Bengal & Anr. (2009) 6 SCC 364, reliance whereupon was placed by counsel for the appellants the tests to be applied at the stage of discharge of the accused person under Section 239 of the Cr.P.C., were found to be no different. Far from readily encouraging discharge, the Court held that even a strong suspicion in regard to the commission of the offence would be sufficient to justify framing of charges. The Court observed:

> "...While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law...
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> 16. To the same effect is the decision of this Court in Union of India v.

Prafulla Kumar Samal and Anr. v. (1979) 3 SCC 4, where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under:

> "10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:
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> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence

> produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-

piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

17. Coming then to the case at hand, the allegations made against the appellants are specific not only against the husband but also against the parents-in-law of the complainant-wife. Whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. This may at times put an innocent party, falsely accused of commission of an offence to avoidable harassment but so long as the legal requirement and the settled principles do not permit a discharge the Court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the Court will not be able to speculate whether the allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge. Two of the appellants in this case happen to be parents-in-law of the complainant who are senior citizens. Appellant No.1 who happens to be the father-in-law of the complainant-wife has been a Major General, by all means, a respectable position in the Army. But the nature of the allegations made against the couple and those against the husband, appear to be much too specific to be ignored at least at the stage of framing of charges. The Courts below, therefore, did not commit any mistake in refusing a discharge.

18. In the result, this appeal fails and is hereby dismissed. Keeping, however, in view the facts and circumstances of the case, we direct that appellant Nos. 1 and 2 shall stand exempted from personal appearance before the trial Court except when the trial Court considers it necessary to direct their presence. The said appellants shall, however, make sure that they are duly represented by a counsel on all dates of hearing and that they cooperate with the progress of the case failing which the trial Court shall be free to direct their personal appearance. No costs.

.....J. (T.S. THAKUR) .....J. (FAKKIR MOHAMED IBRAHIM KALIFULLA) New Delhi November 9, 2012