

Mrs. Dhanalakshmi vs R. Prasanna Kumar And Ors on 15 November, 1989

Equivalent citations: 1990 AIR 494, 1989 SCR SUPL. (2) 165, AIR 1990 SUPREME COURT 494, 1990 (1) UJ (SC) 129, 1989 ALL WC 1447, 1991 SCC(CRI) 142, 1990 (2) CURCRIJ 53, 1990 CRIAPPR(SC) 32, 1990 SCC(SUPP) 686, (1990) 1 DMC 36, (1990) 11 RECCRIR 173, (1990) 1 CRIMES 26, (1991) 1 GUJ LH 118, (1990) 1 HINDULR 272, (1990) MAH LJ 32, (1990) MATLR 1074, (1990) 2 CRILC 155, (1990) ALLCRIR 11

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, E.S. Venkataramiah, K.N. Singh

PETITIONER:

MRS. DHANALAKSHMI

Vs.

RESPONDENT:

R. PRASANNA KUMAR AND ORS.

DATE OF JUDGMENT 15/11/1989

BENCH:

FATHIMA BEEVI, M. (J)

BENCH:

FATHIMA BEEVI, M. (J)

VENKATARAMIAH, E.S. (CJ)

SINGH, K.N. (J)

CITATION:

1990 AIR 494	1989 SCR Supl. (2) 165
1990 SCC Supl. 686	JT 1989 (4) 318
1989 SCALE (2) 1128	

ACT:

Code of Criminal Procedure, 1973: S. 482--Proceedings instituted on complaint--Quashing of--Jurisdiction of High Court--No meticulous analysis of case necessary--Complaint to be read as a whole.

HEADNOTE:

The criminal complaint instituted by the appellant was taken cognizance of by the Magistrate for offences under ss.

494, 496, 498-A, 112, 114, 120, 120-B and 34 IPC. It was alleged that the first respondent had married the second respondent while the proceedings for decree of divorce were still pending, and that the marriage was performed secretly in the presence of respondent Nos. 3 to 6. The High Court, however, on the application of the first respondent quashed the proceedings before the Magistrate.

Allowing the appeal by special leave,

HELD: The High Court was in error in assessing the material before it and concluding that the complaint cannot be proceeded with. [167C-D]

In proceedings instituted on complaint exercise of the inherent power under s. 482 of the Code of Criminal Procedure by the High Court to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. It is not necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. [166G; 167A]

In the instant case, there were specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It was for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint was frivolous there was no jurisdiction for the High Court to interfere. [167D-E]

Sharda Prasad Sinha v. State of Bihar, [1977] 2 SCR 357; Trilok

166

Singh & Ors. v. Satya Deo Tripathi, AIR 1979 SC 850 and Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala
JUDGMENT:

& CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 672 of 1989.

From the Judgment and Order dated 16.2.1988 of the Madras High Court in Crl. Misc. Petition No. 12389 of 1987. R. Mohan and R.A. Perumal for the Appellant. R.K. Jain, Mrs. Aruna Mathur and A. Mariarputham for the Respondents.

The Judgment of the Court was delivered by M. FATHIMA BEEVI, J. Special Leave granted. The appellant married the first respondent on 29.4. 1979. They lived together until 1982 and have two children. They separated and the legal battle commenced in 1983. The first respondent moved the City Civil Court for divorce. The appellant instituted criminal complaint in the court of the Metropolitan Magistrate. The complaint was taken cognizance of for offences under Sections 494, 496, 498-A, 112, 114, 120, 120-B and 34 IPC against the respondents. It was alleged that the first respondent married the second respondent while the proceedings for decree of divorce were still pending, the marriage was performed secretly in the presence of respondent Nos. 3 to 6. On the application of the first respondent the High Court by the impugned order quashed the proceedings before the Metropolitan Magistrate. Hence the appeal.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. in that event there would be no justification for interference by the High Court.

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, [1977] 2 SCR 357; *Trilok Singh and Others v. Satya Deo Tripathi*, [1980] 86 CRL. LJ 882--AIR 1979 SC 850 and *Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala and Others*, [1983] 1 SCR 895 proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere. We, therefore, allow the appeal, set aside the impugned order and direct that the proceedings before the Magistrate shall be restored and disposed of in accordance with the law.

P.S.S.

Appeal allowed.