

Dr. S.M Mansoori (Dead) Thr L.R vs Surekha Parmar on 12 April, 2023

Author: Abhay S. Oka

Bench: Abhay S. Oka, Rajesh Bindal

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1088 OF 2023
(Arising out of S.L.P. (CrI.) No.4517 of 2019)

DR. S.M. MANSOORI (DEAD) THR. L.R.

...APPELLANT

versus

SUREKHA PARMAR & ORS.

...RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the private respondents as well as for the State.

FACTUAL ASPECTS

2. The appellant filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') in the Court of the learned Judicial Magistrate (First Class) at Anuppur. Cognizance of the offences punishable under Sections 147, 323, 342, 504 and 506□B Criminal Appeal @ S.L.P.(CrI.) No.4517 of 2019 of the Indian Penal Code, 1860 (for short, 'IPC') was taken by the learned Judicial Magistrate on the basis of the complaint.

3. The original appellant was the complainant. The appellant (1.1) – Dr. Mushtaq Mansoori is the son of the original appellant. Dr. Mushtaq was married to one Mehjabi Anjum. On the basis of a complaint filed by Mehjabi on 18th January 2000, a First Information Report (F.I.R.) was registered by Mahila Police Station, Jabalpur against the appellant and their family members for the offences punishable under Section 498□A, and Section 506 read with Section 34 of IPC as well as Section 3 read with Section 4 of the Dowry Prohibition Act, 1964.

4. The allegation in the complaint filed by the original appellant is that on 6th July 2000, the first respondent – Smt. Surekha Parmar, the then Asst. Sub-Inspector (ASI) of the Mahila Police Station, Jabalpur along with other police personnel shown as accused in the complaint came to Anuppur to arrest the appellant and his family members. It is pointed out that the appellant and his family members were staying within the jurisdiction of Anuppur Police Station. The first respondent entered the jurisdiction of another Police Station to arrest the appellant and his family members.

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5. The case made out in the complaint is that on 7 th July 2000 at about 05:30 a.m., the first respondent and other police personnel entered the house of the appellant in Anuppur. The first respondent along with others started abusing and beating the original appellant with kicks and fists. He was dragged out of his room by holding his hair. The first respondent and other police personnel assaulted the appellant (1.1) with kicks, fists and dandas. It is alleged that due to the injuries sustained by him, the appellant (1.1) fell down. At that time, the first respondent snatched a gold chain weighing about one and a half tolas worn by the appellant (1.1). The other police personnel dragged the younger brother of the appellant (1.1) to the original appellant's room and while doing so, hurled filthy abuses at him. He was assaulted by the other police personnel accompanying the first respondent. Thereafter, by showing a pistol, the first respondent and co-accused Laxmi took out cash amount of Rs.15,000/- from almirah along with four golden ornaments.

6. A crowd gathered outside the house of the appellant and some of them questioned the authority of the first respondent. At that time, the first respondent threatened the crowd and the persons who were challenging her authority. Thereafter, the original appellant and other Criminal Appeal @ S.L.P.(Crl.) No.4517 of 2019 members of his family were handcuffed and made to walk up to the Police Station at Anuppur where they were detained. After some local residents arrived at the Police Station to enquire about the appellant and his family members, the first respondent told them to persuade the appellant to give her Rs.30,000/- failing which, she would torture the arrested persons. Subsequently, the appellant and her family members were taken by the first respondent to Jabalpur and were detained in the lockup of Mahila Police Station.

7. The first respondent and others approached the High Court of Madhya Pradesh by filing a petition under Section 482 of Cr.P.C. for quashing the complaint. On 17th May 2010, the petition was dismissed by the High Court of Madhya Pradesh.

8. The learned Magistrate framed charges against the first respondent for the offences punishable under Sections 147, 323, 504, 506(2) read with Section 34 of IPC. The said order was subjected to a challenge by the first respondent before the Sessions Court by filing a Revision Application, which was dismissed. Being aggrieved by the orders of the learned Magistrate and the learned Sessions Court, the first respondent filed a petition under Section 482 of Cr.P.C. before the High Criminal Appeal @ S.L.P.(Crl.) No.4517 of 2019 Court. By the impugned judgment, the High Court proceeded to quash the charges framed against the first respondent on the ground that a prior sanction under Section 197 of Cr.P.C. was not obtained.

SUBMISSIONS

9. The submission made by the learned counsel appearing for the appellant is that at this stage, the correctness of the accusations in the complaint filed by the appellant cannot be gone into. The learned counsel submitted that going by the allegations made in the complaint, it cannot be said that the impugned actions of the first respondent were taken while acting or purporting to act in discharge of her official duty.

10. The learned counsel representing the first respondent as well as the State submitted that on the basis of the F.I.R. registered at Mahila Police Station at Jabalpur, the first respondent and other police personnel came to Anuppur to arrest the appellant. Therefore, the first respondent visited the house of the appellant in the discharge of her official duty. In any case, it can be said that the first respondent purported to act in the discharge of her duties. Therefore, the High Court has rightly come to the conclusion that the complaint was Criminal Appeal @ S.L.P.(CrI.) No.4517 of 2019 liable to be dismissed on the ground that a sanction under Section 197 of Cr.P.C was required.

11. The learned counsel appearing for the appellant submitted that the first respondent had raised the issue of sanction by filing earlier application under Section 482 of Cr.P.C. before the High Court, which was dismissed on 17th May 2010. He would, therefore, submit that the issue of absence of sanction cannot be agitated now. The learned counsel appearing for the first respondent contended that in the said judgment, the issue of sanction has been expressly kept open.

OUR VIEW

12. We have considered the submissions and perused the judgment dated 17th May 2010 of the High Court on the earlier petition filed by the first respondent under Section 482 of Cr.P.C. In paragraph 7, the High Court held thus:

“7. Apparently, the bar contained in Section 197 of the Code would not be attracted to the aforesaid facts and circumstances of the present case simply because the police officers had exceeded their authority in proceeding to arrest the accused persons at Criminal Appeal @ S.L.P.(CrI.) No.4517 of 2019 Anuppur which was not within the territorial jurisdiction of the Mahila Police Station of Jabalpur. They ought to have contacted the local police; apprised the local police officials of the matter and solicited their assistance in effecting arrest of the accused persons.”

13. In paragraph 11, the High Court held thus:

“11. For these reasons, it is not possible to conclude that the allegations made in the complaint even if taken at their face value and accepted in their entirety, would not constitute any offence against the petitioners. Moreover, the conclusion that Section 197 is a bar to the prosecution of the petitioners police officers would be a premature conclusion.” (emphasis added) Criminal Appeal @ S.L.P.(CrI.) No.4517 of 2019

14. The aforesaid judgment of the High Court has become final. On the basis of material on record, the High Court had held that in the facts of the case, it would be premature to hold that Section 197 of Cr.P.C. is a bar to the prosecution. This observation holds good even today, inasmuch as the evidence has not been adduced in the complaint.

15. Going by the assertions in the complaint filed by the appellant, prima facie, it appears that without any authority, the first respondent, along with other police personnel, entered the house of the appellant early in the morning and committed the offences alleged against them. Looking at the nature of the allegations in the complaint, at this stage, it is impossible to conclude that the acts allegedly done by the first respondent were committed by her while acting or purporting to act in the discharge of her official duty. Therefore, at this stage, we cannot conclude that a sanction under Section 197 of Cr.P.C. was required. In the facts of the case, the final view on this issue can be taken only after the evidence is recorded. Therefore, there was no reason for the High Court to quash the proceedings at this stage on the Criminal Appeal @ S.L.P.(Crl.) No.4517 of 2019 ground that a sanction under Section 197 was mandatory.

16. Accordingly, the impugned judgment is set aside and the order of the learned Trial Court of framing charges is restored. The appeal is, accordingly, allowed. However, we make it clear that the observations and findings recorded in this judgment are for limited purposes of considering a challenge to the order of the High Court. Nothing observed in this judgment shall be construed as any final adjudication on the merits of the pending complaint including the issue of sanction.

.....J. (Abhay S. Oka)J. (Rajesh Bindal) New Delhi;

April 12, 2023.

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