

Rakhi Mishra vs The State Of Bihar on 24 August, 2017

Equivalent citations: AIR 2017 SUPREME COURT 4019, 2017 (16) SCC 772, AIR 2017 SC (CRIMINAL) 1440, 2017 (4) AJR 753, (2017) 4 JLJR 5, 2017 CRILR(SC&MP) 1133, (2017) 68 OCR 631, (2018) 1 DMC 223, (2017) 4 BOMCR(CRI) 181, (2017) 4 ALLCRILR 472, (2017) 4 CRILR(RAJ) 1133, (2017) 4 RECCRIR 52, (2017) 2 ALD(CRL) 859, (2017) 101 ALLCRIC 988, (2017) 3 CRIMES 383, 2017 CRILR(SC MAH GUJ) 1133, 2018 (2) SCC (CRI) 299, (2017) 10 SCALE 337, (2017) 180 ALLINDCAS 175 (SC), (2017) 4 PAT LJR 21, (2017) 3 UC 1961

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Bench: L. Nageswara Rao, S.A.Bobde

Non-Rep

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1499 of 2017
(Arising out of SLP (CrI.) No. 2185 of 2015)

RAKHI MISHRA

.....Appellant(s)

Versus

STATE OF BIHAR & ORS.

....Respondent(s)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

This Appeal is filed against an order dated 22.09.2014 passed by the High Court of Judicature at Patna allowing the application filed under Section 482 Cr. P.C. by Respondents 2 and 4 to 10.

2. A complaint was preferred by the Appellant on 18.07.2013 to the SHO, Police Station Bihiya, District Bhojpur, Bihar which was registered as FIR No.140 of 2013 dated 18.07.2013 under Section 498 A, 323, 354 A (1), 354 B read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961. It was stated in the said complaint that the Appellant was married to Santosh Kumar Tiwari son of Shivdhyani Tiwari on Date: 2017.08.24 16:47:40 IST Reason:

18.02.2012. She complained of ill-treatment at the hands of her husband and the other members of his family. She mentioned about the demand of a car. She further stated in the complaint that her father had already given a dowry of Rs.4 lakhs besides gifts like motor-cycle, T.V. fridge, cooler, washing machine, sofa, bed, almirah, five suit cases, one big box and gold ornaments in which necklace, chain, 6 pieces bangles, ear rings, jhumka, tops, ring and silver ornaments in which two payals, bichiyas and other things, the price of which was around Rs.5 lakhs.

3. The Appellant's husband was working in the Air Force and he was threatening that she would be killed if the demand of additional dowry was not met. She also complained of attempted rape by her father-in-law. Allegations were made by the Appellant in her complaint against ill-treatment by the Respondents. On completion of investigation, a charge-sheet was filed on 11.10.2010 against Santosh Kumar Tiwari. The Investigating Officer did not find any material regarding the involvement of the Respondent Nos.2, 3, 4 and 5. By an order dated 20.01.2014, the Chief Judicial Magistrate, while taking note of the fact that the names of Santosh Kumar Tiwari and Respondent Nos. 6 to 12 were mentioned in column No.11 of the charge-sheet, issued summons to Respondent Nos.2 to 11 along with Santosh Kumar Tiwari. The Chief Judicial Magistrate found that a prima facie case was made out against the Respondents also for their involvement in offences under Sections 498 A/34, 354 A, 354 B of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The Respondents filed an application under Section 482 Cr. P.C. seeking quashing of the proceedings which was allowed by an order dated 22.09.2014 by the High Court, the legality of which is assailed in this appeal.

4. We have heard learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the Appellant alleged cruelty against Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10. This Court in *Sonu Gupta v. Deepak Gupta and Ors.* (2015) 3 SCC 424, 426 held as follows:

“At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.”

5. The order passed by the Trial Court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 Cr. P.C. is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.

6. A perusal of the complaint would disclose a prima facie case against Respondent Nos.2, 4 to 10. The order passed by the Chief Judicial Magistrate by which cognizance was taken ought not to have been interfered with by the High Court.

7. For the aforementioned reasons the Appeal is allowed and the order of the High Court quashing the criminal proceedings against Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10 is set aside. The Respondents are not precluded from availing remedies available to them.

.....J [S.A.BOBDE]J [L. NAGESWARA RAO] New Delhi,
August 24, 2017