

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
Cr.M.P. No. 1428 of 2013

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Binod Singh @ Binod Kr. Singh, S/o Sri Subh Karan Singh, R/o Hesal,  
P.O. Hehal, P. S. Sukhdeo Nagar, District Ranchi

... .. Petitioner

Versus

1. The State of Jharkhand  
2. Shushma Devi, W/o Binod Singh R/o Radha Nagar, Pandra P.O.  
Hehal P. S. Sukhdeo Nagar, Dist - Ranchi

... .. Opp. Parties

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**CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**

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For the Petitioner : Mr. Manoj Tandon, Advocate  
For the O. P. No. 2 : Mrs. Shushma Devi, (In person)

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**C.A.V. on 18.12.2014**

**Pronounced on 20.04.2016**

In this application the petitioner has prayed for quashing of the order dated 18.01.2013 passed by Sri S. N. Bara learned Judicial Magistrate, Ranchi in connection with Kotwali (S.N.) P. S. Case No. 336 of 2006 whereby and whereunder the discharge application filed by the petitioner under Section 239 of the Cr.P.C. has been dismissed. A further prayer has been made challenging the order dated 05.04.2013 passed by the learned Judicial Commissioner, Ranchi in Criminal Revision No. 21 of 2013 whereby and whereunder the revision application has been dismissed and the order dated 18.01.2013 has been affirmed.

A First Information Report was instituted by the informant in which it was alleged that her marriage was solemnized on 20.10.2003 with the petitioner and thereafter on account of demand of dowry the petitioner and his family members started torture upon the informant. It has further been alleged that the previous husband of the informant had died in Kashmir and she had been paid an amount of Rs. 10,00,000/- which amount the petitioner wanted. It has also been alleged that the informant had given Hero Honda motorcycle, Rs. 2.5 lacks in cash and money for construction of the boundary wall.

Based on the aforesaid allegation Kotawali (S. N.) P. S. Case No. 336 of 2006 was instituted for the offences punishable under Section

498A of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act.

After investigation charge-sheet was submitted under Section 498A and 494 of the Indian Penal Code pursuant to which cognizance was taken under the said Sections and the petitioner was summoned to face trial. The order taking cognizance dated 27.06.2007 was challenged by the petitioner in Cr.M.P. No. 1831 of 2007 on the ground that prior to the institution of Kotwali (S.N.) P. S. Case No. 336 of 2006 on the same set of facts another case was instituted by the informant being Kotwali (S.N.) P. S. Case No. 209 of 2004. This Court vide order dated 16.07.2012 had quashed that part of the order taking cognizance dated 27.06.2007 by which cognizance was taken under Section 498A of the Indian Penal Code. However, this Court refused to interfere with the cognizance which was taken under Section 494 of the Indian Penal Code as the earlier case was only instituted for the offence punishable under Section 498A of the Indian Penal Code. The petitioner preferred an application for discharge under Section 239 of the Cr.P.C. which was rejected by the learned Judicial Magistrate, Ranchi on 18.01.2013. The revision application preferred against the order dated 18.01.2013 was also dismissed vide order dated 05.04.2013.

Heard Mr. Manoj Tandon, learned counsel appearing for the petitioner and Mrs. Shushma Devi, who appears in person.

It has been submitted by the learned counsel for the petitioner that neither of the court below considered the discharge application filed by the petitioner in view of the order which was passed by this Court in Cr.M.P. No. 1831 of 2007. Learned counsel submits that this Court had refused to interfere in order taking cognizance so far as the Section 494 of the Indian Penal Code is concerned, as there was no allegation with respect to constituting an offence under Section 494 of the Indian Penal Code in the earlier case instituted. It has further been submitted that save and except a bald statement made by the informant, there is no other materials which had appeared in course of investigation to suggest that the petitioner had married for the second time during the life time of his first wife. Learned counsel has

submitted that the supervision note cannot be considered to be an evidence and in such circumstance both the learned courts below committed an error of law by not discharging the petitioner for the offence punishable under Section 494 of the Indian Penal Code and therefore, this application is fit to be allowed.

Mrs. Shushma Devi, who is informant in the present case had appeared in person and had submitted that the petitioner had solemnized second marriage which would be evident from the various documents which has been brought on record in the supplementary affidavit filed. It has also been submitted that the petitioner had solemnized marriage with one Sweta Singh and she has also given birth to two children. The informant has also submitted that her marriage with the petitioner was solemnized at Kolkata on 20.10.2003 and out of the said wedlock a male child was also born. It has been submitted that the petitioner was earlier married with one Bishwanath Singh who was employed in the Border Security Force and had become a martyr while he was posted at Kashmir. It has been submitted that the money she received on account of death of her first husband was extorted from the informant by the petitioner and his family members. The informant further submits that on account of her solemnizing marriage with the petitioner the pension she was receiving was reduced by 50%. It has been concluded that neither of the courts committed an error of law in refusing to discharge the petitioner from the allegation levelled against him under Section 494 of the Indian Penal Code and in such circumstance, therefore, the present application is liable to be dismissed.

The order of the learned Judicial Magistrate, Ranchi dated 18.01.2013 reflects that while rejecting the discharge application filed by the petitioner under Section 239 of the Cr.P.C. the same seems to have been influenced by the order dated 16.07.2012 passed in Cr.M.P. No. 1831 of 2007. The question of existence of an offence under Section 498A of the Indian penal Code or not was only decided by this Court in Cr.M.P. No. 1831 of 2007 since in the earlier First Information Report instituted by the informant allegation of committing of an offence

under Section 494 of the Indian Penal Code was not in existence. The petitioner had subsequently preferred an application for discharge under Section 239 of the Cr.P.C. and it was incumbent upon the learned Magistrate to decide the application so filed without being influenced by the order passed in Cr.M.P. No. 1831 of 2007. Learned Judicial Commissioner, Ranchi while affirming the order of the learned Magistrate has also not properly appreciated or discussed the contention of the petitioner with respect to submission of charge sheet under Section 494 of the Indian Penal Code based only on the supervision note. It further appears that the revisional court was also influenced by the order passed in Cr.M.P. No. 1831 of 2007 as it has been held therein that the position which was in existence at the time of deciding the application under section 482 of the Cr.P.C. and the filing of the discharge petition remains the same.

In the proceeding before this Court under Section 482 of the Cr.P.C. the inherent jurisdiction of the court is to prevent miscarriage of justice. It is abundantly clear that this Court had only considered the fact as to whether an offence under Section 498A of the Indian Penal Code is made out against the petitioner or not since the basic contention of the petitioner was that two criminal cases cannot be permitted to proceed if the same are based on same set of facts. In the context of Section 494 of the Indian Penal Code it was held in Cr.M.P. No. 1831 of 2007 as follows:-

*"However, so far that part of the order under which cognizance of the offence has been taken under Section 494 of the Indian Penal Code that never appears to be illegal as the police having investigated the matter did find the case as that of Section 494 whereas the case which has been lodged in the year 2004 had never been registered under section 494 of the Indian Penal Code. Therefore, it cannot be said that said offence was also the subject matter of earlier F.I.R."*

In such circumstances enumerated above, it would thus appear that the learned courts below had misinterpreted the order dated 16.07.2012 passed in Cr.M.P. No. 1831 of 2007 and in such fact situation none of the orders impugned are tenable in the eye of law.

Accordingly, in view of what has been discussed above, this application is allowed and the impugned order dated 18.01.2013 passed by the learned Judicial Magistrate, Ranchi in Kotawali (S.N.) P. S. case No. 336 of 2006 as also order dated 05.04.2013 passed by the learned Judicial Commissioner, Ranchi in criminal Revision No. 21 of 2013 are set aside and the matter is remitted back to the learned Judicial Magistrate, Ranchi to pass a fresh order in accordance with law on the application filed by the petitioner under Section 239 Cr.P.C.

This application is allowed and disposed of.

(R. Mukhopadhyay, J.)