

Equivalent citations: 1988 (1) WLN 510

Bench: N Kasliwal

J. Om Prakash vs State Of Rajasthan on 23/2/1988

## JUDGMENT

N.M. Kasliwal, J.

1. The petitioner by this petition under Section 482, Cr. PC, has sought to quash the proceedings in Criminal Case No. 7/1987 pending in the Court of judicial Magistrate No. 4, Jaipur, against him.

2. Brief facts of the case are that one Madhusudan was married to Mst. Manju D/o Peshori Lal Babbar in October, 1983. On December 15, 1985, Mst. Manju died by burning. Madhusudan reported the matter to Adarash Nagar Police Station, Jaipur. On this information, Adarsh Nagar Police Station registered the case and started investigation. During the investigation, the statements of the parents of Mst. Manju were also recorded. The parents made statements that they did not suspect any foul play. The police submitted a report that the case was of suicide. Subsequently, at the instance of father of Mst. Manju, the case was referred to CID, Jaipur for further investigation. The case was registered as FIR No. 98/1986 under Sections 306 & 498A, IPC. While the case was being investigated by the CID, a private complaint was filed by the father of Mst. Manju against Madhusudan and other under Sections 302, 306, 498A & 120B IPC in the court of Judicial Magistrate No. 13, Jaipur City, Jaipur. The case was then transferred to the court of Judicial Magistrate No. 4, Jaipur City. The learned Magistrate by order dated November 15, 1987 took cognizance of the offences under Section 302/498A/120B IPC against the petitioner and four other accused persons and issued non bailable warrants. The petitioner J. Om Prakash, one of the accused persons, has filed petition for quashing the proceedings against him.

3. The case of the petitioner is that he has been impleaded as one of the accused persons, wrongfully, maliciously and illegally by suppressing material facts. The case of the petitioner he is that is carrying on business of producing cinematograph films in Bombay since 1959. As producer and director of cinematograph films the petitioner has earned a good name and fame in the film trade in particular and in general. The petitioner has further alleged that Shri Peshori Lal father of Mst. Manju had issued a letter dated December 26, 1985, to various parties and authorities in which he made defamatory statements against the petitioner in connection with the death of Mst Manju. In order to connect the petitioner with the death of Mst. Manju, Peshori Lal made false, incorrect, and vexatious statements that Mst. Manju resided in the company of 5 persons including the petitioner. This circular letter was published widely with a view to defame the petitioner. Shri Peshori Lal also gave an interview to a journalist, which appeared in an issue dated February 1, 1986 of the paper 'DINMAN'. According to the petitioner, the statement appearing in the said article was per se defamatory of the petitioner. The petitioner, therefore, filed a criminal case against Peshori Lal and the journalist under Section 500 read with Section 34 IPC in the Court of Additional Metropolitan Magistrate (Esplanade) Court on or about February 20, 1986. Before filing the said complaint the petitioner also served a notice dated February 5, 1986 on Peshori Lal. Peshori Lal sent a reply of the aforesaid notice through his advocate. According to the petitioner, neither the circular letter dated December 26, 1985, nor the reply sent by Peshori Lal established any acts leading to the establishment of any conspiracy which would have remotely involved the petitioner with the death of Manju.

4. It has been further alleged that Peshori Lal filed a transfer application on September 17, 1986 in the Supreme Court for transferring the criminal case lodged by the petitioner from the Court of Bombay to the Court of Delhi. The said transfer application came to be dismissed by the Supreme Court. In the transfer application Peshori Lal had clearly stated that his daughter resided with her husband and father-in-law at Jaipur. It was no where stated that the petitioner ever stayed in Jaipur. In one of the paragraphs in the transfer

application it was stated as under:

Further facts relating to the case are that the murder of Manju, the daughter of the Non-petitioner No. 2, married the petitioner No. 1 living in the family of the petitioners Nos. 2 & 3 at Jaipur and it took place on the night of December 14, 1985 when at the time Shri J. Om Prakash was staying in Hotel Ashoka New Delhi.

The reference to the petitioners Nos. 2 & 3 are of Shri Chaman Lal Soorma and Madhusudan Soorma father-in-law and husband of deceased Manju. It has been submitted by the petitioner that in the said transfer application there was no mention of any overt act of conspiracy attributed to or alleged against the petitioner in connection with the death of Manju. On the contrary, in the said transfer application Shri Peshori Lal in turn stated that the offence of murder if, any, has been committed by the non-petitioner Nos. 2 & 3 and not by the petitioner. The exact words used by Peshori Lal in the transfer applications read as under:

There has been thus a consistent fear in the mind of the petitioner who had already lost young daughter Manju of about 2 years of age in the prime of her life in this shock of death committed on account of murder by respondents Nos. 2 & 3 was undesirable.

The petitioner has further alleged that Peshori Lal was aware that the name of the petitioner did not figure in the investigation carried out by the CID, Crime Branch. Thus, getting frustrated with the result of investigation Shri Peshori Lal filed a false complaint involving the petitioner falsely and in abuse of the process of the court. Even perusal of the complainant's story by Peshori Lal would show that the petitioner has been implicated and involved in the matter maliciously and with dishonest ulterior motives. The main allegation contained in the complaint against the petitioner has been summarised as under:

That on 29-9-1985 the complainant celebrated the marriage of his last daughter and invited his daughter Manju. At that time she even told that the accused No. 5 has come to Jaipur many times and he also harassed her along with the other accused. Accused No. 5 told the other accused that this girl is not worthy of your family because she has no child and, therefore, it is better to get rid of this girl and marry accused No. 1 to some other girl. Hearing these things the complainant and his wife became very panicky and worried and gave Manju F.D. Receipt of Rs 5,000/- in her name.

(b) That on 15-12-1985 at about 9.15 a.m. in the morning a telephone call came from Jaipur informing that Manju was seriously ill and that she has been admitted to hospital. After a little while accused No. 5 who was staying at Delhi telephoned me and told me that Manju was dead.

It has been submitted by the learned Counsel for the petitioner that even the above allegations do not constitute any offence against the petitioner under Sections 302, 306, 498A & 120B, IPC. It has been submitted that the petitioner, has been implicated with an ulterior motive to bring undue pressure upon him so that he may withdraw the criminal complaint of defamation pending in the court of Metropolitan Magistrate, Bombay. It has been submitted that even if the material placed on record is taken at its face value, un rebutted and unpeached even then no case is made out for taking cognizance and issuing process against the petitioner. It has been further argued that there is no legally admissible evidence against the petitioner placed on record and the witnesses have merely narrated the incident on the basis of hear-say. It was also argued that the whole case against the petitioner gets demolished in view of the stand taken by Peshori Lal before the Supreme Court where in it was categorically asserted that on December 14, 1985 the petitioner was staying in Hotel Ashoka, New Delhi. It was also submitted that merely because the petitioner was brother-in-law (gainer side) of Chaman Lal Soorma (father-in-law of Manju) he has been falsely implicated as he was influential person. The petitioner is living at Bombay and engaged in the production and direction of film and was not even present at Jaipur in the fateful night and there is no iota of evidence worth the name to involve the petitioner in any conspiracy of the death of Mst. Manju.

5. It was also argued by the learned Counsel for the petitioner that in the statements of Peshori Lal and Smt. Sheela (mother of Mst. Manju) recorded on December 16, 1985 they clearly stated that they did not suspect any foul play in the death of Manju. In the statement recorded on December 16, 1985, Peshori Lal clearly stated that they had no difference or quarrels or any misunderstanding with the in-laws of Manju, on any account what so ever and never their daughter Manju complained about her-in laws. He further stated that on December 15, 1985 in the morning at about 9.30 he received an information on telephone that Manju was not well and that she had been admitted in the hospital and he was asked to come down immediately. He sent his wife Sheela Devi by bus to Jaipur and he along with other relations reached Jaipur in the night and on reaching at Manju's in laws they came to know that Manju has burnt herself to death. Peshori Lal further stated that there had never been any talk about dowry between them and Manju's in-laws. Manju also never complained about the dowry to them. It was further submitted that not a single neighbouring witness came forward during investigation to show any incriminating circumstance against the accused persons. It was submitted that though a mention was made with regard to the letter of Mst. Manju dated December 6, 1985, giving a vital clue of the confirmed plea of killing of Manju by Soorma family, but no such letter has been produced during investigation or in support of the complaint filed by Peshori Lal. The story regarding such letter is totally baseless and imaginary and has been made out merely in order to prejudice the court. It has been submitted that there is not a single letter of Manju produced on record to show any ill-treatment, torture or demand of any dowry from the side of the accused-persons.

6. It was also argued by the learned Counsel for the petitioner that so far as the petitioner J. Om Prakash is concerned, no allegation what so ever regarding any instigation to Soorma family to commit murder of Mst. Manju was ever stated by Peshori Lal in his first statement recorded by the police on December 16, 1985 or in the complaint made to Hon'ble Minister of State, Transport and Civil Aviation, Government of India dated December 24, 1985 or even in the written complaint sent through Shri K.A. Diwan, Advocate, Delhi to the Station House Office r, Police Station, Adarsh Nagar, Jaipur, on December 26, 1985. It was thus submitted that it was only in the present complaint filed as late as on January 5, 1987 that a new twist has been given to the entire case that Mst. Manju had told that the petitioner had come to Jaipur many times and he also harassed her along with other accused. Mst. Manju also told that the petitioner told the other accused that Mst. Manju was not worthy of their family because she had no child and, therefore, it was better to get rid of this girl and marry Madhusudan with some other girl. It was submitted that no such case was ever set up or stated by Peshori Lal at any stage in his several statements recorded by the police during investigation or even in the written complaints filed by Peshori Lal to various Ministers and higher authorities. It was thus argued that the allegation with regard to any involvement or instigation by the petitioner was made in the private complaint filed by Peshori Lal dated January 5, 1987 merely in order to put pressure on the petitioner to withdraw the criminal complaint for defamation already lodged by the petitioner in the court at Bombay against Peshori Lal. It was thus submitted that when there was no material on record to establish even prima facie case against the petitioner, it would be great harassment and injustice to face the trial.

7. Mr. Shital Das, appearing on behalf of the complainant Peshori Lal, vehemently submitted that this Hon'ble Court should not go into the merits of the case at this stage. It was submitted that the petitioner was not only the brother-in-law of Chaman Lal Soorma, but his elder brother's son has also been married to Sneha Lata another daughter of Peshori Lal. It was submitted that any defence story set up by the petitioner cannot be considered at this stage and there was enough material to take cognizance against the petitioner also. Reliance was also placed on Smt. Nagawwa v. Veeranna Shivalingappa Kanjalgi and Ors. in support of the above contention.

8. It was also argued by Mr. Shital Das that the complaint even though was filed after a long time, but there was no bar of limitation and complaints have been entertained even after a lapse of more than 4 years. Reliance in this regard was placed on Ratansingh v. Kusum and Ors. 1984(1) Crimes 690. It was further argued that it was not necessary to lead any direct evidence for proving any conspiracy of the petitioner in such a heinous crime. It was difficult to lead any direct evidence in order to prove conspiracy which is always shrouded in mystery and it can be gathered from other indirect but connecting circumstances. The petitioner

did not attend the funeral of Manju but informed regarding her death Peshori Lal at Delhi and these circumstances also showed that he was in league and conspiracy with Soorma family in order to commit the murder of Mst. Manju.

9. It was further argued by Mr. Shital Das that it is settled law that the question at this stage is not whether there was any truth in the allegations made, but the question is whether on the basis of allegations cognizable offence has been alleged to have been committed taking all the allegations in the complainant to be true without adducing or subtracting anything. At this stage it cannot be said that no prima facie case for trial had been made out. This Hon'ble Court is not concerned at this stage with the truth or otherwise of the allegations made in the complaint which would only be investigated at the time of the trial. It is further submitted that in the complaint it has been mentioned that the petitioner several times came over to Jaipur from Bombay at the house of other co-accused persons and hatched conspiracy with other co-accused persons for murdering Smt. Manju and getting rid of her. It has been further alleged in the complaint that all the accused used to humiliate and harass Smt. Manju for demand of dowry. It has been further alleged in the complaint that on the fateful day (December 15, 1985) of occurrence of death of Smt. Manju the petitioner was staying at Delhi. Other co-accused persons on telephone intimated that Mst. Manju was seriously ill and was admitted in hospital. The petitioner telephoned that Smt. Manju had expired. Thus from this circumstance also conspiracy is clearly proved for killing Smt. Manju as the petitioner was very well knowing the fact that Mst. Manju was dead. There is also an allegation that all the accused persons including the petitioner used to torture and give beating to deceased Manju for demanding dowry. It was also argued that statements of Smt. Sheela Rani, Peshori Lal and Naresh Babbar have been recorded during inquiry under Section 200 Cr.PC and from the statements of these witnesses a clear prima facie case of conspiracy is established against the petitioner. It has been further argued that the statements of Peshori Lal and other witnesses recorded by the police during investigation at various stages and documents produced during investigation cannot be taken into consideration for taking cognizance on the private complaint now filed by Peshori Lal. It is argued that in Smt. Nagawwa's case (supra) it has been held that at that stage of issuing process, Magistrate is mainly concerned with the allegations made in the complaint of the evidence led in support of the complaint.

10. I have given my careful consideration to the arguments advanced by learned Counsel for the parties and have thoroughly perused the record.

11. There can be no dispute in the proposition of law that at this stage the Court is not concerned whether there was any truth or not in the allegations made and has to only consider whether on the basis of the allegations any cognizable offence has been made out or not. At the same time, if it is found from the admitted facts of the case and the material placed on record that there is no iota of evidence or any person has been involved with ulterior motive in order to harass him or to put undue pressure for some ulterior object then this Court should invoke its inherent powers in protecting such person from the agency and harassment of the trial.

12. In the present case I am only concerned with the allegations against the petitioner and not with regard to other accused-persons. So far as the petitioner is concerned, he is admittedly a permanent resident of Bombay. The petitioner was not in Jaipur on December 14 or 15, 1985, when the unfortunate death of Manju took place. The petitioner is not a member of Soorma family where Smt. Manju was married to Madhusudan. It is no doubt correct that the petitioner is closely related to Soorma family, The petitioner is alleged to be brother-in-law (gainer side) of Chaman Lal father-in-law of Smt. Manju. Another relation of the petitioner is that his elder brother's son has been married to Smt. Sneha Lata elder sister of Mst. Manju. Other admitted facts of the case are that soon after the death of Smt. Manju, Adarsh Nagar, Police Station, Jaipur investigated the matter and in the statements of Shri Peshori Lal and Smt. Sheela Rani recorded on December 16, 1985 no allegation what so ever was made against the petitioner. Not only that it was stated by Peshori Lal and Smt. Sheela Rani that they suspected no foul play in the death of Smt. Manju and there was never any talk about dowry between them and Manju's-in-laws. Even Manju never complained them about any dowry. Peshori Lal thereafter submitted a written complaint on December 24, 1985 to the Hon'ble Minister for State, Transport allegation of any conspiracy was alleged against the petitioner. The only fact which may be relevant in this

regard connecting the petitioner was that the applicant received a telephonic message on December 15, 1985 at 9.20 a.m. from Jaipur that Manju was seriously ill and was admitted in hospital. The applicant tried to confirm the new. At 10.30 a.m. or so there was a telephonic message from Shri J. Om Prakash (petitioner) from Bombay informing that Manju was dead. In the above application the entire allegation was against Shri Madhusudan, his parents Chaman Lal Soorma and Smt. Swarna, his sister Smt. Madhu Kapoor and his friend Shri Ashok. Thereafter, a written complaint by registered post was sent to the Station House Officer, Police Station, Adarsh Nagar, Jaipur on December 26, 1985 through K.A Diwan, Advocate, Delhi. For the first time in this complaint name of the petitioner J. Om Prakash was also added and it was alleged that Shri J. Om Prakash while boarding and lodging in Ashoka Hotel, New Delhi intimidated the complainant for the first time at about 11 a.m. the death of Manju. It was further alleged that all the accused persons in the act of their criminal conspiracy and in furtherance to their common intention to kill Manju and to usurp all the valuables and the dowry items and with further intention of Shri Madhusudan to remarry and to settle him in Bombay and to have more lust of money and to ignore the married wife Manju, a conspiracy was hatched. It is important to note that Peshori Lal also submitted a complaint in writing to Mrs. Kiran Bedi, Deputy Commissioner of Police, Delhi on December 26, 1985 in which J. Om Prakash was also named but the only allegation against him was that at about 11 a.m. on December 15, 1985, Peshori Lal received a telephone call from Shri J. Om Prakash informing him that Smt. Manju was dead. It was understood that Shri J. Om Prakash was staying in room No. 648 in Hotel Ashoka, New Delhi. The other allegations were almost identical with the allegations made in the complaint sent through K. A. Diwan, Advocate. Then there is a letter written by Smt. Snehlata from Jabalpur to her father Shri Peshori Lal on January 27, 1986. The contents of this letter clearly show that the petitioner was falsely implicated in the case. Thereafter, registered notice was given by Dr. C.K Jaisinghani, Advocate, Bombay on behalf of the petitioner J. Om Prakash to Shri Peshori Lal on February 5, 1986 to stop the campaign of vilification against the petitioner and to withdraw the allegations made against him and tender an unqualified apology in that regard. It was further mentioned in the above letter that if no satisfactory reply was received within a period of 7 days, his client (petitioner) will be constrained to take appropriate action in the matter to vindicate his honour reputation and character. On December 16, 1986, a reply was sent of the above notice by Peshori Lal through his Advocate Shri Diwan. During investigation statement of Peshori Lal was again recorded on February 7, 1986 by the Police Inspector and countersigned by Deputy Superintendent, CID (CBI) In this statement Peshori Lal stated that he had signed the statement dated December 16, 1985 to avoid any dispute with Soorma family. That statement was not read to him and he did not know Hindi. He only knows Urdu and English. In any case, no allegation worth the name has been stated against the petitioner of having any conspiracy in the alleged crime. Then again statement of Peshori Lal was recorded on March 12, 1986 and again on August 8, 1986 and in these statements also there is no allegation of any conspiracy of the petitioner It is also admitted fact that the CID police gave a final report in the case holding that it was a case of suicide. The petitioner filed a complaint of defamation against Peshori Lal at Bombay and thereafter the present complaint has been filed by Peshori Lal on January 5, 1987. Thus the entire allegation of conspiracy against the petitioner was introduced much late in the present complaint dated January 5, 1987 which has been lodged after nearly 13 months of the incident and that also after the filing of the complaint for defamation against the complainant Peshori Lal. Admittedly, there is no documentary evidence to connect the petitioner with alleged crime and even in the complaint and in the statements recorded during preliminary inquiry under Sections 200 & 202 Cr.PC there is a general allegation of conspiracy against the petitioner. There is no evidence worth the name of any neighbouring person at Jaipur to show that the petitioner ever came to Jaipur and any connection what so ever with the alleged demand of dowry by Soorma family. Thus, I am clearly of the opinion that in view of the statements given by Peshori Lal from time to time during investigation as well as in the written complaints, to higher authorities till the matter was consulted with Diwan no circumstances or allegation was made even remotely to connect the petitioner in the alleged conspiracy of the murder of Smt. Manju. I do not agree with the contention of the learned Counsel for the complainant that such statements given by Peshori Lal during investigation cannot be considered at all and only allegations made in the complaint and the statements recorded during the inquiry under sections 200 and 202 Cr.PC can only be looked at this stage. It is not only in the initial statement given by Peshori Lal on December 16, 1985, to the police but even in other statements given subsequently to the CID Police no allegations worth the name of any conspiracy of the petitioner has

been stated. That apart, as already mentioned above, the petitioner is living at Bombay, he is not a member of Soorma family, he was not present in Jaipur in the fateful night and the only circumstance conspiracy which was alleged initially was that he informed on telephone from Ashoka Hotel Delhi to Peshori Lal that Smt. Manju was dead. Thus in the face of above circumstances it would be a clear harassment and injustice to face the agony of trial by the petitioner for charges under Section 302/306/498A and 120B, IPC along with the other accused persons. Thus, in my view the learned Magistrate committed a serious error in taking cognizance against the petitioner and the order passed by the learned Judicial Magistrate No. 4, Jaipur City, Jaipur dated Dec. 15, 1987, taking cognizance so far as the petitioner (J. Om Prakash) is concerned, is quashed. It is made clear that none of the observations made in this order effect the trial of the case against the other accused persons.