Rishi Anand & Anr vs Government Of N.C.T. Of Delhi & Ors on 20 March, 2002
Supreme Court of India

Bench: D Mohapatra, P V Reddi

CASE NO.:

Appeal (crl.) 399 of 2002

PETITIONER:

RISHI ANAND & ANR.

Vs.

RESPONDENT:

GOVERNMENT OF N.C.T. OF DELHI & ORS.

DATE OF JUDGMENT: 20/03/2002

BENCH:

D.P. Mohapatra & P. Venkatarama Reddi

JUDGMENT:

P. Venkatarama Reddi, J.

Leave granted and appeal heard.

By the impugned order, the High Court of Delhi rejected the application of the petitioners/appellants for quashing F.I.R. No. 467 of 1998 registered by the Greater Kailash Police Station in respect of the offence under Section 406 IPC. The informant (Respondent No.2) is the brother's wife of the first appellant by name Rishi Anand presently living in Fairfax, USA and she is the daughter-in-law of the second appellant by name Raj Kumar Anand. The other two accused named in the FIR are the husband and mother-in-law of the complainant. The husband is also living in Fairfax, USA. A son was born out of the wed-lock in April 1996. Even before that, it appears the relations between the respondent and the husband & his family members became strained. Unfortunately, the marital life came to an end within 1-1/2 years after the marriage. It appears that a decree of divorce was granted on an application filed by the husband by the

Circuit Court at Fairfax on 10.12.1999. The first respondent lodged a complaint with the Police on 15.1.1997. Although in the first information report, various other offences viz. under Sections 498 A, 323 IPC and Section 4 of Dowry Prohibition Act are mentioned, the FIR was registered for an offence under Section 406 of Indian Penal Code. After investigation, the charge-sheet was filed. Cognizance was taken by the Metropolitan Magistrate, Greater Kailash and process for appearance was issued. Non-bailable warrant has also been issued against the first appellant as he failed to appear before the Court on the specified date. At that stage, petitions were filed under Section 482 Cr.P.C. by the appellants herein for quashing the FIR against them. By a brief order dated 7.12.2000 which is assailed in the present appeal, the High Court observed that certain disputed questions regarding return of the articles of the complainant have to be examined at the trial and there is no ground to quash the FIR at this stage.

It is the contention of the appellant that the FIR does not disclose the offence under Section 406 and even going by the allegations, there is absolutely no material even prima facie to arraign the appellants as accused in the case. As regards the first appellant who is the husband's brother, it is contended that he came to India to attend the wedding of his brother (Accused No.1) and having attended the wedding on 27th January, 1995, he left for USA the same night and he was unnecessarily implicated in the case. On behalf of the second appellant, it is submitted that the first respondent was in India only for five days after the marriage, she took along with her jewellery and other valuable items as seen from the export certificate filed and whatever remaining articles were left at appellant's home were returned. It is contended that ingredients of offence under Section 406 are lacking vis-is the role ascribed to both the appellants.

The High Court observed that the factum of return of articles is under dispute and it can only be examined after trial and that no case has been made out for quashing the FIR. The High Court did not address itself to the crucial question whether the substance of the allegations in the complaint coupled with any other material on record justified the prosecution of the appellants under Section 406 and the Magistrate taking cognisance of the alleged offence. In a recent case S.W. Palanitkar Vs. State of Bihar [JT 2001 (9) SC 151] a Bench of this Court consisting of one of us (D.P. Mohapatra, J.) and Shivaraj V. Patil, J. reminded the High Court of the obligation to intervene under Section 482 Cr.P.C. in cases where manifest error has been committed by the Magistrate in issuing process despite the fact that the alleged acts did not at all constitute the offences (in that case under Sections 406 and 420 IPC). It was observed thus :-

"while exercising power under section 482 of Criminal Procedure Code the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under the

Criminal Procedure Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under section 482 of Criminal Procedure Code should be consistent with the scope and ambit of the same in the light of the decisions afore-mentioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under section 482 of Criminal Procedure Code to quash the very issue of process, the High Court on the facts and

circumstances of a case has to be exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

On a perusal of the complaint, we find no allegations much less of specific nature even to remotely connect the first appellant with the alleged offence under Section 406. It is not the case of the informant that any of her articles were entrusted to him at the time of marriage. There is no dispute that he went back to USA after a brief stay immediately after the marriage. Learned counsel for the first respondent has, however, maintained that this appellant is residing with his brother in Fairfax, USA and he was a privy to the acts of harassment and suffering caused to his client. Our attention has been invited to the following statement in para 8 of the FIR :-

"From January 1996, Accused No.4, in criminal conspiracy with Accused No.1, started

misbehaving with the complainant by abusing her, criminally intimidating, kicking and throwing her belongings and repeatedly demanding car for their use in India, flat and other expensive items in dowry befitting the status of their family in India."

In para 9, it is alleged that the complainant was beaten mercilessly by Accused Nos. 1, 3 and 4 and was insulted and humiliated. These alleged acts which took place beyond the territory of India, even if assumed to be correct, does not make out a case to proceed against the first appellant for an offence under Section 406 IPC. The High Court, in exercise of its jurisdiction under Section 482 Cr.P.C., ought to have quashed the criminal proceedings against the 1st appellant.

As far as the second appellant is concerned, we are not inclined to disturb the order of the High Court and put a stop to the proceedings at this stage. It is stated in para 14 of the FIR that the articles listed in Annexure 'A' belonging to the first respondent are not being returned to her with a dishonest intention. No doubt some documents are being relied upon to establish that the respondent had herself taken her jewellery and other valuable items. But, the truth or otherwise of the respective versions should be gone

into at the trial, as observed by the High Court. Assuming that there was omission in giving certain details about the alleged entrustment of moveable properties of the informant and the dishonest intentions of the appellant, that by itself, in the circumstances of the case, does not afford a valid ground to quash the proceedings against the second appellant also. In making this observation, we shall not however be understood to have expressed any view on merits.

In the result the appeal of the first appellant is allowed and the proceedings against him are quashed. The appeal is dismissed as far as the second appellant is concerned.

..J.

(D.P. Mohapatra)

..J.

(P.Venkatarama Reddi)

March 20, 2002.