

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.7281/2016

Omprakash Pandey & others

Vs.

Smt. Sandhya & others

Ms. Sonali Gupta, learned counsel for the applicants.
Shri Nilesh Dave, learned counsel for respondent No.1.

ORDER

(Passed on this day of April, 2017)

This application is filed under Section 482 of Cr.P.C. and is directed against the order passed by learned Judicial Magistrate First Class, Jawada, District-Ratlam in Criminal Case No.1303/2016 dated 21.06.2016 by which the Magistrate took cognizance against the present applicants under Sections 498-A, 323, 294, 506, 494 of IPC & Section 4 of Prohibition of Dowry Act.

2. According to the relevant facts, applicant Nos.1 and 2 are father of respondent No.2 while respondent No.1 is wife of respondent No.2. Applicant No.3 is sister of applicant No.2 and

daughter of applicant Nos.1 and 2. According to the applicants, respondent No.1 was married to respondent No.2. At the time of marriage, during the first night, it was discovered that she was suffering from some vaginal anatomical defect and due to which the marriage could not be consummated and some dispute arose between the husband and wife. The father of respondent No.1 was informed that he would undertake the necessary treatment given to the respondent No.1 and also would bear the expenses of the treatment. Thereafter, respondent No.2 with respondent No.3 moved to some other house, but dispute arose between the family.

3. Respondent No.1 filed a criminal complaint before the learned Magistrate alleging that respondent No.2 contracted the second marriage with respondent No.5 Renu D/o of Vijay Nath respondent No.4. It is also alleged that the present applicants alongwith respondent No.2 committed cruelty and harassment and demanded additional dowry from the applicants. The Magistrate took cognizance under Sections as aforesaid.

4. Aggrieved by this impugned order, this application is filed for quashment of proceedings arising out of complaint on following grounds (i) that there was a report of the police that no offence was committed by the present applicants still and taking report into consideration, the Magistrate took cognizance of the offence (ii) the Magistrate was under an obligation to call the complete inquiry

report from the concerning police station. Without completing this legal requirement, the cognizance was taken, which was bad in law.

(iii) the fact is that the present applicants were driven out of their house and the respondent No.1 took possession of the house, and therefore, no case is made out against the present applicants (v) an application for divorce is also pending, filed against respondent No.1. There is omnibus allegations against all the family members and no case is made out on the basis of such omnibus allegations.

5. Learned counsel for the respondent submits that applicant should have file a revision before the competent revisional Court. This application is filed under Section 482 of Cr.P.C. though, he fairly admit that this application is maintainable., He submits that under Section 482 of Cr.P.C., the scope is very limited, only aspect to be seen is whether there is any abuse of process of Court and whether any injustice stare in the face. He further submits that the respondent No.1 was already treated in the year 1999 for her ailment. The doctor never said that she was not competent to fulfill her matrimonial obligations. The medical report submitted by the respondent itself do not show any such opinion by the doctor. There was some deformity in her private part, which was duly corrected long ago by surgical corrective procedure.

6. I have gone through all the medical papers submitted by the applicants and the impugned order. The Magistrate expressed that

the father of respondent No.1 was working for police department, and therefore, a negative report was submitted by the police and in this view of the matter, on the basis of statements recorded under Section 200 of Cr.P.C., he proceeded to take cognizance. In my considered opinion, so far as the application under Section 482 of Cr.P.C. is concerned, there appears to be no abuse of process of Court as prescribed procedure was followed by the learned Magistrate. So far as the injustice is concerned, there appears to be serious dispute in this case. There are allegations against respondent No.2 that he contracted the second marriage with respondent No.5 though, the Magistrate did not take any cognizance against respondent No.5. The role of the present applicants being family members of respondent No.2 could not be ruled out at this stage, and therefore, no case is made out for any interference in the impugned order, using powers granted to this Court under Section 482 of Cr.P.C.

Accordingly, in considered opinion of this Court, this application is devoid of any force, liable to be dismissed and dismissed accordingly.

(Alok Verma)
Judge

Ravi