

[2009] 4 S.C.R. 112

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SAMIRA KHANUM

V.

MD. AFSAR TOWHEED AND ANR

Criminal Appeal No. 450 of 2009

MARCH 6, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

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Code of Criminal Procedure, 1973 – s.482 – Complaint u/ss. 498-A and 406 IPC and u/ss. 3 and 4 of Dowry Prohibition Act – Application for quashing the proceedings – Allowed by High Court – On appeal, held : High Court order passed without indicating any basis or reason for exercising jurisdiction under the provision – Matter remitted to High Court for consideration afresh – Penal Code, 1860 – ss. 498-A and 406 – Dowry Prohibition Act, 1961 – ss. 3 and 4.

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Appellant filed a complaint case u/ss. 498-A and 406 IPC and u/ss. 3 and 4 of Dowry Prohibition Act, 1961. Directions were given to summon the respondents. Respondent No.1 filed application u/s 482 Cr.P.C. and the same was allowed. Hence the present appeal.

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Allowing the appeal and remitting the matter to High Court, the Court

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HELD : The High Court has not indicated any basis or reason for exercising jurisdiction u/s. 482 Cr.P.C. The application was disposed of in a casual manner. Therefore, the order of the High Court is clearly indefensible and is, accordingly, set aside.

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State of Haryana and Ors. v. Bhajanlal and Ors. 1992 Supp (1) SCC 335 – referred to.

Case Law Reference

1992 Supp (1) SCC 335 Referred to. Para 4

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SAMIRA KHANUM V. MD. AFSAR TOWHEED AND ANR 113

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal A
No. 450 of 2009

From the Judgement and Order dated 28.08.2006 of the High Court of Judicature at Patna in Criminal Misc. Application No. 32326 of 2005.

Ejaz Maqbool, for the Appellant. B

Altaf Ahmad, T.A. Khan, Gaurav Agrawal, Gopal Singh, Manish Kumar, for the Respondents.

The Judgement of the Court was delivered by C

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the learned Single Judge of the Patna High Court allowing the application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Prayer was made by the respondent no.1 to quash the order dated 30.11.2004 passed by learned Sub-Divisional Judicial Magistrate, Patna, in Complaint Case No.2523(C)/2004, whereby direction was given to issue summons against the respondent no.1 and others for facing trial for alleged commission of offences punishable under Sections 498-A and 406 of the Indian Penal Code, 1860 (in short the 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961(in short 'D.P. Act'). D
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3. The factual position in a nutshell is as follows :

The case of the complainant (O.P. No.2) is that she was married to the respondent no.1 on 24.10.1999 at Patna according to the Muslim Law. The other two accused are his father and mother. After marriage, on the same day she went to her matrimonial house. At the time of marriage several articles, ornaments, cash etc. amounting to Rs.5 lacs were given as gift. The respondent no.1 and his parents were not happy with the same and wanted more dowry. The parents of the respondent H

A no.1, taunted her for insufficient dowry. After 15 days of the marriage, the respondent no.1 went to America where he was doing a job of Software Engineer and in the meantime the complainant on 9.11.1999 returned to her parental house as the parents of the respondent no.1 compelled her to leave the

B matrimonial house by their misbehaviour and cruel attitude. Respondent no.1 thereafter sent a visa to the complainant and the complainant went to America on 18.4.2000. There she found her husband having illicit relationship with an American girl named "Dolly". She seriously objected to this relationship. The

C respondent no.1 told her that in America it was status symbol to have a girl friend and he demoralized her saying that she belongs to an orthodox and backward family. The complainant anyhow stayed there for about a year and returned to India with the respondent no.1 on 19.8.2001. During their stay at Patna her

D parents tried to convince the husband to refrain from such relationship with another for cordial conjugal life. He promised to mend himself. Both of them again went to U.S.A. after staying for five weeks in Patna. During this stay all the accused persons asked the complainant to bring Rs.12 lacs from her parents for

E purchase of a flat in the name of complainant herself. The father of the complainant promised on 19.9.2001 to give Rs.7 lacs provided the flat was purchased in the name of the complainant. Subsequently, her father out of love and affection gave Rs.7 lacs to the parents of the father of the respondent no.1 in various

F installments. Despite this, all the accused were adamant for further Rs.5 lacs and for non-fulfillment of that amount the accused persons brutally assaulted her both mentally and physically.

G It was further alleged that after going to America the respondent no.1 despite his promise tried to re-establish his relationship with the above girl, and on protest by the wife assaulted her. He developed the habit of taking wine and wasting time in clubs and on objection she was subjected to cruelty. As a result of multi-dimensional tension she suffered

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SAMIRA KHANUM V. MD. AFSAR TOWHEED AND ANR 115
 [DR. ARIJIT PASAYAT, J.]

miscarriage on 13.5.2003. She was also not allowed to meet any of her relatives residing in U.S.A. A

The respondent no.1 then on request of the complainant brought her to India. On 30.8.2003, the respondent no.1 after reaching India went to Hyderabad and asked the complainant to go to her parental house at Patna. During this stay he did not come to Patna. So the complainant herself went to Hyderabad and in spite of atrocities on her, she along with the respondent no.1 on 14.9.2003 returned to America where he continued his torture and on 22.3.2004 she was forcibly sent to India and since then she was living in Patna. It is also alleged that when she returned to India the respondent no.1 sent E-mail to her not to return to America without his permission and also directed her to cancel the return ticket. The complainant on 2.7.2004 through E-mail requested the respondent no.1 to reconsider his decision but to no effect and suddenly replied that unless his parents' desire was fulfilled no question of sympathy arises and on 10.9.2004 asked her father to make payment of Rs.5 lacs to his parents by the next month positively and on that date her father talked to the father and mother of the respondent no.1 and showed his inability. B
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It was also alleged in the complaint petition that during his stay in America, the respondent no.1 had pressurized her on several occasions to collect at least 50,000 American dollars from Phuphi and Phupha residing there and on refusal by her the respondent no.1 himself told her Phupha on phone to send 50,000 dollars, otherwise the complainant would be in trouble. F

After filing of the complaint, the complainant was examined on S.A. She also examined witnesses in enquiry under Section 202 of the Code. Learned S.D.J.M. after perusing the complaint petition, the statement of the complainant on S.A. and the statement of the witnesses examined by the complainant, passed the order which was impugned before the High Court. G

Before the High Court it was contended on behalf of the H

A present respondent no.1 that the allegations were false. It was
stated that the respondent had divorced the complainant on
12.9.2004 and, therefore, the case had been filed as a counter
blast with mala fide motive. It was further submitted that the
alleged torture committed by the petitioner before the High Court
B on the complainant in America even if accepted as true, the
same was relatable to the alleged relationship with an American
girl and had nothing to do with the amount of dowry. Certain
other factual aspects were alleged to show that the ingredients
of Section 498A IPC were not made out and there was no
allegation of breach of trust punishable under Section 406 IPC.
C The application filed by the respondent no.1 was disposed of
by the High Court after noticing the rival submissions as follows:

D “Learned counsel for O.P. No.2 defended the order. I find
force in the submission of the learned counsel for the
petitioner and on the reasons mentioned by him I also find
that the alleged demand or receipt of dowry by the petitioner
is false and mala fide on account of divorce of the
complainant by the petitioner and that the alleged torture
by the petitioner was not in connection with unlawful
demand of Rs.15 lacs and was not such as to drag O.P.
E No.2 to commit suicide and that there is no allegation of
breach of trust against the petitioner.

F In the result, this application is allowed. The impugned
order as regards the petitioner is set aside.”

G 4. It is stated by learned counsel for the appellant that the
order is practically non-reasoned and no reason has been
indicated as to why the respondent's prayer was accepted and
that the parameters for exercise of power under Section 482 of
the Code have not been kept in view what has been stated in
State of Haryana and Ors. v. Bhajanlal and Ors. (1992 Supp
(1) SCC 335).

H 5. Learned counsel for the respondent no.1 supported the
order of the High Court.

SAMIRA KHANUM V. MD. AFSAR TOWHEED AND ANR 117
[DR. ARIJIT PASAYAT, J.]

6. We find substance in the plea of the learned counsel for the appellant that the High Court has not indicated any basis or reason for exercising jurisdiction under Section 482 of the Code. The application was disposed of in a casual manner. A

7. Therefore, the order of the High Court is clearly indefensible and is, accordingly, set aside. However, we make it clear that we have expressed no opinion on the merits of the case which are to be adjudicated. The Matter is remitted to the High Court for a fresh consideration. B

8. The appeal is allowed.

K.K.T.

Appeal allowed.