

CASE NO.:
Appeal (crl.) 433 of 2008

PETITIONER:
Gulam Kutbuddin @ Lal Babu @ Gulam Qutubuddin & Ors

RESPONDENT:
State of Jharkhand & Anr

DATE OF JUDGMENT: 03/03/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO.433 OF 2008
[Arising out of S.L.P.(Crl.)4812 of 2007]

Leave granted.

Respondent no.2 herein, viz., Afroozi Begam, who is the wife of appellant no.1, lodged a complaint against the appellants alleging therein that they had subjected her to cruelty and criminal assault due to non-compliance of demand of dowry in the sum of Rs.2,00,000/- . The appellants allegedly had asked her to bring the said amount from her parents.

The Trial Court dismissed the complaint on the ground that there was delay of more than nine months in lodging the complaint and that the allegations were vague and unspecific and the case was filed only to harass the appellants.

Respondent no.2, being aggrieved, filed a Revision Petition before the Sessions Court. In the said petition, the appellants were not made parties. The Addl. Sessions Judge, Fast Track Court, Jamshedpur, accepted the Revision Petition and set aside the order of the Trial Court and the Trial Court was

Crl.A.No.433/08 @ SLP(Crl.)No.4812/07 (Contd.)

- 2 -

directed to proceed further in accordance with the provisions of law against the appellants by issuing processes against them and put them to trial.

Aggrieved against the said order of the Revisional Court, the appellants preferred an application under Section 482, Code of Criminal Procedure for quashing of the proceedings before the Trial Court. The ground taken in the said application was that the Addl. Sessions Judge should have issued notice to the appellants and an opportunity of being heard should have been given to them. The High Court, however, dismissed the said application by the impugned order dated 22nd June 2007.

Learned counsel for the appellants has relied upon a judgment of this Court in the case of P. Sundarrajan & Ors. v. R. Vidhya Sekar (2004) 13 SCC 472 to contend that it was mandatory for the Revisional Court to issue notice to the appellants before allowing the Revision Petition and setting aside the order of the Judicial Magistrate dismissing the complaint.

Learned counsel for the respondents has not been able to controvert the same.

Admittedly, the Revisional Court did not issue notice to the appellants before setting aside the order of the Judicial Magistrate dismissing the complaint. It is also apparent from the record that the appellants were not made parties before the Revisional Court.

Crl.A.No.433/08 @ SLP(Crl.)No.4812/07 (Contd.)

- 3 -

We find force in the submission of the learned counsel for the appellants. In the case of P. Sundarrajan (supra) in similar circumstances, this Court set aside the order of the High Court, which was the revisional court in that case, where the High Court, without issuing notice to the respondent therein, had directed the Magistrate to proceed with the complaint. It was observed in para 5 as under :

"In our opinion, this order of the High Court is ex facie unsustainable in law by not giving opportunity to the appellant herein to defend his case that the learned Judge violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order."

In view of the above observation, this Court accepted the appeal, set aside the impugned judgment and remanded the matter to the High Court to issue proper notice to the accused therein and provide him an opportunity of hearing and pass appropriate orders.

Following the dictum of this Court in the case of P. Sundarrajan (supra), we set aside the impugned order of the High Court as well as that of the Revisional Court and remand the case to the Revisional Court for a fresh decision in accordance with law after affording adequate opportunity to the appellants to defend themselves. Parties, through their counsel, are directed to appear before the Revisional Court on 07th April

Crl.A.No.433/08 @ SLP(Crl.)No.4812/07 (Contd.)

- 4 -

2008. The Revisional Court either on the said date or on a subsequent date(s) to be fixed by it pass appropriate orders in accordance with law. In the meantime, the respondents may file appropriate application for impleading the concerned appellants as parties before the Revisional Court.

The appeal is allowed accordingly.