

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1210 OF 2023

(Arising out of Special Leave Petition (Crl.) No. 8742 of 2018)

RITU TOMAR

...APPELLANT

VERSUS

STATE OF U.P. AND OTHERS

...RESPONDENT(S)

J U D G M E N T

Aravind Kumar, J.

1. Leave granted.
2. The order dated 30.05.2018 passed in Criminal Miscellaneous Writ Petition No.14422 of 2018 by the High Court of Allahabad whereunder the petition filed under Section 482 of the Code of Criminal Procedure (for short ‘the Cr.P.C.’) for quashing of the FIR dated 20.05.2018 registered in Case Crime No.97 of 2018 for the offence punishable under Section 147, 148, 149, 452, 324, 307, 342 and 506 of the Indian Penal Code (for short ‘the IPC’) by third respondent herein

came to be dismissed is challenged. Facts shorn of unnecessary details and required for the purpose of disposal of this appeal are crystallized hereunder:

3. The marriage of appellant's sister Ms. Rekha, daughter of fourth respondent herein with 3rd respondent came to be solemnized on 15.05.2011 as per the prevalent custom and usage which resulted in its consummation and she gave birth to a baby girl who has been since named Tejal.

4. The said Ms. Rekha alleging that she had been thrown out of matrimonial home, sought for maintenance by filing a petition under Section 125 Cr.P.C. which came to be registered as V. No.230 of 2014 and same is pending on the file of Principal Family Judge resulting in an order being passed on 22.07.2017 directing third respondent to pay a sum of Rs.5,000/- per month. She has also lodged an FIR in Crime No.73 of 2017 on 15.03.2017 against third respondent and others for the offences punishable under Section 498A, 406/34 of the IPC read with Sections 3 and 4 of The Dowry Prohibition Act with the Harsh Vihar Police Station, North East Delhi. On the basis of the said FIR registered the jurisdictional police are said to have commenced the investigation.

5. When the aforesaid factual scenario existed, third respondent filed an Application No.41 of 2018 under Section 156(3) of Cr.P.C. alleging that appellant along with Respondent Nos.4 to 7 had forcibly entered his house and with an intention to kill the complainant and his father assaulted them with knife on the head of the applicant when they refused to heed to their demands of shifting to Delhi after selling the village land and house. On the basis of the said complaint made before the Chief Judicial Magistrate-I, Gautam Budh Nagar, a report was called for from 2nd respondent, resulting in a report being submitted on 11.03.2018 opining that accused persons including the appellant never visited the house of the complainant and said incident as alleged by the complainant had not occurred. However, the Learned Magistrate by Order dated 03.05.2018, ordered for registration of FIR and as such FIR in Case Crime No.55 of 2018 for the offences noted hereinabove came to be registered against appellant and others by the second respondent. Hence, a petition for quashing of the said FIR came to be filed and same having been dismissed present appeal has been filed.

6. We have heard the arguments of the learned advocates appearing for the parties and perused the records. On bestowing our careful and

anxious consideration to the contention raised by the appellant before the High Court and reiterated before this Court we notice that undisputedly third respondent who is the husband of the appellant's sister and who had filed an application under Section 156(3) before the Additional Chief Judicial Magistrate-Ist, Gautam Budh Nagar in application No.41 of 2018 has expired during the pendency of the present proceedings. Hence, his name came to be deleted vide Order dated 20.01.2020. None have appeared for respondents 1 and 2.

7. According to the report dated 11.03.2018 filed by the jurisdictional police in response to the application filed under Section 156(3), it disclosed that complainant had married Ms. Rekha, namely, sister of the appellant and said marriage had broken down which resulted in disharmony between the two families. This situation had also led to the filing of two cases by said Ms. Rekha against her husband for maintenance in V. No.230 of 2014 wherein the respondent therein namely husband (the complainant) had been ordered to pay a sum of Rs.5,000/- per month as maintenance to his wife and she had also lodged a report alleging harassment, demand for dowry etc. resulting in Crime No.73 of 2017 being registered against her husband (the complainant

i.e., third respondent herein) and his family members. In this background when the impugned order passed by the Additional Chief Judicial Magistrate which has resulted in jurisdictional Magistrate directing the jurisdictional police, namely 2nd respondent to register an FIR against appellant is perused, it would clearly disclose that report which had been called for by the Magistrate had been submitted on 11.03.2018 whereunder it has been clearly observed that after investigation it was found that applicant (third respondent herein) on the basis of concocted and baseless facts to mount pressure on his wife and his family members had filed the application and none in the village where the complainant resided have testified about the presence of the appellant and his family members or they having visited the village Khatana and had caused injuries to the complainant and his father on 26.01.2018 as alleged. The jurisdictional police after investigation have also opined that incident projected appears to be false. However, the impugned order of the learned magistrate does not indicate as to the basis on which said report dated 11.03.2018 was being rejected or why it does not deserve to be accepted.

8. In the teeth of afore-stated facts and in the factual background of there being dispute between two families, which had already resulted in

filing of two cases by the wife resulting in FIR being registered against the complainant (third respondent herein) and his family Members and the fact that none of the villagers including the neighbours of the complainant having supported or testified about occurrence of any incident on 26.01.2018 as claimed by the complainant, the irresistible conclusion to be drawn by this court is to accept the report of the jurisdictional police where under they have arrived at a conclusion that incident projected by the complainant appears to be false, and thereby the proceedings against the appellant deserves to be quashed.

9. Hence, we quash the proceedings registered as Crime No.97 of 2018 under Section 147, 148, 149, 452, 324, 307, 342 and 506 of IPC by the second respondent in so far as appellant is concerned.

The appeal is allowed accordingly.

.....J.
(B.R. Gavai)

.....J.
(Aravind Kumar)

New Delhi
April 21, 2023