

ABC 2019 (III) 147 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
 (Abhay Manohar Sapre & R. Subhash Reddy, JJ.)
 Criminal Appeal No 1268 of 2019
 (Arising out of S.L.P (Cr.)No. 10115 of 2018)
 (From Madras High Court)
 Decided on 23 August 2019

SEENIVASAN **- Appellant(s).**

Versus

STATE BY INSPECTOR OF POLICE & ANR. **- Respondent(s).**

Law Covered:- Code of Criminal Procedure, 1973 – Section 482 – Indian Penal Code, 1860 – Sections 406, 506(ii) & 498-A – Dowry Prohibition Act, 1961 – Sections 4 & 6(b) – Quashing of proceedings – FIR against distant relatives – residing at a different address during the time alleged demand was made – Specific allegations are only against the husband & immediate family members – bald allegation – in the absence of specific allegations & overt acts – the proceedings quashed. (Para 7)

Held:- It is not in dispute that the appellant-A-6, who is the husband of A-7, was residing at a different address during the time alleged demand was made. Further, we have perused the complaint filed by the 2nd respondent. Mainly the specific allegations are only against the husband and immediate family members. So far as the appellant who is A-1's paternal uncle's son, a bald allegation is made that he along with his mother and wife were abusing the complainant. In absence of any specific allegations against him, we are of the view that the appellant also stands on same the footing of A-7 against whom proceedings are quashed. As the appellant was not even residing in the address of the complainant and his family members who are A-1 to A- 4 and in absence of specific allegations and overt acts, we are of the view that if the proceedings are allowed to go on against the appellant, it amounts to abuse of process. Applying the ratio laid down in the judgment of this Court in the case of *State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp. (1) SCC 335* we are of the view that it is a clear case which falls within one of the categories of the aforesaid case where power can be exercised under Section 482, Cr.P.C. to quash the proceedings. (Para-7)

Counsel:- For Appellant(s): M.P. Parthiban, Adv.

For Respondent(s): M. Yogesh Kanna, Adv.

a

Cases Referred:-

State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp. (1) SCC 335, (Para-7)

JUDGMENT

R. SUBHASH REDDY, J.: - 1. Leave granted.

b

2. This criminal appeal is filed by the accused no.6 in C.C. No.196 of 2009 on the file of Judicial Magistrate No.1, Coimbatore, Tamil Nadu, aggrieved by the order dated 04.07.2018 passed by the High Court of Judicature at Madras in CrI.O.P.No.16967 of 2010.

c

3. The aforesaid CrI.O.P. was filed by accused nos.5 to 7 before the High Court under Section 482 of Cr.P.C. to quash the proceedings issued against them. By the impugned order, the CrI.O.P. was dismissed *qua* the appellant and allowed so far as accused no.7 is concerned by quashing the proceedings. The 5th accused has died on 13.08.2016, as such, it was observed that no case subsists against her.

d

4. The 2nd respondent herein had preferred complaint to the Commissioner of Police, Coimbatore City on 11.04.2009 which was forwarded to the 1st respondent basing on which a crime was registered against accused nos.1 to 7 in Crime No.10 of 2009 and a final report was filed before the trial court on 06.08.2009 arraying totally seven accused. 1st accused is the husband of the complainant; 2nd accused is the mother-in-law; 3rd accused is the brother-in-law; 4th accused is the wife of 3rd accused; 5th accused is the sister of the 2nd accused; 6th accused is the son of the 5th accused; and 7th accused is the wife of the 6th accused.

e

f

5. The Quash Petition was filed by accused nos.5 to 7 before the High Court mainly on the ground that they are not the members of the family of the complainant and they were residing at a different address, namely, 751, Big Bazar Street, Coimbatore whereas accused nos.1 to 4 were residing at 880, Big Bazar Street, Coimbatore. Appellant was sought to be prosecuted along with A-1 to A-4 for the offences punishable under Sections 498-A, 506(ii) of the Indian Penal Code (IPC); Sections 4 and 6(b) of Dowry Prohibition Act and under Section 406 of the IPC.

g

h

6. We have heard Sri S. Nagamuthu, learned senior counsel for the appellant and Sri M. Yogesh Kanna, learned counsel appearing for

a the State. In spite of service of notice, there is no appearance by the 2nd respondent-complainant.

b 7. Having heard the learned counsel on both sides, we have perused the impugned order and other material placed on record. The Quash Petition was filed before the High Court by the A-5 to A-7. So far as A-5 is concerned, as she died during the pendency of the proceedings, cause did not survive. So far as A-7, who is the wife of A-6, is concerned, the High Court has observed that there are no specific overt acts against her and she has been residing in a different address and at no point of time she had been in a joint family wherein c the de facto complainant lived during the period the alleged demand of dowry is said to have been made. On the aforesaid ground, the High Court has quashed the proceedings so far as A-7 is concerned. So far as appellant-A-6 is concerned, the petition is dismissed by the High Court observing that there are some averments, against the d appellant. It is not in dispute that the appellant-A-6, who is the husband of A-7, was residing at a different address during the time alleged demand was made. Further, we have perused the complaint filed by the 2nd respondent. Mainly the specific allegations are only against the husband and immediate family members. So far as the e appellant who is A-1's paternal uncle's son, a bald allegation is made that he along with his mother and wife were abusing the complainant. In absence of any specific allegations against him, we are of the view that the appellant also stands on same the footing of A-7 against whom proceedings are quashed. As the appellant was not f even residing in the address of the complainant and his family members who are A-1 to A-4 and in absence of specific allegations and overt acts, we are of the view that if the proceedings are allowed to go on against the appellant, it amounts to abuse of process. Applying the ratio laid down in the judgment of this Court in the case g of *State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp. (1) SCC 335* we are of the view that it is a clear case which falls within one of the categories of the aforesaid case where power can be exercised under Section 482, Cr.P.C. to quash the proceedings.

h 8. In the aforesaid circumstances, we allow this appeal and set aside the impugned order to the extent of dismissing the petition filed in CrI.O.P.No.16967 of 2010 on the file of High Court of Judicature at Madras and consequently quash the proceedings *qua* the appellant in C.C. No.196 of 2009 on the file of Judicial Magistrate No.1, Coimbatore.

9. It is made clear that we have not expressed any opinion on the allegations made against A-1 to A-4. It is open for the trial court to record its own findings after trial. a

Result:- Appeal allowed.

ABC 2019 (III) 150 SC b
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA
(Sanjay Kishan Kaul & K.M. Joseph, JJ.)
Criminal Appeal No 1905 of 2009 With Criminal Appeal No. 246 of 2011 c
(From Gauhati High Court)
Decided on 26 August 2019

SAMSUL HAQUE - Appellant(s).
Versus d
STATE OF ASSAM - Respondent(s).

Law Covered:- (A) *Indian Penal Code, 1860 – Sections 34, 147, 148, 302/149 & 302 – Allegation of firing of bullet – related witnesses – Contradiction in the evidence of PWs as to firing by accused – No bullets or bullet marks found at the site– no bullet injury – no weapon recovered – Besnefit of doubt . (Para 28, 29, 31)* e

(B) *Code of Criminal Procedure, 1973 – Section 313 – Indian Penal Code, 1860 – Sections 302 & 109– Conviction under – Independent eye-witness – Not supporting the case by – DW who was not produced as a witness by the prosecution, though was stated to be present at the place of occurrence– deposed against the main accused – not assigned even the factum of presence to accused No.9 – Evidence of relative witness at variance with disinterested witnesses – not relied – improvements and embellishments in the evidence of complainant – Case against the accused not established – Clear acquittal. (Para19, 20 & 24)* f

(C) *Interpretation of Statute – Indian Penal Code, 1860 – Section 34 – Scope – Held, the section does not create a distinct offence – it is with the participation of the accused that the intention of committing the crime is established. (Para 16)* g

(D) *Indian Penal Code, 1860 – Section 34 – Scope & Application – To rope in a person with the aid of Sec. 34 – the prosecution has to prove that the criminal act was done by the* h