

CASE NO.:
Special Leave Petition (crl.) 439 of 2001

PETITIONER:
HARIJINDER KAUR

Vs.

RESPONDENT:
STATE OF JHARKHAND & ANR.

DATE OF JUDGMENT: 28/08/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil J.

The order dated 31.10.2000 passed by the Patna High Court, Ranchi Bench, Ranchi, in Criminal Revision No. 101 of 2000(R) is assailed in this petition.

The petitioner filed a written complaint before the Golmuri Police Station at Jamshedpur on 2.9.1994 against her husband (the respondent no. 2) and his other relatives. On the said complaint, Golmuri P.S. Case No. 172/94 was registered for offences under sections 498-A, 313 of the Indian Penal Code (IPC) and sections 3 & 4 of the Dowry Prohibition Act, 1971. After investigation, charge-sheet was filed. However, Dr. (Mrs.) Snehlata Mukherjee was not sent for trial against whom it was alleged by the complainant that she was aborted at the nursing home of the said doctor. The learned Chief Judicial Magistrate on 19.11.94 took cognizance under sections 498-A, 313 of the IPC and sections 3 & 4 of the Dowry Prohibition Act, 1971 and discharged the accused Dr. (Mrs.) Snehlata Mukherjee. The remaining accused filed an application on 15.5.1995 to delete section 313 of the IPC from the charge-sheet as no case was made out for the said offence. The learned Magistrate, by his order dated 1.9.1995, allowed the application and the charge against the accused under section 313 of the IPC was deleted. The petitioner did not challenge either the order dated 19.11.1994 discharging Dr. (Mrs.) Snehlata Mukherjee or the order dated 1.9.1995 discharging the accused for offence under section 313 of the IPC. On 12.2.1998, an application was filed on behalf of the petitioner to proceed for the trial of the accused under section 313 of the IPC. The said application was dismissed on 17.7.1998 against which order a Criminal Revision Petition No. 303/98(R) was preferred by the petitioner before the High Court. The High Court disposed the said Revision Petition in the following terms:-

In the result, I find no reason to

interfere with the impugned order except that the previous order of the Chief Judicial Magistrate discharging the accused persons of the offence under section 313 I.P.C. would be no bar to the committal of the case in accordance with the provisions of section 323 of the Code. With this observation, this application is dismissed. However, it is made clear that if on examination of the remaining witnesses and on looking to the relevant documents brought on the record in course of the trial, the Subdivisional Judicial Magistrate finds that the accused persons before him, or any of them is shown to have committed offence under section 313 of the Indian Penal Code or for that matter, even of its abetment, he may commit the case to the court of Sessions either on application made for the purpose by the prosecution, or suo motu.

Thereafter, the learned Magistrate, having already recorded evidence of two witnesses, continued the trial and recorded the evidence of six more witnesses. In compliance with the directions given by the High Court as extracted above, he passed a detailed order on 16.3.2000 holding that it was not necessary to commit the case to the court of Sessions and posted the case for recording the statements of the accused. It is this order, which was challenged before the High Court and the High Court, by the impugned order dismissed the Revision Petition filed by the petitioner. Hence, this petition.

The main thrust of the argument of the learned counsel for the petitioner was that the learned Magistrate committed a manifest error in appreciating the evidence produced by the prosecution as required for final disposal of the case either to convict or acquit the accused instead of considering only as to whether there was prima facie material to constitute a charge for offence under section 313 of the IPC. The learned counsel for the respondent, while bringing to our notice the previous order passed by the learned Magistrate and the High Court, urged that in the facts and circumstances of the case, the learned Magistrate was right in passing the order and as such the impugned order of the High Court confirming the same is perfectly justified.

Looking to the narration of the facts made above, it is clear that the order dated 19.11.1994 discharging Dr. (Mrs.) Snehlata Mukherjee for the offence under section 313 of the IPC and the order dated 1.9.1995 discharging the remaining accused for the offence under section 313 of the IPC were not challenged by the petitioner. The order made by the High Court on earlier occasion in Criminal Revision No. 303/98(R) was also not challenged. The learned Magistrate complied with the directions given by the High Court in the said Revision Petition. No fault can be found with the order of the learned Magistrate when he proceeded to record the evidence of six more witnesses and

thereafter passed the order holding that no case was made out to commit the accused for trial under section 313 of the IPC by the Sessions Court. The learned Magistrate was bound to follow the directions given by the High Court in the aforementioned Revision Petition. When the petitioner did not challenge the order of the High Court, she cannot now say that the learned Magistrate should not have taken into account the evidence of 8 witnesses examined in passing the order dated 16.3.2000.

Having regard to the facts and circumstances of this case, declining to interfere with the impugned order, we dismiss the petition. No costs.

.....J.
[D.P. MOHAPATRA]

.....J.
[SHIVARAJ V. PATIL]

August 28, 2001.