

HIGH COURT OF JAMMU AND
KASHMIR AT JAMMU

561-A Cr.P.C. No. 215/2010
Cr.M.P. No. 236/2010

Date of Decision: 22.02.2012

Ramesh Chander and ors. VS. Sonika Gupta

Coram:

MR. JUSTICE J.P.SINGH.

APPEARING COUNSEL:

For Petitioner(s) : Mr. M.L.Gupta, Advocate.
For Respondent(s) : Mr. Vivek Sharma, Advocate.

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| i) | Whether to be reported
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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The process issued by Judicial Magistrate, Ist Class (City Judge), Jammu, on respondent's Complaint under Section 406 RPC is questioned by the petitioners projecting, *inter alia*, the abuse of the process of law by the respondent to pressurize and harass the petitioner so that he was disabled to prosecute his Petition filed in the Matrimonial Court to seek dissolution of Marriage.

The facts giving rise to the case may be stated thus:-

The Respondent-Sonika Gupta was married to the Ist petitioner-Ramesh Chander

Gupta on January 30, 2005 at Janipur, Jammu. The 2nd and 3rd petitioners are the brothers-in-law and the 5th petitioner, the mother-in-law of the respondent. The 6th petitioner is the near relation of petitioner Nos. 1 to 5.

The respondent filed a Complaint saying that the petitioners had dishonestly misappropriated her “Istridhan” and were still misappropriating her property, i.e., gifts given to her at the time of the marriage, which after its transfer to them, by her, were kept in the custody of petitioner No.6.

The process was issued against the petitioners on the basis of the Statements of the respondent and her mother-Kamla Devi.

Heard learned counsel for the parties and perused the Complaint as also the Statements recorded in support thereof.

In their sworn testimony, the Complainant and her mother say that all the petitioners were misusing her “Istridhan” and had dishonestly committed breach of trust by misusing the Complainant’s property which they had no right so to do.

The Statements of the Complainant and her witness are, however, significantly silent about any such act or omission of the

petitioners, either individually, or collectively, that was construed by the Complainant as misuse of “Istridhan” and breach of trust. No such facts on the basis whereof even inference of misappropriation be drawn are indicated either in the Complaint or in the Statements. The manner of use of property which is stated to have been misappropriated, is not indicated in the Statements.

The question that therefore falls for consideration is—whether process was justified against the petitioners, on the basis of such statements which reiterated only the phraseology employed in the charging Section, and nothing beyond, or such facts or circumstances demonstrating attraction of the provisions of the charging penal Section were required to be spelt out by the Complainant and her witness in their statements recorded on oath?

In terms of the provisions of Section 204 Cr.P.C, before considering issuance of process, the Magistrate is required to satisfy himself, on the basis of the statements of the Complainant and his/her witness(es), if any, recorded on oath, that there existed sufficient ground for proceeding against the accused. The

satisfaction contemplated by the Section may be gathered from such facts or circumstances as spelt out by the Complainant or his/her witness(es) in their evidence which may *prima facie* indicate commission of offence(s).

Mere reiteration of the phraseology of the Penal Section in the Statements may not furnish requisite material needed for recording satisfaction contemplated by law for issuance of process by the Magistrate. This is so because issuance of process has the effect of taking away the freedom affecting the Right to personal liberty of the person proceeded against, in that, his freedom thereafter shall be subject to the orders to be passed by the Court regulating his attendance during trial in the Complaint. It is no doubt true that Right to personal liberty may not be absolute and was subject to its curtailment by Judicial Process or under any law for the time being in force; but before doing that reasonable grounds must exist warranting depriving one of his/her liberty. Taking away the liberty of any person on mere *ipsi dixit* of the Complainant or his/her witness(es) in saying that the accused had committed offence(s) punishable under an indicated Section, may not be permissible. The

existence of such facts or circumstances which indicate the commission of offence(s) is the *sine qua non* for proceeding under Section 204 Cr.P.C on a Complaint.

As the Complainant and her witnesses have not spelt out requisite facts or circumstances demonstrating commission of any offence(s), so mere reproduction of the wording of the Penal Section by the Complainant and her witness(es) in their Statements does not satisfy the requirements of Section 204 Cr.P.C and the process issued by the learned Magistrate on the respondent's Complaint cannot, therefore, be justified.

At this stage, regard needs to be had to the provisions of Section 200 Cr.P.C in terms whereof on taking cognizance on Complaint, the Magistrate is required at once to examine the Complainant and the witness present, if any, upon oath and thereafter to reduce to writing, the substance of the examination.

The examination of the Complainant and her witnesses, on the basis whereof, the Magistrate has to record satisfaction and thereafter issue process against the accused, that may affect the accused's right to liberty, which as already indicated, may be done, on

existence of reasonable grounds, appears to have been intended by the Legislature, **a probatory function**, that the Judicial Magistrate must himself discharge, putting such additional questions to the Complainant and his/her witness(es), in addition to what was narrated by them, which the circumstances of the case may so require, to get requisite information about the facts and circumstances of the occurrence complained against, to satisfy himself as to the truth or otherwise thereof, for recording satisfaction, as to whether or not the Complaint warranted issuance of process against the accused. Recording of the statement in a routine fashion, as it usually so happens and proceeding on what was stated by the Complainant and her witnesses alone, without asking such additional questions that may be required to record requisite satisfaction, may not serve the purpose intended by the provisions of Section 200 Cr.P.C.

The cautious and probative approach of the learned Magistrates would obviate abuse of the process of law, and possible remands for fresh detailed probatory examination of the Complainant and his witnesses.

The process issued on the respondent's Complaint against the petitioners cannot, therefore, for all what has been said above, be sustained in the absence of requisite examination of the Complainant and her witness about the facts and circumstances, which according to the respondent amounted to misappropriation of her entrusted property by one or the other accused.

This Petition, therefore, succeeds, and is accordingly allowed, setting aside learned Judicial Magistrate, Ist Class (City Judge), Jammu's Order dated 09.03.2009 and all other Orders passed subsequent thereto.

The Complaint of the respondent is remanded to the learned Magistrate for its consideration afresh in accordance with law.

(J. P. Singh)
Judge

Jammu.
22.02.2012
Pawan Chopra