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Court : Patna

Decided On : Apr-25-2014

Judge : Rakesh Kumar

Appeal No. : Criminal Miscellaneous No. 18253 of 2008

Appellant : Kiran Kumar @ Kiran Kumar Sinha

Respondent : The State of Bihar and Another

Advocate for Pet/Ap. : Smt. Rekha Prasad

Judgement :

Heard Smt. Rekha Prasad, learned counsel for the petitioner, Sri Pradeep Narayan Kunwar, learned A.P.P. as well as Sri Anjani Kumar Sinha, learned counsel, who has appeared on behalf of complainant /opposite party no. 2.

The petitioner, who is husband of sister of complainant/ opposite party no. 2, has approached this court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 21.7.2006 passed by learned Sub Divisional Judicial Magistrate, Sasaram, in Complaint Case No. 810 of 2005 / Tr. No. 1449 of 2006. By the said order learned S.D.J.M. has taken cognizance of offences under Sections 498-A, 494 and 120B of the Indian Penal Code.

Short fact of the case is that the opposite party no. 2 had filed a complaint, which was numbered as Complaint Case No. 810 of 2005 in the court of Chief Judicial Magistrate, Sasaram, Rohtas, disclosing therein that his sister was married with petitioner on 20.2.2002 and even at the time of marriage demand of dowry was made. After solemnization of marriage the victim i.e. sister of complainant went to her in-laws house and for some time she lived peaceful conjugal life. However, immediately thereafter, pressure was being mounted for bringing dowry. Subsequently, the victim was regularly being tortured. Finally, with the help of Police on 31.12.2004 she was rescued and taken back to her parental house. Finally, the complaint case was filed. In the complaint case it was also alleged that during matrimonial period in between petitioner and his wife i.e. sister of opposite party no. 2, the petitioner solemnized second marriage with one Nidhi Shrivastava @ Sarita Devi. After examination of the complainant on S.A., during enquiry victim was examined as enquiry witness no. 1 and other two witnesses were also examined in support of the complainants case. The victim in her deposition corroborated the allegation. Finally, learned S.D.J.M. on being satisfied regarding prima facie case, has taken cognizance of offences under Sections 498A, 494 and 120B of the Indian Penal Code. The said order of cognizance has been assailed in the present petition.

Smt. Rekha Prasad, learned counsel for the petitioner, assailing the order of cognizance, submits that complete false allegation of second marriage against the petitioner was made. She submits that the alleged second wife was relative of the complainants side and only with a view to give the nature of seriousness of the offence it was concocted as if the petitioner has solemnized second marriage. The said allegation is completely incorrect. She submits that although it is alleged that victim was in the house of the petitioner on the date when she was recovered with the help of Police on 31.12.2004, on that date petitioner and his father were not present. She further submits that the alleged lady has already now got married. Secondly, the marriage of allegedly 2nd wife was solemnized with one another person and she is living happily in her marital house. Smt. Rekha Prasad, learned counsel for the petitioner further submits that so far alleged offence under Section 494 of the I.P.C. is concerned, even for the time being if it is assumed that it is correct, the alleged second marriage was solemnized outside the territorial

jurisdiction of the court, where complaint petition was filed, and as such, order of cognizance at least under Section 494 of the Indian Penal Code is not sustainable and is liable to be set aside. Regarding allegation of torture given to the sister of complainant, she simply submits that all such allegations are incorrect and no specific date has been mentioned. On aforesaid grounds she makes a prayer for setting aside the order of cognizance dated 21.7.2006.

Sri Anjani Kumar Sinha, learned counsel for complainant, has opposed the prayer of the petitioner. He submits that in this case counter affidavit has also been filed and referring to counter affidavit, he submits that there are documents to show that petitioner has solemnized second marriage without any decree of divorce from the victim girl, who is sister of the complainant.

Besides hearing learned counsel for the parties, I have also perused the materials available on record including deposition of victim girl, which was recorded during enquiry before the learned Magistrate during enquiry by the learned Magistrate. On perusal of the complaint petition, materials on record as well as order of cognizance, the court is of the opinion that there is no apparent illegality or irregularity in the order of cognizance. So far submission made by learned counsel for the petitioner regarding false implication is concerned, the court is of the opinion that at the time of enquiry the learned Magistrate was required to proceed only on the basis of materials which were brought before him during enquiry. If during enquiry sufficient material is brought to the notice of the learned Magistrate regarding commission of offence, the order of cognizance may not be assailed. So far submission made by learned counsel for the petitioner that offence under Section 494 of the Indian Penal Code was not committed within the territorial jurisdiction of the concerned court, this submission is simply required to be noticed for its rejection. If in one transaction several offences are committed, in that event, even though connected offence is committed beyond the territorial jurisdiction of the concerned court, the said court is well competent to proceed with the case. Reference may be made to Section 323 of the Cr.P.C. There is specific case of the complainant that she was tortured. It is clear cut case in the complaint petition that the victim was tortured and without any decree of divorce the husband/petitioner has solemnized second marriage. So far offences under

Sections 498-A and 494 of the Indian Penal Code are concerned, both were in relation to the same transaction. Apparently, there is no error in the order of cognizance. In view of the facts and circumstances, the court is satisfied that the learned Magistrate has committed no error in passing order of cognizance. Accordingly, the petition stands dismissed.

From the Lower Court Record, it appears that after order of cognizance, before charge evidence has already commenced and at least two witnesses were examined before charge. Keeping in view the fact that complaint was filed in the year 2005, while dismissing the present petition it is desirable to direct the court below to proceed with the case expeditiously, so that, case may come to its logical end without unnecessary delay. It is clarified that whatever observation has been made by this court, has been made in respect of testing the order of cognizance. However, it would be open to the petitioner to file appropriate petition after conclusion of evidence before charge. If such petition is filed, the learned court below without being prejudiced with this order may examine the same and pass appropriate order in accordance with law.

With above observation and direction, the petition stands dismissed.

Office is directed to remit back the Lower Court Record forthwith.

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