

Ashutosh Kumar Dubey and ors. Vs. the State of Bihar and anr.

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Court : Patna

Decided On : May-03-2006

Judge : Rekha Kumari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 203, 228, 244, 245(1), 256 and 482; Indian Penal Code (IPC) - Sections 34, 323 and 498A

Appeal No. : Cr. Misc. No. 36349 of 2004

Appellant : Ashutosh Kumar Dubey and ors.

Respondent : The State of Bihar and anr.

Disposition : Application dismissed

Prior history : Rekha Kumari, J. 1. This is an application under Section 482 of the Code of Criminal Procedure for quashing the order dated 13.10.2004 passed by the Chief Judicial Magistrate, Banka in Case No. 560/99 under which he has refused to discharge the petitioners under the provision of Section 245(1) Cr.P.C. 2. Heard both the sides. 3. The case of the complainant (O.P. No. 2) Pratiksha Devi is that she was married to the petitioner Ashutosh Kumar Dubey with mutual consent according to Hindu rites o

Judgement :

Rekha Kumari, J.

1. This is an application under Section 482 of the Code of Criminal Procedure for quashing the order dated 13.10.2004 passed by the Chief Judicial Magistrate, Banka in Case No. 560/99 under which he has refused to discharge the petitioners under the provision of Section 245(1) Cr.P.C.

2. Heard both the sides.

3. The case of the complainant (O.P. No. 2) Pratiksha Devi is that she was married to the petitioner Ashutosh Kumar Dubey with mutual consent according to Hindu rites on 13.6.1999 in Kali Mandir at village saraiya in presence of witnesses. After marriage, in the said night the complainant went to her Sasural at village Saraiya alongwith her husband. Father and other witnesses, when the petitioners, who are mother-in-law, sister-in-law and brother-in-law, started demanding Rs. 2.5 lacs as dowry and when the father of the complainant expressed his inability, he was assaulted and pushed (sic) out of his house and threatened that they would keep only if he paid the amount within two days. The father of the complainant was thus compelled to return with the complainant. On 15.6.1999 the father of the complainant again went to the house of the petitioners and showed his inability to pay the amount and asked the petitioners to keep her daughter and the petitioners drove him out saying that unless dowry was paid they would not keep the complainant and get the petitioner again married elsewhere.

4. The complainant then filed a complaint before the Chief Judicial Magistrate and the learned C.J.M. at first after considering the statement of the complainant and the statement of other witnesses by the order dated 9.2.2000, dismissed the complaint under Section 203 Cr.P.C. The complainant preferred revision. The revision was allowed and the C.J.M. was asked to make further enquiry and pass a fresh order. The learned Chief Judicial Magistrate then took cognizance against the petitioners under Sections 323, 498A of the Indian Penal Code and issued summons against them.

5. After appearance of the petitioners, the prosecution examined six witnesses before framing of charge. The complainant herself, however, was not examined. The petitioners then filed a petition for discharging them under the provisions of Section 245(1) Cr.P.C. The learned Magistrate after considering the evidence on

record, found a prima facie case against the petitioners for offences under Sections 498A, 323/34 of the Indian Penal Code and hence, by the impugned order dismissed the prayer of the petitioners and posted the case for framing of charge against them.

6. Learned Counsel for the petitioners submitted that there was no sufficient evidence on record to frame charge against the petitioners. The complainant herself has not been examined. There is no specific allegation against any of the petitioners. Therefore, there was no justification for the learned Magistrate to dismiss the prayer of discharge of the petitioners. In support of his submissions he has relied on the decision of this Court in the case of Sunil Kumar Jha v. State of Bihar 1997 (1) PLJR 466, and the decision of this Court in the case of Dhrubdeo Mishra v. State of Bihar 1996(1) PL JR 121. He further submitted that no marriage had taken place between the complainant and petitioner No. 1 as alleged. No marriage could take place in Malemas and therefore, there was no question of torture on account of dowry. Petitioner No. 1 had lodged an F.I.R. at Bausi Police Station (Bausi P.S. Case No. 64/99) on 13.6.1999 i.e. the alleged date of marriage stating that the father of the complainant had abducted her for the purpose of marriage (Annexure 4) but the learned Magistrate did not consider the documents.

7. Section 245(1) Cr.P.C. reads as follows:

245. When accused shall be discharged.- (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

8. Section 244 Cr.P.C. reads thus:

244. Evidence for prosecution.- (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witness directing him to attend or to produce any document or other thing.

9. Thus, from the provision of Section 245(1) read with Section 244, it is clear that in a warrant case constituted otherwise than on police report when the accused appears (i) the Magistrate is required to take all the evidence as may be produced by the prosecution, (ii) The Magistrate must discharge the accused, after giving reasons, when in the light of evidence he considers that no case is made out against the accused. Therefore, at this stage the Magistrate has only to see whether the prosecution evidence discloses a prima facie Case against the accused. He has to accept the evidence on the face value and consider whether the evidence, if unrebutted, would result in conviction of the accused. He cannot consider the document of the accused. There is also nothing in the above sections that it is mandatory for the prosecution to examine the complainant.

10. So, if the learned Magistrate did not consider the F.I.R. of the accused or if the complainant has not yet been examined, the same cannot affect the merit of the order. The case of Dhrubdeo Mishra (supra) relied on by the learned Counsel is on the point of dismissed of the complain in absence of the complainant, and relates to Section 256 Cr.P.C. and is not applicable in this case.

11. As regards the question as to whether there was sufficient evidence to hold a prima facie case against the petitioners, though the complainant has not been examined, the impugned order shows that the father of the complainant, who is a competent witness, has stated that all the petitioners are not keeping the complainant for non-fulfilment of dowry of Rs. 2.5 lacs. P.W.5 the barber, P.W.3 the Priest, who had performed the religious ceremony, have supported the performance of marriage. Other witnesses including the uncle of the bride (petitioner No. 1) had also supported the case of the complainant. At this stage the Magistrate is not required as already mentioned to appreciate the evidence and has to accept the evidence on their face value. The evidence 'mentioned above clearly make out a prima facie case against the petitioners and unrebutted they are sufficient to convict them.

12. Therefore, the learned Magistrate was quite justified in holding that there was sufficient evidence against the petitioners to frame charge. In view of evidence it cannot also be said that the allegations are vague or that the learned Magistrate did not apply his mind.

13. In the case of Sunil Kumar Jha (supra) relied on by the learned Counsel does not apply to the facts of this case. In that case, the learned sessions Judge while framing charge under the provision of Section 228 Cr.P.C. did not (sic) anything as to what he has considered in framing charge against the accused. So it was held that the order was vague and displayed non-application of mind. But in this case the learned Magistrate has referred to the evidence of the witnesses in coming to his conclusion.

14. It was also submitted by the learned Counsel for the petitioners that for the purpose of Section 498A I.P.C. the bodily injury or harassment must be such as to drive the women to commit suicide. But in this case there was no such harassment or bodily injury.

15. This submission of the learned Counsel is also not tenable. Explanation (b) of Section 498A shows that harassment of the woman with a view to coercing her or any person related to her to meet unlawful demand and also constituted cruelty. In this case the harassment to the complainant was with a view to coerce her further to meet an unlawful demand of Rs. 2.5 lacs.

16. Therefore, the harassment to the complainant constitutes cruelty under Section 498A I.P.C.

17. Thus, I do not find any infirmity in the impugned order. The application is dismissed.