

Babi Sinha Vs. State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/122893

Court : Patna

Decided On : Jan-30-2006

Judge : Rekha Kumari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 494 and 498A; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4

Appeal No. : Criminal Misc. No. 2470 of 2005

Appellant : Babi Sinha

Respondent : State of Bihar and anr.

Disposition : Application dismissed

Prior history : Rekha Kumari, J. 1. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 10.12.2004 passed by the 3rd Additional Sessions Judge, Saharsa in Criminal Revision No. 163 of 2004 whereby he has upheld the order dated 22.4.2004 passed by the learned Chief Judicial Magistrate, Saharsa in Complaint Case No. 307-C of 2004. 2. Heard. 3. It appears that opposite party No. 2 Gholti Devi filed a petition of complaint against co-accused Vijay Kumar Si

Judgement :

Rekha Kumari, J.

1. This is an application filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 10.12.2004 passed by the 3rd Additional Sessions Judge, Saharsa in Criminal Revision No. 163 of 2004 whereby he has upheld the order dated 22.4.2004 passed by the learned Chief Judicial Magistrate, Saharsa in Complaint Case No. 307-C of 2004.

2. Heard.

3. It appears that opposite party No. 2 Gholti Devi filed a petition of complaint against co-accused Vijay Kumar Sinha and the petitioner alleging, inter alia, that he was married to accused Vijay Kumar Sinha on 13.1.1991 and thereafter began to live with him. She gave birth to one daughter and a son showing their age as five years and two years respectively at the time of filing of complaint. On 25.10.2003 Vijay Kumar Sinha brought petitioner Babi Sinha in his house and told the complainant-opposite party No. 2 that she was his wife and would remain in the house. Thereafter the co-accused and the petitioner started torturing her and also asked her to bring money from her parents and for that also they assaulted her. It further appears that thereafter the complainant was examined on solemn affirmation by the learned Chief Judicial Magistrate, Saharsa and the complainant examined her mother. The learned Chief Judicial Magistrate after perusing the statements of the two witnesses took cognizance under Sections 323,494 and 498A/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

4. The petitioner filed a criminal revision application against the above order of the learned Chief Judicial Magistrate which was dismissed by the impugned order by the learned 3rd Additional Sessions Judge, Saharsa.

5. Learned Counsel for the petitioner submitted that opposite party No. 2 is, in fact, wife of one Wakil Sharma and not the wife of co-accused Vijay Kumar Sinha which would be evident from the certificate (Annexure 3) granted by the mukhia, Ration Card (Annexure 6) of the year 1997 and the revised voters list (Annexure 4) of the year 1996. The complainant lives with her mother after her desertion from her husband Wakil Sharma and the voters lists of Saharsa Anchal of the year 1995

and 2004 (Annexures 5 and 5/1) will support this contention. Therefore, it is quite absurd that such occurrence, as alleged, can take place.

6. It is well settled that at the time of taking cognizance and issuing processes against the accused, the Magistrate is required only to see whether the complaint makes out an offence and there is legal evidence to support the same. It is also well-settled that at this stage neither the cognizance taken by Magistrate nor the revisional Court can look into the defence of the accused of the documents furnished by him.

7. Therefore, when the complaint petition discloses the offence mentioned above and the order of the learned Magistrate shows that after perusing the statement of the complainant on S.A. and the statement of her mother which supports the above allegation, ordered to proceed against the petitioner and the co-accused Vijay Kumar Sinha, the learned Additional Sessions Judge was quite justified in not interfering with the order of the learned Magistrate. In the case of *State of M.P. v. Awadh Kishore Gupta* : 2004 CriLJ598 , it has also been held by the Apex Court that annexures to the petition under Section 482, Cr.P.C. cannot be treated as evidence without being tested and, hence, should not be acted upon by the High Court in exercise of its discretionary power. Therefore, on the basis of the annexures to the petition filed under Section 482, this Court also cannot hold that the alleged occurrence is false and the order issuing processes against the petitioner is illegal.

8. In the result, there being no merit in this application for quashing, this application stands dismissed.