

**Sidharth (Dr.) and ors. Vs. State of Bihar and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/123627](http://sooperkanoon.com/123627)**

**Court : Patna**

**Decided On : Feb-16-2006**

**Judge : Rekha Kumari, J.**

**Acts :** [Dowry Prohibition Act, 1961](#) - Sections 3 and 4; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 245(1) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 498A

**Appeal No. :** Crl. Misc. No. 3102 of 2005

**Appellant :** Sidharth (Dr.) and ors.

**Respondent :** 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, 1973 (hereinafter referred to as the Code) for quashing the order dated 5.7.2003 passed by the learned Sub-Divisional Judicial Magistrate, Patna in Complaint case No. 1434(C) of 2003 by which he has taken cognizance and ordered to issue summons against the petitioners for standing trial under Sections 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, and also for quashing

**Judgement :**

**Rekha Kumari, J.**

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 5.7.2003 passed by the learned Sub-Divisional Judicial Magistrate, Patna in Complaint case No. 1434(C) of 2003 by which he has taken cognizance and ordered to issue summons against the petitioners for standing trial under Sections 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, and also for quashing the order dated 18.12.2004 passed by the learned Sub-Divisional Judicial Magistrate refusing to discharge the petitioners under Section 245(1) of the Code.

2. Heard,

3. Learned Counsel for the petitioners submitted that opposite party No. 2 has filed the above complaint case against the petitioners for taking action under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and the complaint was filed on or about 3.7.2003 whereas the petitioner No. 1 had filed one month prior to that of Divorce Suit i.e., Matrimonial Case No. 45 of 2003 against opposite party No. 2 on 5.6.2003 in the Family Court, Muzaffarpur. Therefore, the allegations in the complaint petition are false and the complaint petition is an afterthought. He further submitted that, in fact, the opposite party No. 2 had been torturing her husband (petitioner No. 1) and to save his life and the prestige, he filed inforatory petition (Annexure-3) to the Sub-Divisional Magistrate on 14.2.2003. He also submitted that the complainant-opposite party No. 2 has admitted in her evidence that her brother-in-law co-accused Diwaker Singh (petitioner No. 2) is posted at Hazaribagh and petitioner No. 4 Amitabh, brother of the husband of opposite party No. 2. is preparing for competitive examination at Delhi. Therefore, it is totally false to say that they could take part in the alleged offence. He further submitted that in the complaint petition it has been mentioned that on 10.12.2002 the police had come and an undertaking was given by petitioner No. 1 but Annexure-6, the compromise petition dated 10.12.2002 would show that opposite party No. 2 had not made allegation of any demand of dowry. Learned Counsel then submitted that during trial no independent witness

has been examined by opposite party No. 2 and there are contradictions in the evidence of the witnesses.

4. At the outset it must be mentioned that though the order of issuance of summons to the petitioners was passed on 5.7.2003, no petition for quashing was filed earlier and when after the evidence of five witnesses the petition for discharge was rejected on 18.12.2004 the application for quashing both the orders was filed which is not desirable.

5. However, from the impugned order dated 5.7.2003 it appears that the learned Sub-Divisional Judicial Magistrate after perusing the complaint petition and the statement of the complainant on S.A. was satisfied that a prima facie case under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act was made out against the petitioners. Therefore he directed to issue summons against the petitioners for the above offence.

6. The impugned order dated 18.12.2004 shows that the learned Magistrate after perusing the evidence of the witnesses examined by the complainant and after hearing both sides found that there were sufficient ground to frame charge under the above offences against the petitioners. Therefore, he rejected the prayer of the petitioners to discharge them.

7. It is well settled that at the stage of issuance of processes, the Magistrate is mainly concerned with the allegations in the complaint petition and the evidence led in support of the same and he is only to be prima facie satisfied whether there is sufficient ground for proceeding against the accused.

8. As provided under Section 245(1), Cr.P.C. a Magistrate can discharge an accused if after taking of the evidence adduced by the prosecution he finds that no offence is made out against him. The Magistrate, at this stage, is not to examine and assess in details the evidence adduced nor he is required to consider the sufficiency of the evidence to establish the offence alleged.

9. It is also settled that at the stage of issuance of processes or at the stage of framing of charge, the Magistrate cannot consider the defence of the accused. He

cannot also consider the documents produced by the accused. It is also settled that the High Court in exercise of its inherent power under Section 482 of the Code cannot consider the documents annexed with the application at the above stage. This Court would also not embark upon an inquiry on the reliability of evidence and sustainability of accusation on a reasonable appreciation of evidence.

10. Therefore, when the allegations in the complaint petition disclose the above offence and the complainant in her statement S.A. has supported the allegations, there is no infirmity in the impugned order under which processes were ordered to be issued against the petitioners. Only because petitioner No. 1 had filed a matrimonial case before filing of the complaint, that alone is not sufficient to hold at this stage that the complaint is an afterthought or mala fide specially when admittedly there was bitter feelings between the parties as a result of which the police had to be informed long before filing of the complaint petition.

11. So far as the order dated 18.12.2004 is concerned, the learned Magistrate after perusing the evidence has found sufficient materials to frame charge against the petitioners. There is also nothing to show that upon taking of the evidence adduced by the complainant, no case against the petitioners has been made out. Hence, there is no illegality in this order also.

12. In the result, I do not find any merit in this application. It is accordingly dismissed.