

Arun Kumar Gupta and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Jan-24-2008

Judge : Anwar Ahmad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 498A

Appeal No. : Cr. Misc. No. 7508 of 2007

Appellant : Arun Kumar Gupta and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Syed M. Ashraf, Adv. for Opposite party No. 2

Advocate for Pet/Ap. : Ashok Kumar Sinha, Amrendra Kumar Sinha No. 1 and Santosh Kumar Singh, Advs.

Disposition : Petition dismissed

Prior history : Anwar Ahmad, J. 1. This is an application filed under Section 482 of the Code of Criminal Procedure on behalf of accused persons for quashing the order dated 5th September, 2006 passed by Shri. S.K. Mishra, Judicial Magistrate, 1st Class, Saharsa, finding a prima facie case under Section 498A of the Indian Penal Code and ordering issuance of summons and also the order dated 15th December, 2006 passed by the Sessions Judge, Saharsa in Criminal Revision No. 274 of 2006 rejecting the revision and

Judgement :

Anwar Ahmad, J.

1. This is an application filed under Section 482 of the Code of Criminal Procedure on behalf of accused persons for quashing the order dated 5th September, 2006 passed by Shri. S.K. Mishra, Judicial Magistrate, 1st Class, Saharsa, finding a prima facie case under Section 498A of the Indian Penal Code and ordering issuance of summons and also the order dated 15th December, 2006 passed by the Sessions Judge, Saharsa in Criminal Revision No. 274 of 2006 rejecting the revision and also the entire criminal prosecution and the complaint petition bearing Complaint Case No. 591 C of 2005.

2. Anju Devi filed a petition of complaint against her husband Arun Kumar Gupta and 7 others who are petitioners here, alleging therein that she married Arun Kumar Gupta at Sidheshwar Asthan and in support of the marriage, Arun Kumar Gupta sworn affidavit before the Notary Public. Thereafter, she started living with him in the capacity of wife. She became pregnant but her husband fraudulently got her three months' pregnancy terminated and as a result she could not produce any child in future. It is alleged that the accused persons started to abuse her, commit torture and beat her. As a result, she was compelled to leave the house and she left the house. The learned Magistrate entered into inquiry. He on the basis of the statement of the complainant on solemn affirmation and the statement of the three witnesses examined during the course of inquiry found a prima facie case under Section 498A of the Indian Penal Code against the accused persons and ordered to file requisites for service of summons upon the accused persons. Against that order, the accused persons filed revision giving rise to Cr. Revision No. 274 of 2006 and the learned Sessions Judge under the impugned order dated 15th December, 2006 rejected the revision. Thereafter the present miscellaneous case has been filed for quashing the aforesaid orders.

3. The learned lawyer for the petitioners submits that the complainant is not legally wedded wife of Arun Kumar Gupta. In support of his contention he referred to Ext.3 and submitted that Vijay Kumar Bhagat, husband of the complainant filed a

divorce suit bearing Divorce Case No. 12/95 and that divorce suit was dismissed for non-prosecution on 10.1.2002. As such he submits that divorce was not decreed and hence, the marriage between the complainant and Vijay Kumar Bhagat subsisted and during the subsistence of the marriage, the marriage of complainant with the petitioner Arun Kumar Gupta is void. He, therefore, submits that when the complainant is not the legally wedded wife of the petitioner Arun Kumar Gupta the entire allegation stands falsified. The learned lawyer further submits that as per the allegation offence under Section 498A for which cognizance has been taken is not made out. He refers to Section 498A of the Indian Penal Code which reads as follows:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.- whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, 'cruelty' means -

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

He submits that as per the allegation contained in the petition of complaint the ingredients of cruelty are not attracted and the offence under Section 498A of the Indian Penal Code is not made out. He, therefore, submits that petitioners are innocent and it would be abuse of the process of the court to put them on trial. He prays that impugned orders be quashed.

4. The learned lawyer for the complainant submits that just after the marriage the petitioner Arun Kumar Gupta sworn an affidavit (Annexure-A) before the Notary

Public in which he admitted the marriage and this affidavit has been filed with the petition of complaint itself. He submits that the complainant also filed the affidavit regarding the marriage (Annexure-A/1). As such he submits that there is document showing the marriage of the complainant with the petitioner Arun Kumar Gupta. He submits that so far as Ext.3 filed on behalf of the petitioners is concerned, this document cannot be looked into as it is a document not placed on the record during the course of inquiry. He submits that this document will be looked into during the course of trial. He submits that the complainant is legally wedded wife of Arun Kumar Gupta. He submits that as per the allegation the complainant became pregnant and her pregnancy was terminated fraudulently and as a result she could not produce any child in future and this is covered within the meaning of 'cruelty' under the provisions of Section 498A, Explanation (a) and hence the provision of Section 498A is attracted. He submits that the contention of the learned lawyer for the petitioners is, therefore, not sustainable in law. He, therefore, asserted that the miscellaneous case has got no merit and it is fit to be dismissed.

5. Considering the allegation in the petition of complaint, impugned orders and submissions made on behalf of both sides, I find that there is no merit in the miscellaneous case and it is fit to be dismissed.

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