

Aslam Khan, Vs. State of Bihar

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Court : Patna

Decided On : May-05-2006

Judge : J.N. Bhatt, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 498A

Appeal No. : Cr. Misc. No. 7507 of 2005

Appellant : Aslam Khan, Md. Zahir Khan and Halima Khatoon

Respondent : State of Bihar

Advocate for Def. : Jharkhandi Upadhyay, APP

Advocate for Pet/Ap. : U.P. Chainpuri, Adv.

Disposition : Appeal dismissed

Judgement :

J.N. Bhatt, C.J.

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (In short 'the Code'), by which the petitioners have made a prayer for quashment of the order dated 5.5.2003 of Shri S.K. Pandey, Judicial Magistrate, Ist Class, Aurangabad (Bihar) passed in Complaint Case No. 85/2003, Tr. No. 869/2003 by which the learned Court below has taken cognizance of the offence

under Section 498A of the Indian Penal Code, against the petitioners. The petitioners have also prayed for quashment of the order dated 19.1.2005 passed by Sri Umesh Chandra Mishra, Additional Sessions Judge (Fast track Court No. III), Aurangabad in Criminal Revision No. 116/2003/3/2004.

2. The instant trial arises out of a complaint filed by the complainant-wife against her husband. Md. Aslam Khan, and two others alleging, inter alia, that she was married with petitioner No. 1 about 11 years back and two daughters and two sons were borne out of this wedlock but the petitioner No. 1 again married for the second time with one Halima Khatoon and then third marriage and when the complainant protested, she was harassed, assaulted and also subjected to torture and cruelty at the hands of the petitioners. The petitioner No. 1 used to demand Rs. 50,000/-. On protest, the complainant was badly assaulted by her husband, father-in-law and newly wedded wife of her husband and, ultimately, for non-fulfilment of payment of Rs. 50,000/- she was driven out from the house.

3. Learned Counsels for the parties have been heard. The Police papers and record emerging from the present case have also been examined.

4. In order to avail the inherent powers of the High Court under Section 482 of the Code for quashment of the Criminal Proceedings, it has to be shown that there is exceptional case for exercise of such powers. The complaint made by the complainant wife clearly involves all the three petitioners before this Court. It cannot be said that there is no offence constituted on the plain reading of the complaint and the other supporting papers.

5. While exercising the jurisdiction under Section 482 of the Code, the High Court would not embark upon a fresh inquiry - whether the allegations against the petitioners in the complaint is likely to be established or not. The power under Section 482 of the Code, as per the settled proposition of law, has to be exercised sparingly. Such powers are extra-ordinary powers and are designed to help those persons against whom, on plain reading of the complaint petition or relevant papers, no offence is made out or constituted. The interference in minor matters with the help of Section 482 of the Code would be warranted only when the complaint or the first information report or the Police papers do not, even on plain

perusal, constitute, prima facie, any offence against the accused persons.

6. In the recent decision in the case of Mohd. Malek Mondal v. Pranjal Bardalal and Anr. (2005) 10 SCC 608, the Hon'ble Apex Court has highlighted, once again, the principles for the purpose of exercising powers under Section 482 of the Code for quashing the criminal proceedings. When and how such powers should be exercised are also articulated and expounded. Obviously, such powers are to be exercised sparingly and with caution and not to stifle legitimate prosecution. Such powers could only be exercised in a case where the complaint does not disclose any offence and it is brought to the notice of the Court that it is frivolous, excessive, vexatious or oppressive. At that stage of quashment of the proceedings, meticulous appreciation of evidence or quality of the material or detailed analysis is not warranted.

7. In the facts and circumstances of the case, viewed in the light of the aforesaid proposition of law, this Court is satisfied that there is no substance in the present petition. Hence, the same shall stand rejected. Rule is discharged.

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