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Court : Patna

Decided On : Oct-13-2003

Judge : I.P. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 239, 397 and 401; [Indian Penal Code \(IPC\), 1860](#) - Sections 120, 406 and 498; [Dowry Prohibition Act, 1961](#) - Sections 3, 4 and 5

Appeal No. : Cri. Revision No. 523 of 2001

Appellant : Manju Devi @ Manju Singh and ors.

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Judgement :

I.P. Singh, J.

1. This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short 'the Code'). It is directed against the order dated 2.7.2001 passed by the Sub-Divisional Judicial Magistrate, Gopalganj in Tr. No. 1099/2001

wherein and whereunder the learned Magistrate was pleased to reject the petition filed on behalf of the petitioners for their discharge under Section 239 of the Code.

2. It appears that opposite party No. 2 had filed a complaint petition against the present petitioners which was forwarded to the police under Section 156(3) of the Code. It was registered as Mirganj P.S. Case No. 173 of 1999. The police after completing the investigation submitted charge sheet. The cognizance of the offence was taken under Sections 498, 406, 120B of the Indian Penal Code read with Sections 3, 4 and 5 of the Dowry Prohibition Act and the case was posted for framing of charge in the Court of the learned Sub-Divisional Judicial Magistrate, Gopalganj.

3. On 31.5.2001 the petitioners filed a petition before the Court along with the various documents praying therein that it was not necessary to proceed to conduct the trial as there was no sufficient ground to proceed in the matter. The petitioners had filed as many as seven documents along with their petition. The learned Sub-Divisional Judicial Magistrate, however, without considering any one of those documents dismissed the petition of the petitioners for their discharge by his impugned order without assigning any reason for having done so. The impugned order is totally a non-speaking order wherein charges were directed to be framed even against petitioner No. 1 who is totally outsider to the family of the parties. Under law the learned Sub-Divisional Judicial Magistrate has legal obligation to take into consideration the documentary evidence produced on behalf of the petitioners in order to reach to the conclusion as to whether there was sufficient material to proceed against the accused persons. The petitioners have contended that as per the provisions of Section 239 of the Code the stage of framing of the charge it requires that the learned Trial Court has to consider the documents filed on behalf of the accused persons before passing the order of framing of charge or discharge against them. In the impugned order, however, the learned Sub-Divisional Judicial Magistrate has not even uttered a single word with regard to the documents produced on behalf of the petitioners with respect to the defence taken by them. Those documents annexed as Annexure-2 were all of unimpeachable character and should not have been ignored by the Court. Non-consideration of those documents has made the impugned order infructuous and liable to be set aside. On these grounds it has been contended that the impugned order be quashed.

4. The parties have been heard at length on the questions raised in this petition. On behalf of the petitioners written arguments have also been filed. By order dated 5.10.2001 notice to opposite party No. 2 was issued to show cause as to why this petition should not be admitted or disposed of at the admission stage. By order dated 12.8.2002 this application was admitted for hearing and finally the matter was heard on 29.7.2003 and the order was reserved.

5. A counter affidavit has also been filed on behalf of opposite party No. 2 annexing the photo copy of the supervision note of the Dy. S.P. as also the photo copy of the entire order sheet of Civil Misc. Case No. 1/2001. Some other documents have also been annexed.

6. The parties have been heard in detail on the various questions raised on their behalf. In this connection my attention has been drawn to the impugned order dated 2.7.2001. The fourth paragraph of this order runs as follows:

'xxx xxx xxx xxx'

7. From the aforesaid it would appear that the learned Magistrate has not heard the parties with respect to the framing of the charge before passing the impugned order. In this connection a reference may be made to Section 239 of the Code which runs as follows:

'239. When accused shall be discharged--If upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate, thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reason for so doing.

240. Framing of charge--(1) If, upon such consideration, examination, if any, and hearing the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.'

8. From the aforesaid provisions of law it becomes clear that at the stage of framing of the charge/discharge of the accused the Magistrate ought to give the prosecution and the accused an opportunity of being heard. This is a necessary requirement of law which has to be complied with by the Magistrate before ordering for framing of charge/discharge of the accused.

9. This matter had come up for consideration before the Hon'ble Supreme Court in the case of Satish Mehra v. Delhi Administration and Another, (1996) 9 SCC 766. In this decision it has been clearly laid down by the Hon'ble Supreme Court that at the stage of framing of the charge the Court is not debarred from looking into any material produced by the accused at this stage. It was further held that hearing of the accused is not confined to oral arguments. In paragraph 13 the Hon'ble Court (firstly referring to Section 226 in paragraph 12) has observed as follows:

'13. Similar situation arises under Section 239 of the Code (which deals with trial of warrant cases on police report). In that situation the Magistrate has to afford the prosecution and the accused an opportunity of being heard besides considering the police report and the documents sent therewith. At these two stages the Code enjoins on the Court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. It is a matter of exercise of judicial mind. There is nothing in the Code which shrinks the scope of such audience to oral arguments. If the accused succeeds in producing any reliable material at that stage which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material shall be looked into by the Court at that stage. Hence the ground may be any valid ground including insufficiency of evidence to prove the charge.'

10. Thus the law on this point has been very clearly laid down by the Hon'ble Supreme Court. It provides that, (a) both the parties have to be heard at this stage of framing of the charge and (b) the Court has to take into consideration any reliable documentary evidence produced on behalf of the accused at this stage before ordering the framing of the charge. In the present case it appears that on

behalf of the petitioners various documents were placed before the learned Court below. From the impugned order, however, it nowhere appears that those documents were taken into consideration. It not even shows that the parties were heard even orally on the point of framing of charge. This is clear violation of the mandate of law on this point.

11. In view of what has been stated above, it is clear that the impugned order is not in terms of the law and is required to be set aside.

12. In result, this application is allowed and the impugned order is quashed. The learned Magistrate is directed to proceed from the stage of framing of charge/ discharge of the accused in this case on the basis of the materials made available on the record and also in the light of the observations made above.

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