

Shailendra Kumar Singh Vs. the State of Bihar and anr.

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Court : Patna

Decided On : May-13-2009

Judge : Ajay Kumar Tripathi, J.

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

Appeal No. : Cr. Misc. No. 53216 of 2007

Appellant : Shailendra Kumar Singh

Respondent : The State of Bihar and anr.

Advocate for Def. : Permeshwar Mehta, Adv. for the Opp. Party No. 2 and; M.N. Jha, APP

Advocate for Pet/Ap. : K.N. Joseph and;Hemant Kumar Advs.

Disposition : Application allowed

Judgement :

Ajay Kumar Tripathi, J.

1. Heard learned Counsel for the petitioner, learned Counsel for opposite party No. 2 and APP for the State.

2. Petitioner is the husband who is before this Court for quashing of the order dated 19.10.2006 passed by the Chief Judicial Magistrate, Khagaria in Aloli P.S. Case No. 121 of 2004 by virtue of which cognizance has been taken against the petitioner under Section 498A of the Indian Penal Code. Petitioner has been summoned to face trial and therefore the present application under Section 482 of the Cr. P.C. has been filed before this High Court.

3. A very pointed legal submission has been made by learned Counsel for the petitioner that from a bare perusal and reading of the FIR coupled with the allegation made therein no cause of action has arisen within Aloli Police Station situated in the District of Khagaria where the FIR has been lodged by the father of the girl and the concerned Magistrate thereafter has taken cognizance of the offence against the petitioner. Learned Counsel also submits that all the bundles of facts and allegations are relatable to a place known as Bhuswar located in the Police Station- Bibhutipur in the District of Samastipur. It is also alleged that the father of the girl in question is a resident of Amba located in Aloli Police Station in the District of Khagaria and that does not amount to the cause of action in favour of the complainant. In support of the said legal question learned Counsel for the petitioner relies on some recent decisions of the Hon'ble Supreme Court as well as Patna High Court in this regard. Some of the said decisions are relatable to in the case of Bhura Ram and Ors. v. State of Rajasthan and Anr. reported in 2008 (3) PLJR 367 (SC). Emphasis is laid on paragraph 4- of the decision which is as follows:

Paragraph -4: The facts stated in the complaint disclose that the complainant left the place where she was residing with her husband and in-laws and came to the city of Sri Ganganagar, State of Rajasthan and that all the alleged acts as per the complaint had taken place in the State of Punjab. The Court of Rajasthan does not have the jurisdiction to deal with the matter. On the basis of the factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter. As a consequence thereof, the proceedings before the Additional Chief Judicial Magistrate, Sri Ganganagar are quashed. The complaint be returned to the complainant and if she so wishes

she may file the same in the appropriate court to be dealt with in according with law.

4. Yet another decision of the Hon'ble Supreme Court on similar point is in the case of Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr. reported in : (2004) 8 SCC 100 and a recent decision of this Court which is in the case of Md. Kalim and Ors. v. The State of Bihar and Anr. reported in 2009 (1) PLJR 111.

5. Learned Counsel for opposite party No. 2 submits that there is no wrong if the Magistrate in question has taken cognizance of the case so lodged where the informant lives and that the some part of cause of action arose there also because the demand of dowry has been made from the father of the girl and to that extent no interference in the proceeding is required.

6. But it is difficult for this Court to accept the submission made on behalf of the opposite party No. 2 keeping in view of the law laid down in this regard and the bundle of allegations and cause of action which has not arisen where the FIR in question had been instituted and cognizance has been taken. The cause of action has arisen in the district of Samastipur which is evident from a broad reading of the allegations made in the FIR. Petitioner has made out a case for interference. In view of the same the order taking cognizance dated 19.10.2006 passed in Aloli P.S. Case No. 121 of 2004 (GR No. 1260 of 2004) stands quashed.

7. This application is accordingly allowed.

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