

Pramila Devi, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-26-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 156(3), 198A; Indian Penal Code (IPC) - Sections 498A, 323, 307, 182, 211

Appeal No. : CRIMINAL MISCELLANEOUS No.6226 OF 2002

Appellant : Pramila Devi, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs.Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : Mr. Ram Balak Mahto; Mr. Ashwini Kumar Sinha, Adv.

Judgement :

1. Nine petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 18.1.2002 passed by the Chief Judicial Magistrate, Munger in Munger Kotwali p.S. Case No.74 of 2001. By the said order, the learned Magistrate, differing with the police report, has taken cognizance of offence under Section 498A of the Indian Penal code and directed for summoning the accused persons.

2. Short fact of the case is that opposite party no.2 filed a complaint in the court of Chief Judicial Magistrate, Munger, which was number as Complaint Case

No.107(c) of 2001. In the complaint petition, it was alleged that the accused persons had committed offence under Sections 323, 307 and 498A of the Indian Penal Code. It was alleged that opposite party no.2 was husband of one Dipti @ Salini. The marriage was solemnized in February, 1998 and thereafter, when his wife arrived at her in-laws place, the accused persons started torturing and demanding further dowry. Perturbed with the behaviour of the accused persons within a week, wife of informant left the house of in-laws and thereafter, she started to living with her parents. It was further alleged in the complaint petition that on 14.2.2001 at about 4.30 P.M., while the informant was in his shop, he heard cry of her wife and thereafter, he rushed to the floor of his house and he noticed that accused persons i.e. Accused Nos.2, 3, 4, 5, 6 and 9 had caught hold of the wife of the informant and they had sprinkled kerosene oil over the wife of informant, namely, Dipti Devi. It was alleged that the accused persons were trying to put fire on the person of the wife of the informant. Continuously, they tried to light stick of matches, but it failed and on the alarm raised by the wife of the informant, the informant and many other persons arrived there and in that way, life of wife of informant could be saved. The said complaint petition, which was numbered as Compalint Case No.107(c) of 2001, was referred to the police under Section 156(3) of the Code of Criminal Procedure for its registration and investigation. The police registered a case on 1.3.2001 vide Kotwali P.S. Case No.75 of 2001 for the offence under Section 498A of the Indian Penal Code. After registering the F.I.R., the case was thoroughly investigated and on 31.5.2001, a final report was submitted by the police mentioning therein that allegations were found false. Besides filing final report, police also filed a prosecution report for prosecuting the informant for the offence under Sections 182 and 211 of the Indian Penal Code for lodging a false case.

3. After submission of final form, the learned Magistrate examining the materials available on record and differing with the police report, by its order dated 18.1.2002, took cognizance of offence under Section 498A of the Indian Penal Code against all the accused persons.

4. Aggrieved with the order of cognizance, petitioners approached this Court by filing the present petition. On 25.2.2003, the case was admitted for hearing. While

admitting, Lower Court Record was called for and it was further directed that in the meantime, further proceeding in the court below in Complaint Case No.107(c) of 2001, Munger Kotwali P.S. Case No.74 of 2001 shall remain stayed. The stay order is still continuing.

5. Shri Ram Balak Mahto, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of cognizance, has argued, at the very outset, that the opposite party no.2 was not authorized to initiate prosecution against the petitioners in view of provision contained in Section 198A of the Code of Criminal Procedure. It was submitted that the order of cognizance and entire prosecution on this ground alone is liable to be set aside. It was further argued that besides non maintainability of the complaint petition, the order of cognizance and entire proceeding is liable to be set aside on the ground of malicious prosecution. Learned Senior Counsel has referred to paragraph-16 of the present petition wherein detail of cases initiated by opposite party no.2 has been mentioned, which are as follows:

"16 (I) Complaint case no.345(C) of 1999 filed on 3.6.99, against the petitioners, his son and other family members for offence under sections 323, 504 and 380 of the Indian Penal Code for looting colour T.V. and ornaments Titan watch and golden chain etc. which was dismissed on 2.9.99 by the Chief Judicial Magistrate.

(II) Kotwali P.S. Case No.313/99 under sections 341,323,354,380 of the Indian Penal Code for committing theft of Sari, Thali, Lota and silver glass in which final report non cognizable under section 323 of the Indian Penal Code was submitted which is still pending.

(III) Case no.491 C/99 for offence under section 307/380 and 452 of the Indian Penal Code for committing theft of golden chain, ring bucket cash etc. which was dismissed on 29.11.99 by Judicial Magistrate, first class, Case no.505/99 under section 323,399,384 and 504 of the Indian Penal Code and for theft of golden chain, Titan watch and cash etc. which was dismissed on 6.10.99.

(IV) 7C/2000 under section 323, 379 of the Indian Penal Code for theft of golden chain and titan watch which is still pending in the court of Judicial Magistrate.

Kotwali P.S. Case No.50 of 2001 under section 341, 323, of the Indian Penal Code for committing theft of Jewellery which is pending before judicial Magistrate, 1st class, Munger.

(V). Title suit (partition) no.111 of 1999 filed on 22.9.99 which is pending before the Sub judge, 1, Munger."

6. It was submitted that since number of cases instituted by opposite party no.2 was found to be not correct, the opposite party no.2, with a view to put pressure on the petitioners, had come out with the present prosecution on an allegation of commission of offence under Section 498A of the Indian Penal Code. Learned Senior Counsel has also referred to certain paragraph of the complaint petition, which is the part of the F.I.R. It was submitted that on the basis of materials on record, it is evident that the present case was initiated with an oblique motive and as such the impugned order of cognizance may be set aside.

7. Shri Ashwini Kumar Sinha, learned counsel appearing on behalf of opposite party no.2 has vehemently opposed the prayer of the petitioners. On the point of maintainability, learned counsel has pointedly referred to Section 198A of the Code of Criminal Procedure, which is as follows:

"198A. Prosecution of offences under section 498-A of the Indian Penal Code.- No Court shall take cognizance of an offence punishable under section 498-A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption."

8. On the basis of aforesaid provision, Shri Sinha has submitted that Section itself says that police was competent or authorized to investigate the case and in this case, after the complaint was referred to the police, police had thoroughly investigated the case. Of course, there were materials in the case diary, but due to the reason best known to Supervisory Authority; final form was submitted in the present case. It was submitted by Shri Sinha that the contents of the complaint

petition itself makes it clear that accused persons had committed the offence. It was further argued that the points which have been raised by the learned Senior Counsel for the petitioner can be well addressed at appropriate stage before the court below itself. It is not the stage to scrutinize the evidence. Accordingly, it has been prayed to reject the present petition.

9. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State, has supported the stand taken by learned counsel appearing on behalf of opposite party no.2.

10. Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as maintainability of the case is concerned, in view of provisions contained in Section 198A of Code of Criminal Procedure, I do not find that F.I.R. of the present case can be questioned. The court is of the view that as per provision under Section 198A of Cr.P.C., the police is fully competent to register or investigate a case for commission of offence under Section 498A of the Indian Penal Code and on the police report, cognizance of offence is not barred under Section 198A of the Cr.P.C. So far as allegation of initiation of the present proceeding with an oblique motive is concerned, the contents of the F.I.R. itself makes it clear that the informant had already filed cases against the accused persons of the present case. Prima facie, the court is satisfied that complaint which was filed before the learned Magistrate was itself not fair and honest, but was filed with some oblique motive. Since number of litigations are pending in between petitioners and opposite party no.2, the court is of the opinion that allowing prosecution of the petitioners in peculiar facts and circumstances of the present case may amount to allowing abuse of the process of the court and as such for the ends of justice, it is necessary to interfere with the impugned order and order of cognizance dated 18.1.2002 passed by the learned Chief Judicial Magistrate in Munger Kotwali p.S. CaseNo.74 of 2001 is hereby set aside. It is made clear that whatever observation has been given in the present case may not be considered or taken into account at any subsequent stage.

11. With above observation and direction, the petition stands allowed.