

**Kanti Devi, and anr. Vs. State of Bihar, and anr.**

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**Court :** Patna

**Decided On :** Oct-08-2010

**Judge :** Akhilesh Chandra, J.

**Acts :** Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 341, 323, 498A, 379, 504; Dowry Prohibition Act - Sections 3, 4

**Appeal No. :** CRIMINAL MISCELLANIOUS No.38189 OF 2005

**Appellant :** Kanti Devi, and anr.

**Respondent :** State of Bihar, and anr.

**Advocate for Def. :** Mr. Damodar Prasad Tiwary, Adv.

**Advocate for Pet/Ap. :** Mr. Baxi S.R.P. Sinha, Adv.

**Judgement :**

1. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State. None turned up on behalf of complainant opposite party no.2 in spite of appearance much before. Supplementary affidavit has been filed today on behalf of learned counsel for the petitioners.

2. This is an application under section 482 of the Criminal Procedure Code seeking quashing of entire proceeding of complaint case no. 422C of 2004 and also seeks quashing of order dated 16.05.2005, taking cognizance and issuance of process against the petitioners by Shri R.J. Pal, Judicial Magistrate, 1st Class,

Lakhisarai.

3. The relevant facts of this case is that opposite party no.2 filed a Complaint against all the petitioners including one Rajni Kumari Devi, non-petitioner, alleging therein that all the named accused persons arrived at the quarter of the complainant in the night at about 11.30. P.M. on 27.11.2004, she provided shelter to them being relative and also offered for dinner which was avoided, they only sought shelter for night, as in the morning, they were to go Jasidih, in early hours at 4 P.M. the complainant found all the accused persons living her house with some articles Brifcase etc. On protest, petitioner no.4 Bibhuti Sharan aimed pistol at her and all successfully escaped from there.

4. Learned counsel for the petitioners submitted that the case was filed with false allegations concealing material facts just to put pressure upon non-petitioner Rajni Kumar Devi, and the petitioners not to pursue the earlier Complaint Case No. 798 of 2002 filed by Rajni Kumari Devi against her husband, the parents-in-law and the complainant i.e. sister-in-law for the offence under Sections 341, 323, 498A, 379, 504 of the Indian Penal Code besides 3/4 of the Dowry Prohibition Act. Knowing fully well about the case and appearance therein taking privilege of bail etc. the complainant opposite party no.2 filed the false case.

5. Learned Additional Public Prosecutor after initial hesitation failed to point out anything contrary to the submissions.

6. The materials available on the record indicates that earlier at the instance of accused no.1 Rajni Kumar Devi complaint case no. 798 of 2002 was filed, whereon Chandauti P.S. Case No. 111 of 2002 was instituted on 17.08.2002, wherein opposite party no.2 had to seek privilege of anticipatory bail was granted to the complainant opposite party no.2 vide order dated 30.07.2004 under A.B.P. No. 333 of 2004. Not only that, father and brother of opposite party no.2 had to furnish additional undertakings on 28.07.2003 itself before being granting the relief as prayed, in spite of knowing everything. The complainant opposite party no.2 kept silence on all such details, even she did not disclose exact relationship with accused no.1 at whose instance she had to suffer and obtained order of bail etc.

7. The facts aforementioned relating to strained relationship and filing of earlier case are sufficient to show that the complainant opposite party no.2 has got the instant case instituting just in retaliation of earlier case filed by accused no.

1. She appears purposely concealed all such details from the court by not mentioning in the complaint petition depriving the court from arriving at real truth during inquiry.

8. It is also not out of place to mention that in case filed by accused no. 1 Rajni Kumar Devi, the complainant opposite party no.2 and other named accused persons therein now stands convicted by judgment dated 29.06.2010 passed by learned S.D.J.M. Gaya, in Tr. No. 2861/2010 G.R. No. 1772/2002. From the judgment of the same also it appears that petitioner no.2 here was prosecution witness no.1 in the said case and his statement was also considered holding guilt of accused persons there including opposite party no.2 here.

9. From the aforementioned discussion, it is crystal clear that proceeding before the court below was initiated just to satisfy personal vendetta and grudge. Hence, it is not permissible to continue. Accordingly, the impugned order is hereby quashed and this application stands allowed.

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