

Vijay Tantee, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Oct-26-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 323, 380, 34, 354, 452, 498A; Dowry Prohibition Act - Sections 3, 4

Appeal No. : CRIMINAL MISCELLANEOUS No.10820 OF 2007

Appellant : Vijay Tantee, and ors.

Respondent : State of Bihar, and anr.

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

Advocate for Pet/Ap. : Mr. Jayram Sharma, Adv.

Judgement :

1. Six 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 25.3.2006 passed by the Judicial Magistrate, Ist Class, Bihar Sharif (Nalanda) in Complaint Case No.1323c of 2005. By the said order, learned Magistrate has taken cognizance of offence under Sections 323 and 380/34 of the Indian Penal Code and summoned the petitioners to face trial.

2. Short fact of the case is that the opposite party no.2, who is father-in-law of petitioner no.3, namely, Sobha Devi, filed a complaint in the court of Chief Judicial

Magistrate, Nalanda, which was numbered as Complaint Case No.1323c of 2005, alleging commission of offences against all the petitioners under Sections 323, 354, 380, 452 and 34 of the Indian Penal Code. It was alleged in the complaint petition that all the accused persons had assaulted the complainant and thereafter, forcibly they had taken away household articles of the complainant. After the complaint was filed, the learned Magistrate conducted enquiry and thereafter, by the impugned order, has taken cognizance of offences as indicated above.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. On 2.7.2007, while issuing notice to opposite party no.2, this Court directed that till next date, further proceeding in the court of Judicial Magistrate, Ist Class, Biharsharif in Complaint Case No.1323c of 2005 shall remain stayed. Despite valid service of notice on opposite party no.2, the opposite party no.2 has preferred not to appear.

4. While questioning the order of cognizance and initiation of prosecution against the petitioners, Shri Jayram Sharma, learned counsel appearing on behalf of the petitioners, submits that the present complaint petition was filed maliciously and with oblique motive. It has been submitted that prior to filing of the present complaint petition, the complainant as well as his other family members had committed offence under Section 498A of the Indian Penal Code against petitioner no.3, who was daughter-in-law of complainant of the present case. Thereafter, a complaint was filed by petitioner no.3 vide Complaint Case No.2410 of 2004. The complaint was filed on 5.10.2004 on allegation of commission of offences by husband of petitioner no.3 and other family members including the complainant of the present case for commission of offences under Sections 498A, 341 and 323 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. In the said case, after conducting enquiry, the learned Magistrate took cognizance of offence on 16.1.2005/17.1.2005 and summoned the accused persons including the complainant of the present case i.e. opposite party no.2. It has further been submitted, while referring to enclosures to the petition that despite issuance of process of warrant of arrest, the complainant of the present case i.e. opposite party no.2 has not appeared in Complaint Case No.2410 of 2004. Even a show because notice was issued vides Annexure-8 to the petition to the Officer-in-

charge, Bihar Sharif Police Station, Nalanda. Learned counsel for the petitioners, while referring to Annexure-5 to the petition, submits that the petitioner no.3 was apprehending false implication at the hand of opposite party no.2 and, accordingly, an Informatory Petition was filed on 31.10.2005 in the court of Chief Judicial Magistrate, Patna, which was numbered as Informatory Petition No.3019M of 2005. On the aforesaid grounds, it has been submitted that the order of cognizance on such complaint petition is liable to be set aside.

5. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appears on behalf of the State.

6. Besides hearing learned counsel for the petitioner and State, I have also perused the materials available on record.

7. In view of the fact that earlier prior to filing of the present complaint, the petitioner no.3, who is daughter-in-law of opposite party no.2 has filed a complaint for offence under Section 498A and other provisions of Indian Penal Code and Dowry Prohibition Act, against the complainant/opposite party no.2 and others, the court is of the opinion that present complaint was filed maliciously against all the petitioners. Accordingly, the court is of the opinion that allowing the prosecution will amount to abuse of the process of the court.

8. The order of cognizance dated 25.3.2006 passed by Judicial Magistrate, Ist Class, Bihar Sharif, Nalanda in Complaint Case No.1323c of 2005 is hereby set aside and petition stands allowed.

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