

Sanjay Kumar, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Nov-15-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 323, 324, 307, 379, 498A, 34

Appeal No. : CRIMINAL MISCELLANEOUS No.13457 OF 2007

Appellant : Sanjay Kumar, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Sri Nand Kishore Prasad, Adv.

Advocate for Pet/Ap. : Sri Bajrangi Lal, Adv.

Judgement :

1. Four 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 29.7.2004 passed by the learned Sub Divisional Judicial Magistrate, Gaya in Complaint Case No.616 of 2004. By the said order, learned Magistrate has taken cognizance of offences under Section 498A of the Indian Penal Code and 3 / 4 of the Dowry Prohibition Act.

2. Short fact of the case is that Opp.Party no.2 wife of petitioner no.1, filed a complaint in the court of learned Chief Judicial Magistrate, Gaya, which was

numbered as Complaint Case No.616 of 2004 against the petitioners for commission of offences under Sections 323, 324, 307,379, 498A/34 of the Indian Penal Code and 3 / 4 of the Dowry Prohibition Act. It was disclosed in the complaint petition that the complainant was married to petitioner no.1 in the year 1979. At the time of marriage, petitioner no.1 was unemployed and adequate dowry was given to the accused persons. Subsequently, accused persons started pressurizing the complainant to arrange money for purchasing land at Ranchi. Due to non-fulfilment of the same, she was regularly tortured. It was further disclosed that in the year 1986 also accused persons had poisoned the complainant, but she was saved by neighbours when she was carried by them to the Ranchi hospital. It has further been alleged that on 5.6.2004 in the night, while the complainant was sleeping, accused persons poured K.Oil and tried to put her on fire. However, on the alarm raised by the complainant, the neighbours arrived and she could be saved. On the next day, she was ousted from the house of her in-laws and accused persons forcibly took her ornaments and other articles. After filing of the complaint petition, witnesses were examined and learned Magistrate after being satisfied that prima face case was made out took cognizance of offences under Section 498A of the Indian Penal Code and 3 / 4 of the Dowry Prohibition Act and directed for summoning the accused persons.

3. Aggrieved with the order of cognizance dated 29.7.2004; petitioners approached this Court by filing the present petition.

4. Sri Bajrangi Lal, learned counsel for the petitioners, while questioning the order of cognizance and initiation of proceeding against accused persons firstly argued that the complaint petition itself was not maintainable due to the reason that on the date of filing of the complaint petition, the complainant was not wife of petitioner no.1. Learned counsel for the petitioners has referred to Annexure-2 to the petition, which is photo copy of an ex parte Judgment and Decree dated 11.6.2002 passed in Matrimonial Title Suit No. 3 of 2001. It has been submitted that petitioner no.1 on the ground of desertion had filed the said case for decree of divorce and the same was decreed by Annexure-2 to the petition. It has further been submitted that the marriage had taken place long back in the year 1979 , which finally came to an end after the Judgment and decree of divorce dated

11.6.2002. It was submitted that since the marriage had already come to an end on 11.6.2002, there was no question for pouring K.Oil on the complainant on 5.6.2004, as was alleged in the complaint petition. Learned counsel for the petitioners has also referred to Annexure-3 to the petition, which is a copy of letter issued under the signature of petitioner no.1 and addressed to the Superintendent of Police, Ranchi. It was submitted that petitioner no.1 had also requested the Superintendent of Police to provide him security since Opp.Party no.2 despite the decree of divorce was creating unnecessary scene and demanding her share in the property. Accordingly, it has been prayed to set aside the impugned order of cognizance.

5. Sri Manish Kumar, learned counsel for Opp.Party no.2 has vehemently opposed the prayer of the petitioners. On the query made by the Court as to whether Opp.Party no.2 is still ready to live with petitioner no.1, it was submitted by Sri Manish Kumar that the complainant is still ready to live with her husband i.e. petitioner no.1. However, it was not accepted by learned counsel for the petitioners. It was also submitted by Sri Kumar that ex parte decree was already set aside after filing a petition under Order 9 Rule 13 of the Code of Civil Procedure by the complainant.

6. Be that as it may after going through the contents of the complaint petition as well as the impugned order, the Court is of the opinion that the learned Magistrate has committed no error in passing the impugned order. So far the Judgment and decree of divorce is concerned, it is not in dispute that the said Judgement and decree was ex parte decree. Since the stand has been taken on behalf of the petitioners that on the allegation of desertion by the complainant, the Court was persuaded to request learned counsel for Opp.Party no.2 as to whether Opp.Party no.2 is still ready to live with petitioner no.1. However, it was not accepted by learned counsel for the petitioners. This indicates that in a well designed manner Matrimonial case was filed by the petitioner no.1. So far as submission of learned counsel for the petitioners regarding Annexure-3 to the petition is concerned, the Court is of the opinion that those documents may not be looked into by this Court at this stage.

7. After going through the materials on record, the Court is satisfied that the learned Magistrate has committed no error. I do not find any ground for interference with the order of cognizance. Accordingly, the petition stands rejected.

8. In view of rejection of this petition, interim order of stay dated 27.4.2009 stands automatically vacated.

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