

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

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**Court :** Patna

**Decided On :** Nov-16-2010

**Judge :** Rakesh Kumar, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 482, 164; Indian Penal Code (IPC) - Sections 498A, 420,406, 120B, 494, 365, 34; Dowry Prohibition Act - Section 4

**Appeal No. :** CRIMINAL MISCELLANEOUS No.19712 OF 2007

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

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

**Advocate for Def. :** Smt. Indu Bala Pandey, Adv.

**Advocate for Pet/Ap. :** Sri Arbind Kumar, Adv.

**Judgement :**

1. Two 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 13.2.2007 passed in Complaint Case No.534 (C) of 2006 by learned Sub Divisional Judicial Magistrate, Khagaria. By the said order learned Magistrate has taken cognizance of offences under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. It is peculiar case, in which petitioner no.1 was firstly kidnapped by the complainant, i.e. Opp.Party no.2 and forcibly got married with his daughter, namely, Anila Devi.

2. Short fact of the case is that Opp.Party no.2 filed a complaint in the court of learned Chief Judicial Magistrate, Khagaria, which was numbered as Complaint Case No.534(C) of 2006 against both the petitioners and other eleven persons on an accusation of committing offences under Sections 420,406, 498A, 120B, 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. It was disclosed in the complaint petition that the marriage of petitioner no.2 was solemnized with the daughter of the complainant on 17.5.2004 and after marriage she was kept for about a week and subsequently, she was ousted from the house of her in-laws. It was alleged in the complaint petition that for the purposes of settling the marriage, accused persons had taken about Rs. 4 Lacs as advance and they were further demanding Rs.3 lacs and due to non-fulfilment, the daughter of the complainant was ousted from the house of her in-laws. She was also assaulted by the accused persons. Accordingly, it was alleged that the accused persons cheated the complainant by way of taking Rs.4 Lacs and subsequently, they had committed offence under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. After filing of the complaint, the complainant was examined on S.A. and in support of the complaint petition; six witnesses were examined during the enquiry of the case including the victim girl, Smt. Anila Kumari. After conducting enquiry, learned Magistrate by the impugned order, i.e. order dated 13.2.2007 has taken cognizance of offences as mentioned above.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. On 28.9.2007 while issuing notice to Opp.Party no.2, this Court directed that till next date, further proceeding in the court of S.D.J.M., Khagaria in Complaint Case No.534 ( C) of 2006 shall remain stayed. Opp.Party no.2 after issuance of notice appeared through his advocate and on 13.5.2009, the petition was admitted for hearing. While admitting , it was directed that till further order further proceeding in Complaint Case No.534 ( C) of 2006 pending in the court of SDJM , Khagaria in so far as relates to the present petitioners shall remain stayed. The order of stay is still continuing.

4. On 29.10.2010, the case was taken up for hearing. However, on the prayer made by learned counsel appearing on behalf of Opp.Party no.2, it was adjourned and was directed to be listed on 15th November, 2010 for further hearing.

Yesterday, on call none appeared on behalf of Opp.Party no.2. However, the case was passed over for the day. Today again, at the time of hearing, none appeared on behalf of Opp.Party no.2.

5. Sri Arbind Kumar, learned counsel appearing on behalf of the petitioners, at the very outset while challenging the impugned order has submitted that there were no relation of husband and wife in between petitioner no.2 and daughter of the complainant. It has been pointed out that the complainant on the date of marriage i.e. on 17.5.2004 forcibly kidnapped the petitioner no.2 while he was coming on a Horse-cart (Tamtam). It was disclosed that petitioner no.1 was appointed as a teacher on compassionate ground in the State of Jharkhand and her mother (petitioner no.1), was residing at village- Amarpur in the district of Bhagalpur. The petitioner no.2 had come to see her ailing mother and with a view to meet some persons, he had gone out of his village and while returning, he was kidnapped by the complainant- Opp.Party no.2 other 6-8 accused persons. Thereafter, petitioner no.2 was carried to the house of Opp.Party no.2, where he noticed that there were some arrangements for solemnizing marriage. At the house of Opp.Party no.2, petitioner no.2 was brutally assaulted by the accused persons. Subsequently, he was provided some water by Opp.Party no.2 and thereafter he became unconscious and on the next day when he regained his consciousness, he found himself in a Police Jeep. Learned counsel for the petitioners in course of hearing of the present petition has produced certified copy of the F.I.R. vide Bihpur P.S. Case No.86 of 2004 dated 17.5.2004 ( let it be kept on record) , which was registered on the basis of written complaint filed by the brother of petitioner no.2, namely, Amresh Kumar Yadav. On perusal of the F.I.T. it is evident that there was specific allegation against Opp.Party no.2 (complainant of the present case) regarding kidnapping of petitioner no.2. Learned counsel for the petitioner has further submitted that in Bihpur P.S. Case No.86 of 2004 after petitioner no.2 was rescued by the police, was got examined by the Doctor and thereafter his statement under Section 164 of the Code of Criminal Procedure was recorded by a Magistrate before whom he depicted the story of kidnapping . Learned counsel for the petitioners has referred to Annexure-3 to the petition, which is a typed copy of the statement of petitioner no.2 recorded under Section 164 of the Code of Criminal Procedure. It was further submitted that in Bihpur P.S. Case No.86 of

2004, the complainant/Opp.Party no.2 was put on trial along with other two accused persons, namely, Nawal Kishore Yadav and Rajeev Kumar. It has been submitted that during the enquiry of the present complaint petition, accused Nawal Kishore Yadav was also examined as enquiry witness in support of the present case. Learned counsel for the petitioners has referred to Annexure-2 to the petition, which is a copy of the Judgement of conviction and sentence in T.R.No.799 of 2007, G.R.No.309 of 2004 dated 21st February, 2007 passed by the learned Addl.Chief Judicial Magistrate, Naugachia. It has been pointed out that the complainant/Opp.Party no.2 was held guilty for the offence under Section 365/34 of the Indian Penal Code along with accused Nawal Kishore Yadav and Rajeev Kumar and they were sentenced to rigorous imprisonment for four years for the same offence. Accordingly, it has been submitted that in view of the facts and circumstances of the present case, the present complaint, which was filed on 14.7.2006, was filed only with a view to create defence in Bihpur P.S. Case No.86 of 2004. Accordingly, it has been prayed to set aside the order of cognizance as well as entire criminal prosecution.

6. I have heard Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State. None has appeared on behalf of Opp.Party no.2 despite the fact that Opp.Party no.2 has already entered his appearance through advocate.

7. Besides hearing learned counsel for the petitioners and the State, I have minutely perused the materials available on record. After going through Annexure-2, i.e. a copy of the Judgment of conviction and sentence passed in T.R.No.799 of 2007, it is evident that the allegation against the complainant for kidnapping petitioner no.2 was finally proved during fully fledged trial and thereafter the complainant of the present case was convicted and sentenced by the trial court. The falsity of the present complaint is further corroborated in view of the fact that in the complaint petition itself, the complainant has asserted that after the solemnization of marriage on 17.5.2004, his daughter remained for a week in her in-laws house and thereafter she was ousted. Meaning thereby that whatever offence was committed was committed within a week from the date of marriage, i.e. 17.5.2004. However, the present complaint was filed after a long delay i.e. on 14.7.2006. It is also evident from the Judgment of the trial court that the

complainant/Opp.Party no.2 was held guilty for kidnapping the petitioner no.2.

8. In view of the facts and circumstances of the present case, the Court is of the opinion that the present complaint was filed maliciously as well as with an oblique motive, i.e. to create a defence in favour of the accused persons, who were accused in Bihpur P.S. Case No.86 of 2004 and on the basis of such allegation, the learned Magistrate was not required to proceed with.

9. Accordingly, the order of cognizance dated 13.2.2007 passed in Complaint Case No.534 (C) of 2006 by the learned Sub Divisional Judicial Magistrate, Khagaria as well as entire criminal prosecution against the petitioners is hereby set aside and the petition stands allowed.

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