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Court : Patna

Decided On : Feb-04-2011

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Dowry Prohibition Act - Sections 3, 4

Appeal No. : CRIMINAL MISCELLANEOUS NO. 21718 OF 2001

Appellant : Narendra Kumar Mandal.

Respondent : State of Bihar, and ors.

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

Advocate for Pet/Ap. : Mr. Amish Kumar; Mr. Binoy Kumar Singh, Adv.

Judgement :

1. The sole petitioner, invoking inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure has prayed for quashing of an order dated 10.7.2001 passed by the Sessions Judge, Katihar by which Cr. Revision No. 30 of 2001 filed by Opposite Party Nos. 2 & 3 was allowed, as a result of which, the order of cognizance dated 28.2.2001 passed by learned Sub Divisional Judicial Magistrate, Katihar under Sections 3 & 4 of the Dowry Prohibition Act against Opposite Party Nos. 2 & 3 in Complaint Case No. 37 of 2001 has been set aside.

2. Short fact of the case is that, the petitioner had filed a complaint case in the Court of Chief Judicial Magistrate, Katihar vide Complaint Case No. 37 of 2001, alleging therein, commission of offence under Sections 3 & 4 of the Dowry Prohibition Act against Opposite Party Nos. 2 & 3. It was disclosed in the complaint petition that the complainant for the negotiation of marriage of his daughter had approached the father of the Opposite Party No. 2 and husband of Opposite Party No. 3. Father of Opposite Party No. 2 agreed for his marriage with the daughter of the complainant. After the settlement of marriage, the complainant gave a gift of one wrist watch, a golden chain and a gold ring to Opposite Party No. 2 and Opposite Party No. 2 also gifted some clothes and gold ring to the daughter of the complainant in token of acceptance of the marriage in the month of June, 1999. Unfortunately, the father of Opposite Party No. 2 died on 14.10.1999 before solemnization of the marriage. After the death of father of the accused, solemnization of the marriage was kept in abeyance for one year. After expiry of the period of one year, the complainant alongwith others visited the house of the Opposite Party Nos. 2 & 3 and requested to fix the date for solemnization of the marriage. However, the accused persons started demanding dowry of Rs. 1,50,000/- on the ground that now the Opposite Party No. 2 was appointed as a teacher on compassionate ground as well as refused to solemnize marriage on the ground that earlier negotiation was finalized by the father of the accused no. 1.

3. It was also alleged by the complainant that after the marriage was settled with the daughter of complainant; the accused no. 2 had developed some communication and had also sent some letters which were enclosed with the complaint petition. However, due to non- fulfillment of the demand, the accused persons refused to solemnize the marriage, and as such, the complaint was filed by the petitioner on 6.1.2001. After filing of the complaint, enquiry was conducted and during enquiry witnesses were examined in support of the complaint, and thereafter, by the order dated, 28.2.2001, the learned Sub Divisional Judicial Magistrate took cognizance of the offence under Sections 3/4 of the Dowry Prohibition Act and directed for summoning the accused persons i.e. Opposite Party Nos. 2 & 3.

4. The Opposite Party Nos. 2 & 3, aggrieved with the order of cognizance, preferred a revision vide Cr. Revision No. 30 of 2001 assailing the order of cognizance on the ground that neither Section 3 nor Section 4 of the Dowry Prohibition Act was applicable in the facts and circumstances of the case. The learned Sessions Judge, Katihar by its order dated 10th July 2001 allowed the Cr. Revision No. 30 of 2001 and set aside the order of cognizance.

5. Aggrieved with the order dated 10.7.2001 passed by learned Sessions Judge, Katihar in Cr. Revision No. 30 of 2001, the complainant / petitioner, approached this court by filing the present petition which was admitted for hearing on 22.1.2002.

6. Sri Amish Kumar, learned counsel for the petitioner while assailing the order of Revisional Court has argued that the learned Sessions Judge has erroneously held that in view of the definition of dowry in Section 2 of the Dowry Prohibition Act Section 4 of the Dowry Prohibition Act would not be applicable in a case in which any property or valuable security was agreed to be given as consideration for marriage but the same was not actually given.

7. Learned counsel for the petitioner has relied on 2004 (2) P.L.J.R. 64 (SC) Reema Agarwal Vs Anupam & Ors. It was submitted that in the facts and circumstances of the present case Section 4 was applicable and the learned Magistrate had rightly taken cognizance of the offence which was not required to be interfered with by the learned Sessions Judge that too while entertaining a Criminal Revision petition. Learned counsel for the petitioner has taken the court through the provision of Section 4 of the Dowry Prohibition Act and explained that as per definition of Dowry under Section 2 of the Act it was a clear cut case of application of Section 4 of the Act.

8. Sri Binoy Kumar Singh, learned counsel appearing on behalf of Opposite Party Nos. 2 & 3 has strongly opposed the prayer of the petitioner. It was submitted that, if the order of cognizance in the facts and circumstances of the present case is examined, it will be evident that the order of cognizance was itself not sustainable in the eye of law. It was submitted by learned counsel for the Opposite Party Nos. 2 & 3 that the cognizance order under Section 4 of the Act was passed without

sanction accorded by the competent authority in view of State amendment of Section 4 of the Act. It was further submitted that, sanction by the competent authority for prosecuting the Opposite Party Nos. 2 & 3 under Section 4 of the Act, was condition precedent for taking cognizance in the case. From the order of cognizance it is evident that no sanction was available on the record. Learned counsel for Opposite Party Nos. 2 & 3 in support of his argument has relied on a Single Bench Judgment of this court reported in 1984 Cr. Law Journal Page 50 (Hari Charan Paswan & Ors. v. The State of Bihar & Anrs.). Besides non-availability of the sanction, on equity and substantial justice also this court may not interfere with the order of revisional court. It was submitted that daughter of the complainant who was to be married with Opposite Party No. 2 and has already been now got married with someone. Similarly, Opposite Party No. 2 is also a married one. It was submitted that since after marriage both i.e. daughter of the complainant and Opposite Party No. 2 who is son of Opposite Party No. 3, are leading their marital life peacefully, it would not be appropriate for this court to direct the Opposite Parties to participate in the proceeding in relation to commission of offence under Sections 3 & 4 of the Dowry Prohibition Act which has already come to an end by virtue of order dated 10th July, 2001 i.e. almost about 10 years back. It was submitted that even the daughter of the petitioner will have to participate in the proceeding which has already come to an end long back, that too, after being married.

9. On the aforesaid ground, it has been prayed that this court may not interfere with the revisional order.

10. Smt. Indu Bala Pandey, learned Additional Public Prosecutor has appeared on behalf of the State.

11. Besides hearing learned counsel for the Parties, I have also perused the materials available on record. From the order of cognizance, it is evident that, no sanction was available on record, and as such, the order of cognizance itself was not sustainable in the eye of law. In the State (Bihar) amendment of Section 4 of the Dowry Prohibition Act, there is restriction to take cognizance of offence under Section 4 of the Act, except with the previous sanction of the State Government or

of such Officer as the State Government may by general or special order specify in this behalf. This provision was inserted by Bihar Act 4 of 1976 with effect from 20.1.1976. Thereafter, vide notification dated 20th January, 1977 published in Bihar Gazette Part II dated 2nd February, 1977 the State Government has conferred the power upon the District Magistrate for according sanction in such cases. This issue has already been set at rest by this court in a case reported in 1984 Cr. L.J. 50 (Hari Charan Paswan & Ors. v. The State of Bihar & Anrs.).

12. Since the court is satisfied that the order of cognizance was itself bad in law, there is no necessity to pass any comment in respect of revisional order. Moreover, keeping in view the submission of the learned counsel for Opposite Party Nos. 2 & 3 that both i.e. daughter of the complainant as well as Opposite Party No. 2 are now leading their peaceful marital life, for the ends of justice, it would be appropriate not to interfere with order dated 10.7.2001 passed by the learned Sessions Judge, Katihar in Cr. Revision No. 30 of 2001. Accordingly, the petition stands rejected.

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