

(2006) 08 PAT CK 0112

In the Patna High Court

Case No : Criminal Miscellaneous No. 33371 of 2006

Ajay Kumar Singh and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438(2)

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 34, 379, 406, 498A

Citation : (2006) 4 PLJR 342

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard learned counsel of the petitioners and the State. The petitioners are the brother-in-law of the husband of the informant, his wife, and father of the wife of the brother-in-law. They are apprehending arrest in a police case under sections 498A, 406, 379/ 34 of the Penal Code and Sections 3/4 of the Dowry Prohibition Act.

2. The allegations against the present petitioners are that petitioner No. 3 played the role of a middle man in the marriage of the daughter of the informant. The husband of the victim is alleged to have had illicit relationship with petitioner No. 2. The allegations for demand of dowry are general and omnibus.

3. The husband of the informant has been enlarged on regular bail by the court below considering that the matter had been compromised between the husband and the wife. The compromise between the main characters in the complaint has appealed to the Sessions Judge, Vaishali, as a very good ground for "sympathetically" considering the prayer for regular bail of the present petitioners. The learned Sessions Judge was not satisfied that the compromise between the main characters in the case u/s 498A of the Penal Code was a good ground for grant of anticipatory bail to the present petitioners.

4. Normally, this Court, would have considered the present and disposed it of

accordingly. This Court, is however, constrained to take note of the manner in which the matter has been dealt with by the Sessions Judge.

5. This Court has been seriously concerned with the surfeit of bail applications coming to this Court, more particularly u/s 498A of the Penal Code. Considering that the same were creating unnecessary and unmanageable burden on this Court, by mechanical rejection of such applications by the court below, this Court laid down certain guidelines for consideration inter alia of such applications in its common judgment and orders in three Criminal Misc. Application of the same nature from three different Sessions Districts. dated 11.5.2006 reported in Md. Naimul Haque Ansari @ Naimul Haque Ansari Vs. The State of Bihar . The said order was directed to be circulated to all the District & Sessions Judges of the State

6. The facts presently are surprisingly similar to the issue what has considered in paragraph 13 of the judgment in Md. Naimul Haque Ansari (supra) which are reproduced below:

Para: 13: This Court is further constrained to observe that in several cases of Matrimonial disputes, the husband and wife having resolved their disputes started to reside together, the husband having been released on bail, yet the Magistrate and the Sessions Court have rejected the anticipatory bail applications of the family members of the husband observing that the revival of the matrimonial harmony was a very good ground for regular bail. This Court is constrained to record that such orders are mechanical and display complete non-application of mind bordering on abdication of duties. The only effect of the order would be possible revival of matrimonial disharmony, and counter productive.

7. Notwithstanding the aforesaid judgment, the Sessions Judge, Vaishali has chosen to reject the application for anticipatory bail of the family members of the husband on 20.7.2006. No reason has been assigned for what transpired in the mind of the Sessions Court to reject the application for anticipatory bail of the petitioners. It needs no reiteration that the Supreme Court as recently in a judgment reported in V.D. Chaudhary Vs. State of U.P. and Another, emphasised the need to briefly spell out the reasons in a bail order to enable the superior court to consider the matter appropriately.

8. Our judicial system is based on hierarchy of courts. The edifice of this hierarchy rests on the pillars of judicial discipline. Any order which shakes the edifice of the judicial system has dangerous portends for the institution. This Court is disturbed by the present order, which is not solitary in nature.

9. After the judgment of Naimul Haque Ansari (supra) dated 11.5.2006, this Court has come across more than one order contrary to the same, of the present nature. One more such matter was noticed in Cr. Misc. No. 33237 of 2006 disposed off on 18.8.2006 from the Sessions District of Nalanda. The husband was in custody but the anticipatory bail of the family members was rejected noticing that at the root of the controversy was the second wife of the husband.

This Court was constrained to note that the judgment and order in the case of Naimul Haque Ansari (*supra*) was ignored. The present also ignores the judgment of this Court as aforesaid.

10. In the aforesaid background, this Court can do no better than refer to a judgment of the Supreme Court reported in Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., and another, and quote paragraphs 31 and 32 of the judgment which are as follows: -

Para 31: It is unfortunate, that notwithstanding the authoritative pronouncements of this Court, the High Courts and the Courts subordinate thereto, still seem intent on affording to this Court innumerable opportunities for dealing with this area of law, though by this Court to be well settled.

Para 32: When the position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders....

11. The Supreme Court has clearly deprecated what it classified as judicial adventurism, judicial impropriety and whimsical by strongly deprecating the tendency. This Court can do better than to reiterate what the Supreme Court has already stated.

12. Let the petitioners, namely, (1) Ajay Kumar Singh (2) Seema Singh and (3) Brajeshwar Prasad Singh shall surrender before the court below within a period of four weeks from today, when they shall be enlarged on anticipatory bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten thousand) each with two sureties of the like amount each to the satisfaction of Chief Judl. Magistrate, Vaishali at Hajipur in connection with Tisiauta P.S. Case No. 14 of 2006, subject to the condition as laid down u/s 438(2) of the Cr.P.C.

13. Let this order be communicated to all the District & Sessions Judges on onwards circulation. This Court hopes and trusts that there shall be no occasion for this Court to say anything further on this aspect of the matter in view of the discussion presently and the views expressed therein.