
(2010) 10 PAT CK 0098

In the Patna High Court

Case No : Criminal Miscellaneous No. 14940 of 2007

Ashok Kumar Chauhan @ Ashok Chauhan

APPELLANT

Vs

The State of Bihar and Kari Devi Chauhan

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 494, 498A

Citation : (2011) 59 BLJR 192 : (2011) 2 DMC 298

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Six Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 2.12.2006 passed in Complaint Case No. CA921 of 2006 by the learned Sub Divisional Judicial Magistrate, Katihar. By the said order, learned Magistrate has taken cognizance of offence under Sections 498A and 494 of the Indian Penal Code and 3 and 4 of the Dowry Prohibition Act.

2. Short fact of the case is that the opposite party No. 2, who claimed to be wife of Petitioner No. 1, filed a complaint in the court of learned Chief Judicial Magistrate, Katihar, which was numbered as Complaint Case No. CA921 of 2006 for the offence u/s 498A of the Indian Penal Code and 3 and 4 of the Dowry Prohibition Act. It was disclosed in the complaint petition that complainant's marriage with Petitioner No. 1 was solemnized nine years back. After solemnization of the marriage, she continued to live happily with her husband and her in-laws, but subsequently, the accused persons started demanding Rs. 20,000/- as well as a cow as dowry. Since it was not fulfilled, the complainant was ousted from the house of her in-laws and thereafter, complainant filed a complaint case vide Complaint Case No. CA646 of 2005 in the court of Chief

Judicial Magistrate, Katihar for the offence u/s 498A of the Indian Penal Code and 3 and 4 of the Dowry Prohibition Act. It was disclosed that on false assurance given by the accused persons, subsequently, the complainant withdrew earlier complaint. The complainant was thereafter taken back to the house of accused persons and thereafter, he again started to demand dowry and assaulted the complainant and finally, she was ousted from the house and thereafter, the present complaint petition was filed. After filing of the complaint petition, enquiry was conducted and the learned Magistrate, by its order dated 2.12.2006, took cognizance of offence under Sections 494 and 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. It may be indicated that in the complaint petition, there was no assertion regarding commission of offence u/s 494 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the Petitioners approached this Court by filing the present petition. On 19.7.2007, while issuing notice to opposite party No. 2, this Court directed that till next date, further proceeding in the court of S.D.J.M., Katihar in Complaint Case No. 921 of 2006 shall remain stayed. Subsequently, the petition was admitted after hearing learned Counsel for the Petitioners as well as learned Counsel appearing on behalf of the complainant and State on 2.8.2010. While admitting, it was directed that during the pendency of this application, further proceeding in Complaint Case No. 921 of 2006 pending in the court of S.D.J.M., Katihar shall remain stayed. The order of stay is still continuing.

4. The present case was admitted for hearing and matter was heard at length, however, none had appeared on behalf of opposite party No. 2.

5. While challenging the order of cognizance, at the very outset, learned Counsel for the Petitioners has argued that the Petitioner No. 1 never solemnized marriage with opposite party No. 2. The stand of Petitioner is that the opposite party No. 2 actually was married to one Natish Biswas. Learned Counsel for the Petitioners has referred to Annexure-2, which is a photo copy of the voter list of the locality i.e. P.S. Kadwa. The Petitioner is also resident of same P.S. Kadwa. It has further been submitted by Mr. Helal Ahmad that even in solemn affirmation, the complainant had admitted that she was married with Petitioner No. 1 after the marriage of Petitioner No. 1 with Petitioner No. 5. Learned Counsel for the Petitioners has specifically referred to page-7 of the petition i.e. the statement of complainant recorded on solemn affirmation. It has been submitted that since the complainant herself had admitted that she was second wife, as per the provisions of law, Section 498A of the Indian Penal Code will not be applicable in such cases. It has been submitted that marriage with second wife during the life time of first wife, as per the Hindu law, is considered as void marriage. In absence of establishing the fact that the complainant was actually and legally married wife of the Petitioner No. 1, she is not in a position to make a complaint that the Petitioners had committed offence u/s 498A of the Indian Penal Code. It has further been submitted that the learned Magistrate, in a mechanical manner,

has passed the order. To substantiate his stand, learned Counsel for the Petitioners has referred to the order wherein cognizance has also been taken u/s 494 of the Indian Penal Code. It has been submitted that in no event second wife can allege for commission of offence u/s 494 of the Indian Penal Code in relation to an allegation of solemnizing marriage. In support of his stand, learned Counsel for the Petitioners has Relied on a judgment of Hon''ble Supreme Court reported in 1988 SC 644 (Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav). The judgment referred by learned Counsel for the Petitioners was of course in relation to a case of maintenance u/s 125 of the Code of Criminal Procedure, but fact remains that in that case, it was held that under the Hindu Marriage Act, second wife was not entitled to maintain a petition for maintenance u/s 125 of the Code of Criminal Procedure since such marriage is considered to be void ab initio. In the present case, complainant herself had admitted that the Petitioner No. 1 was married with Petitioner No. 5 prior to marriage of the complainant with Petitioner No. 1. Even learned Magistrate had noticed in its order regarding the stand taken by the complainant. On aforesaid grounds, it has been submitted that order of cognizance is liable to be set aside.

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

7. Besides hearing learned Counsel for the Petitioners and the State, I have also perused the materials available on record. In the facts and circumstances of the present case particularly averment made in the complaint case as well as admission of the complainant that she was a second wife, the court is of the opinion that the learned Magistrate has committed an error while taking cognizance of the offence u/s 498A of the Indian Penal Code. So far as order of cognizance in respect of Section 494 of Indian Penal Code is concerned, on the basis of averment made in the complaint petition, no such offence is made out.

8. Accordingly, the order of cognizance dated 2.12.2006 passed in Complaint Case No. CA921 of 2006 by learned Sub Divisional Judicial Magistrate, Katihar is hereby set aside and petition stands allowed.