

(2007) 01 PAT CK 0044

In the Patna High Court

Case No : Criminal Miscellaneous No. 932 of 2006

Badri Choubey and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 406, 498A, 504

Citation : (2007) 2 PLJR 721

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Advocate : Ashok Kumar Pandey, for the Appellant; Bijay Bahadur Tiwary for the O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—This petition u/s 482 Cr.P.C. seeks the quashing of the order dated 4.1.2005, passed by the learned Chief Judicial Magistrate Sasaram in Complaint Case No. 6/2005 by which the cognizance of the offence under sections 498-A, 406 323 and 504 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act was taken by the learned court below and the petitioners were summoned to stand their trial. The above order was passed on the basis of the complaint petition bearing no. 06/ 2005 which was filed by the wife of petitioner no. 2 Balendra Choubey @ Birendra Choubey. It is not disputed that the complainant was married to the above noted petitioner Balendra Choubey @ Birendra Choubey and it also appears that the petitioner Balendra Choubey @ Birendra Choubey has children also from the complainant. The relationship between the two appears strained and there was earlier litigation also vide Karagahar P.S. Case No. 46/2002 and it also appears admitted that there was a compromise and that the accused of that case which included some of the petitioners were acquitted by the judgment and order of acquittal dated 24.11.2004, passed by the learned S.D.J.M.. Sasaram in trial no. 662/02 (C.G.

No. 799/ 04). A copy of the judgment of acquittal has been annexed as Annexure-2. It is stated in the complaint petition that the accused persons of the above case gave an undertaking that the complainant shall enjoy the usufructs of 1/3 share of the land which the husband was holding in the entire landed property. It is alleged that the complainant spent some peaceful days with her husband. Thereafter on account of the health of her father having fallen down she moved out to her father's house along with her children with the permission of the husband and came back again one week prior to 19.6.2003 and went to her husband's house at about 7 A.M. for getting her share of land settled to some persons. The husband of the complainant went out of the house and after some time again came back with his father namely Badri Choubey, mother Shiv Kumari Devi and brother Ashok Choubey and his wife Manju Devi and all started abusing the complainant and assaulted her with fists and slaps and also turned her out of the matrimonial house and told her that she did not have any share in the property and further that she would not be allowed to reside in the house, if she did not bring Rs. 50,000/- in cash and a motorcycle from her father. It was further stated to the complainant by the accused persons as per allegations, that if she again came to the house of the accused persons she would be killed. For the above occurrence Karagahar P.S. Case No. 84 of 2003 was registered and the case was pending before a court. It is stated that the accused persons, the complainant and her father were called to the police station by the Officer-in-charge who got some signatures and thumb impression over some stamp paper and asked the complainant to go and live with her husband who would keep her with respect and dignity and accordingly she again came back to her husband's house.

2. It is alleged that the complainant remained in the house of the petitioners for some times but again they renewed their demand of bringing Rs. 50,000/- in cash and a motorcycle from her father which was refused and the accused persons as such stopped meals to the complainant and her children and on 31.12.04 all the accused persons assaulted her, poured kerosene oil upon her body and accused Manju Devi brought a matchbox and gave the same to her father-in-law accused Badri Choubey and accused Ashok Choubey asked his father to set the complainant on fire but the complainant pleaded for mercy and she was spared on the ground that she would bring cash of Rs. 50,000/- and the vehicle as demanded. The complainant went to her father's house and filed the present complaint petition.

3. It was contended that the petitioners were separate from each other and there is a partition through a deed of agreement (Annexure-4) executed by all the accused persons between themselves as a result of which the husband of the complainant got his share separately from the other accused persons. The fact of the matter was that the husband was living with the complainant separately and the complainant was in fact enjoying the entire usufruct of the land falling in the share of her husband accused Balendra Choubey @ Birendra Choubey. It was also contended that the complainant was in fact filing one case after the other in

order to harass and humiliate the accused persons with some ulterior motive and in one of such cases the court acquitted the petitioners after considering the allegations on its merit as may appear from Annexure-2 the judgment and order of acquittal. It was contended that the prosecution appears started on account of mala fide and grudge in order to humiliate and spit at the accused persons and the same must be quashed.

4. On the other hand learned counsel appearing on behalf of the complainant Opposite Party No. 2 contested the contentions and submitted that a lady has come up with true version of the occurrence which had occurred with her. She was being tortured and ill-treated and the defence was not to be considered at the present stage when the accused persons were separate amongst themselves for all purposes and there was no reason for them to go together to commit the offence. There was no element of mala fide in the complaint petition and it was not a case of bringing of false charge against all the accused persons with a view to humiliating them or spiting at them. It is true that there are series of litigations thrust upon the accused persons by the lady but it is also true that the lady has not been provided any means of maintenance or support for living separately from the husband or other accused persons as was contended provided to her. Annexure-4 filed through supplementary affidavit dated 30.11.06 does not indicate that the land falling in the share of Balendra Choubey @ Birendra Choubey has anything to do as regards the maintenance of the complainant or the claim of the petitioners that she was living separately after having provided separate properties for her sustenance.

5. It is trite law that for discerning the constitution of an offence the allegation made in the petition of complaint has to be read and considered. On a consideration of the allegations what appears is that the element of absurdity and improbability appears in them. The accused persons were assaulting the complainant or were attempting to burn her. In that attempt, K. Oil had also been poured upon her and Badri Choubey lit a match stick for setting the complainant at fire. But, she started pleading for mercy and for being spared so that she could go to her father's house for bringing Rs. 50,000/- and a motorcycle and, accordingly, the accused persons melted and spared the complainant so that she could go to her father's house and file the complaint petition. This is patently absurd (Sic.-absurd?) and inherently improbable. If the allegations appeared patently absurd and inherently improbable, the prosecution has to be quashed, as may appear from Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . Keeping that in mind I find that the entire prosecution suffers from patent absurdity and inherent improbability and as such the impugned order and the prosecution initiated through it against the petitioners is hereby quashed. The petition is allowed.