
(2007) 08 PAT CK 0157

In the Patna High Court

Case No : Criminal Miscellaneous No. 47394 of 2006

Baleshwar Choudhary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202

Evidence Act, 1872 — Section 113(b)

Penal Code, 1860 (IPC) — Section 182, 201, 211, 304B

Citation : (2007) PLJR 67

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Jha, J.—The order under challenge is dated 5.12.2005 passed in Complaint Case No. 65C/2005, Tr. No. 1721 of 2005 by Shri D.L. Prasad, Judicial Magistrate, 1st Class, Begusarai, whereby and where under by disposing of the protest petition-cum- complaint petition he has passed the order of cognizance for summoning and thereby putting the petitioner for trial for the offences punishable under Sections 304 (B) and 201 of the Indian Penal Code. Initially a complaint case was filed in the court of the Chief Judicial Magistrate, Begusarai bearing Complaint Case No. 146C of 2003 against the petitioner, Baleshwar Choudhary, and other stating therein that after solemnization of marriage of his daughter Pinki Kumari with Raj Kumar Choudhary in the year 1998, month Baisakh by observance of Hindu rites and rituals. Her Duragman was performed in the year 2001 which was withheld because of non-fulfillment of the dowry demand from the time of marriage with this assurance that demand would be met Even after such Duragman the torture. both mental and physical, as also assault in various ways commenced from net family leading to her tragic death because of such non-fulfilment of dowry demand in spite of the fact that she delivered a child. The complainant was not informed regarding the death of his daughter and when he had been to her Sasural he was informed that his

daughter died 15 days earlier. The information was not given for which the informant was abused and assaulted. The complaint was filed in the court because the police did not entertain such complainant.

2. Complaint petition was sent to the concerned police station for institution of the case and the police submitted final report treating it a false case that the cause of death of Pinki Kumari was due to excessive discharge of blood at the time of delivery of her child and also recommended for proceeding against the complainant under Sections 182 and 211 of the Indian Penal Code. Meanwhile the complainant-opposite party filed a protest petition which was transmitted in the court where such impugned order was passed

3. The transferee Magistrate has considered the statement of five witnesses held in the enquiry u/s 202 of the Code of Criminal Procedure and arrived at this conclusion that prima facie case is made out against the petitioners under Sections 304B and 201 of the Indian Penal Code for their trial.

4. Heard learned counsel for the petitioners, learned counsel for the opposite party No.2 and learned A.P.P. for the State

5. Learned counsel for the petitioner while assailing the impugned order has submitted that as a matter of fact it would be manifest from reading of the complaint petition which is the basis of the F.I.R as also from the other materials collected in course of investigation and also re-statement of the complainant so recorded by the transferee Magistrate that nothing has happened within the jurisdiction of Begusarai District and for that the impugned order suffers from jurisdictional error. Secondly he has argued that there is complete absence of any ingredient so as to infer that any torture ever commenced due to non-fulfilment of dowry demand in her Naihar which falls within the territorial jurisdiction of Begusarai where the complainant resides and ultimately the impugned order is said to have been passed. Thirdly he has argued that there is complete absence of any circumstance, event so as to infer any torture having been commenced on Pinki Kumari in her Sasural just prior to her death. The fact which can be considered in the light that Pinki Kumari remained all through in Sasural, her Duragman was performed in the year 2001 and she had no occasion to visit her Naihar thereafter rather her Naihar people used to see her in her Sasural. He has further submitted that had there been any torture for non-fulfilment of further dowry demand there would not have been any occasion for performance of Duragman and thereby continued uninterrupted living of Pinki Kumari in her Sasural family leading to safe delivery of her child in her Sasural so much so that she was being taken care of medically and consulted from time to time by medical practioner so that she could have safe delivery of her child.

6. Learned counsel for the opposite party in reply has submitted that this is not the stage to examine straight-way pros and cons and entire minutes and detail of the case. So far factual aspect of the case is concerned it is an admitted fact that the marriage was solemnized in the year 1998 and her death took place within 7

years of such marriage in her Sasural and presumption would be u/s 113(b) of the Evidence Act that such torture ultimately led to death of a young lady in her Sasural. Secondly it has been argued on behalf of the opposite party that there was demand of further dowry at the time of the marriage itself for which Duragman was withheld for about more than two years and it was performed only when there was assurance given by the father of Pinki Kumari for such fulfillment of demand.

7. He has also submitted that the impugned order can not be said to be suffering from any jurisdictional error or any illegality in view of the fact that law emphasized of such disposal of protest petition in the manner in which the impugned order is said to have been passed i.e. differing with the police report, cognizance taking Magistrate within the jurisdiction to pass such order after considering the statement of the witnesses so recorded in course of the enquiry.

8. Learned A.P.P for the State has also been heard. In the facts and circumstances, such matters of the defence of the petitioners and as also the allegation of the complaint are factually to be considered when an appropriate stage comes in course of the trial. For the present I do not find any illegality or jurisdictional error in the impugned order. So the petition is dismissed.