
(1999) 02 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No's. 18700 and 19126 of 1998

Binod Kumar Singh and Neelam Kumari @ Neelam Singh and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 304B, 69

Citation : (1999) 3 BLJR 1654 : (1999) 9 PLJR 140

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Judgement

M.Y. Eqbal, J.—In these two applications, one filed by the husband and another filed by the parents and other relatives, petitioners have prayed for quashing the order dated 30-6-1998 passed in Complaint case No. 469(C)/98, by Judicial Magistrate, 1st Class, Patna, whereby he has taken cognizance u/s 304B read with Section 120B of the Indian Penal Code and issued warrant of arrest against the petitioners.

2. I have heard at length Mr. Ram Balak Mahto, learned Senior Counsel and Mr. Rana Pratap Singh, learned Sr. Counsel for the petitioners and Mr. Ganesh Prasad Singh, learned Senior Counsel appearing for the Opposite Party.

3. It appears that the daughter of the complainant was married with the petitioner Binod Kumar Singh on 26-2-94 and gave birth of a son the year 1996. She died of cancer on 28-2-1998. The Complainant's case is that since the very date of marriage, there had been illegal demand of dowry by the accused-persons. It is alleged that part of which was fulfilled and on non-fulfillment of other demand, the deceased was subjected to torture, the very date of marriage on account of which she develop several ailments including breast cancer and died.

4. Mr. Ganesh Prasad Singh, learned Counsel for the Opposite Party vehemently

argued that the deceased has developed cancer because of ill-treatment, cruelty and negligence in her treatment by her husband. According to the learned Counsel, the allegations made in the complaint-petition, therefore, constitute an offence. On the other hand, Mr. Ram Balak Mahto, learned Senior Counsel appearing for the petitioner drawn my attention to several documents annexed with the application in defence to show that the deceased all along lived with her husband who got her treatment at several places including Patna, Calcutta, Delhi and Bombay. Learned Counsel further submitted that the petitioner all along took casual leave and earned leave for the treatment of his wife who ultimately died in presence of the petitioner.

5. It is well settled that at the time of taking cognizance, the Court is to go by the allegations made in the F.I.R./complaint and was not required to consider the defence case with a view to take a decision whether the allegations are true or false. In other words, the allegations made in the F.I.R./Complaint have to be taken on its face value and in their entirety and the order of cognizance on the basis of such F.I.R./Complaint cannot be quashed unless the Court is of the view that the allegations made therein did not disclose commission of the offence for which cognizance has been taken. It has been held by the Apex Court that the defence of the accused should not be considered by the Court at the time of taking cognizance. The prosecution can be quashed on the well-settled ground as held by the Apex Court in numerous cases. Recently in the case of State of M.P. Vs. Harsh Gupta, , the Apex Court held that:

It is rather surprising that at a stage when the only question to be considered was whether the complaint and its accompaniments disclosed any or all of the offences alleged against the respondent the learned Judge not only went into a detailed discussions about his defence out recorded a conclusive finding that he was not guilty of the offences alleged against him. More surprising is that the learned Judge ignored the provisions of Section 69 of the Act which expressly raises a statutory presumption against a person arraigned that the forest produce recovered from him was a property of the Government, until the contrary is proved ; and needless to say, the question proof of the contrary can be answered after evidence is led.

On consideration of the defence case as set out by the petitioner supported by series of documents, I find much force in the submission of Mr. Mahto and prima facie it appears that despite continuous treatment of cancer, expenses of which was borne by the husband, as admitted by the complainant, the deceased could not survive and died because of cancer. Moreover, the ground of delay in lodging complaint after two months is also not satisfactory. But, at this stage, I am not supposed to analyse the evidence and come to a definite finding. The proper remedy available to the petitioners is to file petition for discharge in the Court below and to satisfy that no case is made out. If such application is filed by the petitioners, the same shall be considered by the Court below and shall be disposed of expeditiously by passing a reasoned order.

6. With the aforesaid observation and direction, these applications are disposed of.