

(2001) 07 PAT CK 0035

In the Patna High Court

Case No : Criminal Miscellaneous No. 2414 of 2000

Birendra Mahto and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482, 92
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2001) 3 PLJR 490

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Judgement

P.K. Deb, J.—Heard learned Counsel for the parties.

2. This petition u/s 482 of the Code of Criminal Procedure has been preferred for quashing the entire criminal proceedings including the order of cognizance dated 6.7.1999 in Complaint Case No. 271 (C)/99 now pending before the Addl. Chief Judicial Magistrate, Barh, Patna.

3. Cognizance had been taken u/s 498-A of the Indian Penal Code together with Sections 3 and 4 of the Dowry Prohibition Act. It is the contention of the Petitioners that the complainant did not come with clean hands. The date of marriage has wrongly been mentioned to come within the purview of penal provisions of Section 498-A of the Indian Penal Code and to support that the marriage was solemnised in the year 1991, photocopy of the invitation card has been annexed. It has further been submitted that during the course of enquiry u/s 202 of the Code of Criminal Procedure no specific case could be made out as to specific dates when tortures were being made rather vague statements were being made regarding torture. It has also been argued that it was nowhere there that any agreement was arrived at regarding payment of dowry at the time of settlement of marriage and in that way any demand made after the marriage was solemnised cannot attract any penal provisions under the Dowry Prohibition

Act. Some judgments of this Court have been referred to by the learned Counsel but there is a recent judgment of the Apex Court. By considering the amendment made in the Dowry Prohibition Act even demand of dowry after the solemnisation of marriage also comes within the purview of penal provisions. Be it what it may at this stage when cognizance has been taken, it should only be seen whether a prima facie case has been made out and when the court below has found a prima facie case, it took cognizance, then there remains no scope to interfere with the same. The defence side is at liberty to place all their cards before the court below at appropriate stage. Regarding , making over the case to the Magistrate by the Chief Judicial Magistrate under Sections 92 of the Code of Criminal Procedure some objections have been raised but those are only technical objections and the same may be termed as irregularity and not illegality touching to the merit of the case itself. Thus at this stage I am not inclined to interfere with the order of cognizance.

Hence, the petition is disposed of by giving opportunity to the Petitioners to raise their grievances and place all the cards before the trying Magistrate in connection with Complaint Case No. 271 (C)/99 at appropriate stage and I am confident that if all materials are placed before the Magistrate concerned then he will definitely consider the matter in their proper perspective after giving opportunity of hearing to both the parties and then dispose of the matter by a reasoned order.