
(2010) 09 PAT CK 0132

In the Patna High Court

Case No : Criminal Miscellaneous No. 31258 of 2003

Bishwanath Roy and Others

APPELLANT

Vs

The State of Bihar and Anita Devi

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 147, 323, 379, 498A

Citation : (2010) 09 PAT CK 0132

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Judgement

Rakesh Kumar, J.—On call, none appeared on behalf of the petitioners either to press this petition or to make a prayer for adjournment.

2. Seven 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 12.09.2002 passed in Complaint Case No. C-295 of 2002, Tr. No. 1842 of 2002. By the said order, the learned Magistrate has taken cognizance of offences under Sections 147, 323, 498A and 379 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

3. Short fact of the case is that Opp. Party No. 2, wife of petitioner No. 7 filed a complaint in the court of learned Chief Judicial Magistrate, Vaishali at Hajipur, which was numbered as Complaint Case No. 295 of 2002. It was alleged in the complaint petition that Opp. Party No. 2 was married with petitioner No. 7 in the year 1997. Right from the marriage accused persons started torturing the complainant with a view to extract further dowry. It was alleged in the complaint petition that her husband was having illicit relation with the wife of his own brother. It was alleged that finally the accused persons ousted the complainant from their house and, thereafter while her brother went to the house of accused

persons for settling the dispute, he was assaulted and his Vespa Scooter, bearing Registration No. BR-065-3370 was forcibly taken. After filing of the complaint petition, the complainant examined witnesses in support of her complaint and thereafter, the learned Sub Divisional Judicial Magistrate vide its order dated 12.09.2002 took cognizance of offences under Sections 147, 323, 498A and 379 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

4. Aggrieved with the order of cognizance, all the petitioners approached this Court by filing the present petition, which was admitted on 1.12.2005 and while admitting, it was directed that the interim relief granted on 1.7.2004 shall continue. The order of stay is still continuing.

5. On perusal of the entire complaint petition and materials available on record, it appears that the petitioner had taken the plea that immediately after the marriage within few days, the complainant returned back to her parents' house along with all articles, which were given in the marriage. Despite best efforts made by the husband of the complainant, the complainant never returned to the house of her in-laws and, as such, in the year 1998 a Matrimonial Case vide Matrimonial Case No. 14 of 1998 was filed u/s 9 of the Hindu Marriage Act for restitution of conjugal rights, which was allowed in favour of petitioner No. 7. Thereafter, in the year 2002, petitioner No. 7, husband of complainant, filed a Matrimonial Case vide Matrimonial Case No. 3 of 2002 in the court of the District Judge, Vaishali at Hajipur with a prayer for decree of divorce, which was also allowed by the learned District & Sessions Judge, Vaishali at Hajipur on 23.7.2002. It appears that on the ground of Judgment and Decree passed in both the Matrimonial Cases i.e. Matrimonial Case No. 14 of 1998 and Matrimonial Case No. 3 of 2002, the accused persons had taken the plea that the present complaint was filed falsely and maliciously.

6. I have heard Smt. Renu Kumari, learned Addl. Public Prosecutor appearing on behalf of the State. I have also perused the materials available on record, particularly both the orders, i.e. order dated 26.7.1999 passed in Matrimonial Case No. 14 of 1998, kept at Annexure-2 to the present petition (at pages 14 and 15) as well as Judgment and Degree dated 23.07.2002 passed in Matrimonial Case No. 3 of 2002 by the learned District & Sessions Judge, Vaishali at Hajipur, which has been brought on record at Annexure-3 to the present petition (from page 16 to 19). On perusal of both the orders, it is evident that both the orders were passed ex parte. Meaning thereby that in both the proceedings, the complainant had not participated. Moreover, in the present complaint, the learned Magistrate has taken cognizance on the basis of averments made in the complaint petition as well as on the basis of materials brought during the enquiry by number of witnesses. While hearing a petition u/s 482 of the Code of Criminal Procedure, it is not required to examine the materials meticulously and in detail. The Code of Criminal Procedure is self-contained code and there is already remedy available to the petitioners. Accordingly, I am of the view that it is not a fit case for interference with the

order of cognizance The petitioners have not made out an exceptional and rarest of rare case warranting exercise of inherent jurisdiction in their favour.

7. Accordingly, the petition stands rejected.

8. In view of rejection of the present petition, interim order of stay dated 1.7.2004 stands automatically vacated.

Let a copy of this order be sent to the court below forthwith.