

(2019) 11 PAT CK 0158

In the Patna High Court

Case No : Criminal Miscellaneous No. 2280 Of 2019

Brajesh Kumar And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 380, 494, 498A, 504
Code Of Criminal Procedure, 1973 — Section 482
Constitution Of India, 1950 — Article 20

Citation : (2019) 11 PAT CK 0158

Hon'ble Judges : Arvind Srivastava, J

Bench : Single Bench

Advocate : Prakash Chandra Jha, Upendra Kumar

Final Decision : Dismissed

Judgement

The petitioners seek quashing of the order dated 09.06.2016 passed by the learned Judicial Magistrate-1st Class, Gaya in connection with Complaint Case No. 318 of 2016 whereby the learned Magistrate has taken cognizance for the offences under Sections 494, 498A, 323, 380 and 504 of the Indian Penal Code against the petitioner.

The brief facts of this case is that the marriage of sister of the complainant solemnized with Brajesh Kumar, petitioner No.1 on 16.09.2009 and as a gift Rs. 3 Lac Cash along with ornaments of Rs. 1 Lac along with a Motorcycle and other articles have been given to the petitioners. It is further alleged that the petitioners were torturing the sister of complainant for demand of more dowry upon which the sister of the complainant went to her parental house. In the meantime, the petitioner No.1 joined a service in GAMON INDIA and on the advice of his family members, he performed second marriage with one Asha Kumari on 07.03.2015 and started pressurizing on the sister of the complainant for divorce. Thereafter, the sister of the complainant filed a complaint case against the petitioners which is pending before the A.C.J.M.-IV, Gaya. Further it is

alleged that on 28.01.2016, the petitioner No.1 forcibly entered into the house of complainant to take signature of his sister on the divorce paper by using brutal force, for which again another complaint case being Complaint Case No. 318 of 2016 has been filed against the petitioners.

Learned counsel for the petitioners submits that the petitioners are innocent and have not committed any offence. In fact, these petitioners have falsely been implicated in this case in two others case for the same set of facts. It is further submitted that in view of the mandate of Article 20 of the Constitution of India, two criminal cases cannot be proceeded against any person for the same cause of action. Hence, the impugned order dated 09.06.2016 passed in Complaint Case No. 318 of 2016 passed by the learned J.M.-1st, Class by which the learned Magistrate has wrongly taken cognizance against the petitioners under Section 494, 498A, 323, 380 and 504 of the Indian Penal Code and the same is fit to be quashed.

Learned A.P.P. appearing for the State has opposed the submission of the learned counsel for the petitioner and submitted that the learned Magistrate has rightly taken cognizance against the petitioners vide order dated 09.06.2016 in complaint case No. 318 of 2016. It is further submitted that there are two occurrences took place on different dates and places for which the petitioners have been prosecuted. The first occurrence took place on 15.08.2009 for which Complaint Case No. 359 of 2014 has been registered against the petitioners whereas the second occurrence took place on two occasions i.e. 07.03.2015 and 28.01.2016 for which Complaint Case No. 318 of 2016 has been registered against the petitioners in which the learned Magistrate has rightly taken cognizance on the basis of material and evidence available on record vide order dated 09.06.2016 under Sections 494, 498A, 323, 380 and 504 of the Indian Penal Code against petitioner No.1 only and under Sections 498(A), 323, 380 and 504 of the Indian Penal Code against the petitioner No.2 and 3 only, which is under challenge. Therefore, the order impugned does not require any interference of this Court in exercise of powers conferred under Section 482 of the Cr.P.C..

Considering the submissions advanced by the both the parties, this Court is of the view that the learned Chief Judicial Magistrate while considering the materials available on record has found prima facie case against the petitioners and has rightly taken cognizance under Section 494, 498A, 323, 380 and 504 of the Indian Penal Code against the petitioner No.1 and Sections 498(A), 323, 380 and 504 of the Indian Penal Code against petitioner Nos. 2 and 3 vide order dated 09.06.2016 in connection with Complaint Case No. 318 of 2016 and the same does not require any interference of this Court.

So far as mandate of Article 20 of the Constitution of India is concerned, the essence of Article 20 does not come into play in this case as two complaint cases have been lodged against the petitioners for different set of facts and evidences which is crystal clear from the bare perusal of the two complaint cases in which

different dates of occurrence has been mentioned.

Accordingly, this criminal miscellaneous application is dismissed.