

(2010) 08 PAT CK 0058

In the Patna High Court

Chandra Bhal Tiwary and Others

APPELLANT

Vs

State of Bihar and Savitri Devi

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 201, 304B, 34, 498A

Citation : (2010) 08 PAT CK 0058

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioners, learned Additional Public Prosecutor for the State and learned Counsel for opposite party No. 2.

2. This is an application u/s 482 of the Code of Criminal Procedure seeking quashing of the complaint case including the order dated 26th September, 2003 passed in Complaint Case No. C 1239 of 2001 taking cognizance on protest complaint for the offences under Sections 304B, 498A and 201/34 of the Indian Penal Code.

3. Undisputed relevant facts of this case is that on the complaint petition bearing No. 1502 of 2000 filed by opposite party No. 2, Bhagwanpur P.S. Case No. 103 of 2000 was instituted under Sections 498A, 304B and 201/34 of the Indian Penal Code against the petitioners, who are husband and in-laws of daughter of the complainant-informant, who died within two years of her marriage under some suspicious circumstances after suffering, as alleged, demand of dowry, torture etc. However, Police, after investigation, submitted final form.

4. During investigation, opposite party No. 2 had already filed protest complaint alleging some sort of misdeeds committed by the Investigating Agency. However, on submission of final form, vide order dated 25th September, 2001 the court

below accepted the final form, simultaneously treated the protest complaint as the complaint petition bearing No. C1239 of 2001 and proceeded accordingly.

5. During enquiry some witnesses were examined besides examination of complainant on solemn affirmation. The court below took cognizance for the offences giving rise to Cr. Rev. No. 154 of 2002 at the instance of the petitioners wherein, after hearing the parties, the learned Sessions Judge passed an order of remand on 17th January, 2003 accepting the submissions made on behalf of the petitioners that instead of examining all the witnesses named in the complaint petition only a few were examined, so the revisional court remitted the matter before the court below to get all the witnesses examined only, thereafter, pass an appropriate order.

6. On receipt of the order of the revisional Court remaining, witnesses were examined on behalf of the complainant in the court below who, vide order dated 26th September, 2003, on consideration of the materials available, took cognizance for the offences u/s 304B and another giving rise to instant case.

7. Learned Counsel for the petitioners only raised legal objection that once court below has accepted the final form, it has no authority to proceed on the complaint petition. In support of the contentions the learned Counsel placed reliance upon decisions of this Court in Raghunath Yadav Vs. The State of Bihar, and Ashok Yadav and Another Vs. The State of Bihar .

8. The learned Additional Public Prosecutor and learned Counsel appearing for opposite party No. 2, while supporting the impugned order, submitted that the decisions relied upon by the learned Counsel for the petitioners are not applicable in the instant case. The court below was right in accepting the final form and proceeding on protest complaint by one composite order.

9. Since in the instant case only one single point is raised, as stated above, it is being disposed of on the same.

10. The decision of this Court in the case of Raghunath Yadav (Supra) is on altogether different point. In the case before the Bench, aforementioned, after submission of final form, in presence of protest petition the court below, on going through the materials available as referred in the case diary, taking a different view, did not accept the findings of the Investigating Officer that case against the accused persons was not true, took cognizance for the offences without assigning any reason. Matter was remitted for a fresh order.

11. So far another case Ashok Yadav (supra) as referred by learned Counsel for the petitioners is concerned, the matter before the Bench was also different. There the Police, after investigation, submitted charge sheet against some of the accused persons but exonerated a few named. The court below took cognizance for the offenses also against the persons who were though named in the first information report but no charge sheet was submitted against them and the options available to the Magistrate in such circumstances have been discussed.

The application for quashing of the order was dismissed finding no merit.

12. None of the two case laws placed and relied upon by the learned Counsel for the petitioners are applicable in the instant case wherein undisputedly final form was accepted and on same stroke the court below treated the complaint filed earlier as a complaint petition and proceeded accordingly, but committed no wrong in it.

13. Thus, finding no merit, this application is hereby dismissed.