
(2010) 03 PAT CK 0011
In the Patna High Court

Dinanath Kumar @ Dinanath Prasad and Others APPELLANT
Vs
The State of Bihar and Gunja Devi RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 482
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 03 PAT CK 0011

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Mr. Raju Giri, learned Counsel for the petitioners and Dr. Maya Nand Jha, learned A.P.P. for the State.

2. The petitioners have challenged the order dated 20.7.2007 passed by the Sub Divisional Judicial Magistrate, Sadar Motihari in Trial No. 2494 of 2007, arising out of Sugauli P.S. Case No. 140/04. By the said order, the learned court below has rejected the petition filed on behalf of the petitioners u/s 239 of the Code of Criminal Procedure for their discharge.

3. Learned Counsel for the petitioners while pressing this petition submitted that the present case was instituted maliciously by the informant. He refers annexure-2 to the petition and submits that earlier also the informant had filed a complaint case and in that complaint case, a compromise petition was filed and ultimately the case was compromised. He further submits that the Hon"ble Supreme Court has already made it clear that in a case instituted u/s 498A, if it is brought on record such complaint which was filed maliciously, then this Court is fully empowered u/s 482 Cr.P.C. to quash such proceeding.

4. I have perused the impugned order, i.e. the order dated 20.7.2007, whereby the learned Magistrate has rejected the petition for discharge of the petitioners.

5. Learned Magistrate while hearing the petition filed for discharge u/s 239

Cr.P.C. has categorically examined the materials available on the record. The court also allowed the informant to be heard. The informant had also produced photo copy of certified copy of complaint case, which was filed earlier and in that case, the period of alleged offence was between 1999 to 9.7.2002. By referring different paragraphs of the case diary, the learned court below came to the conclusion that it was not a case for discharge. So far as the question of discharge is concerned, Section 239 Cr.P.C. itself makes it clear that for the purposes of rejection of discharge petition, the court below is not required to assign any reason. However, according to this Section, if the court allows a discharge petition, then he is required to assign reason. But in the present case, the learned Magistrate has also examined the materials and assigned reasons.

6. So far as the argument advanced on behalf of the petitioners that after compromise the informant had backed out and, as such, the present proceeding appears to be malicious, I am of the view that this point can be argued in complaint case in which period of offence was referred in between 1999 and 9.7.2002. In this case, the informant has alleged that after the compromise had arrived in between the parties, the accused persons again started to commit the same offence and due to that reason he instituted the present case i.e. Sugauli P.S. Case No. 140 of 2004. After institution of F.I.R. the police investigated the case and after collecting materials indicating commission of offences submitted chargesheet. On the basis of materials available on record, the court has taken cognizance of offence. Subsequently the learned Magistrate by way of passing the impugned order has rejected the discharge petition and has committed no error.

7. In view of the facts and circumstances mentioned herein above, I am of the view that there is no merit in this petition. Accordingly, this petition stands rejected.