

(2011) 02 PAT CK 0064

In the Patna High Court

Case No : Criminal Miscellaneous No. 29747 of 2003

Dr. Krishna Kant Kumar

APPELLANT

Vs

State of Bihar and Smt. Sunita Kumari

RESPONDENT

Date of Decision : 19-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 34, 498A

Citation : (2011) 02 PAT CK 0064

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole Petitioner, invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 27.9.2003 passed by the learned Judicial Magistrate, Ist Class, Patna whereby, the discharge application filed by the Petitioner in Complaint Case No. 911(C) of 1998, was rejected, holding that there were sufficient materials against the Petitioner, for framing of the charges u/s 498A, 323/34 of the Indian Penal Code.

2. Short fact of the case is, that initially on the basis of fard-beyan of opposite party No. 2, an F.I.R. vide Pribahore P.S. Case No. 268 of 1997, was registered on 29.11.1997, against the Petitioner, his mother, sister and brother-in-law of the Petitioner for the offence under Sections 498A, 323/34 of the Indian Penal code. After registering the F.I.R., Police investigated the case. During investigation, Petitioner and his other family members were arrested. However, after sometime, they were released on bail. During investigation, the Police found the accusation made against all the accused persons including the Petitioner of F.I.R. as false / fabricated and submitted final report. Before submission of final report, a protest petition was filed on 13.1.1998. After submission of final report, the same was accepted, and protest petition was treated as complaint petition. After

conducting enquiry, in the complaint petition, the learned Magistrate took cognizance of offence against all the four accused persons. Subsequently, the cognizance order in respect of remaining three accused persons was quashed by this Court vide Cr. Misc. No. 9893 of 1999 and Cr. Misc. No. 8774 of 2000. At the stage of charge, on behalf of the Petitioner petition for discharge was filed, which was rejected by the learned Magistrate by its impugned order dated 27.9.2003 in Complaint Case No. 911(C) of 1998.

3. Aggrieved with the impugned order, the Petitioner approached this Court by filing the present petition. On 6.5.2004, while issuing notice to opposite party No. 2 this Court directed, that in the meantime, further proceedings against the Petitioner in Complaint Case No. 911 of 1998 pending before Judicial Magistrate, Ist Class, Patna shall remain stayed. After appearance of opposite party No. 2, when the case was taken up for hearing at the time of admission on 16.9.2004, learned Counsel appearing on behalf of both the parties suggested for settling the dispute between the quarreling parties amicably, and as such, by order dated 16.9.2004, the court appointed an Advocate of this Court as conciliator and directed both the parties to meet the conciliator for settling the dispute. Thereafter, matter remained pending for quite a long time, and on 2.5.2006, the case was admitted for hearing. It was directed, that interim order passed on 6.5.2004 shall remain operative during the pendency of this application. In the meanwhile, in a dispute between the same parties wherein the Petitioner's mother was complainant and brothers and father of opposite party No. 2 were made accused, a petition i.e. Cr. Misc. No. 13811 of 2000 was heard by this Court. In the said petition, the parties agreed to settle their all disputes and litigations, and as such, affidavit was filed to this effect. Accordingly, Cr. Misc. No. 13811 of 2000 was disposed of by order dated 19.8.2010. It was observed by this Court that "in view of agreement as indicated above between the parties, the order of cognizance dated 22.4.1999 passed in Complaint Case No. 1762(C) of 1998 is hereby set aside". It was directed that both the parties should abide by their undertaking given before this Court. It was made clear that if at subsequent stage the Petitioners retract from their undertaking given before this Court, the opposite party will be at liberty to approach this Court with a request to cancel the order. After disposal of the said petition, the Petitioner in the present case filed a supplementary affidavit enclosing therewith order dated 19.8.2010 passed in Cr. Misc. No. 13811 of 2010. At the time of hearing, learned Counsel for opposite party No. 2 fairly submitted, that she was not opposing the prayer of the Petitioner. Smt. Sudha Ambashtha, learned Counsel appearing on behalf of opposite party No. 2, submitted on 5.10.2010, before this Court that she was not opposing the prayer of the Petitioner, keeping in view the fact, the Petitioner had agreed not to oppose the case in view of agreement between the parties in Cr. Misc. No. 13811 of 2000.

4. In view of fair stand taken by learned Counsel for the opposite party No. 2, there is no reason to allow prosecution of Petitioner in the present case i.e. Complaint Case No. 911(C) of 1998.

5. Accordingly, with the consent of both the parties, the impugned order dated 27.9.2003, and entire proceedings in Complaint Case No. 911(C) of 1998, pending before the court of learned Judicial Magistrate, Ist Class, Patna is hereby set aside and petition stands allowed.