

(2009) 01 PAT CK 0039

In the Patna High Court

Case No : Criminal Miscellaneous No. 43328 of 2007

Geeta Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 313, 323, 347, 348

Citation : (2009) 4 PLJR 94

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Md. Ataul Haque, for the Appellant; Mayanand Jha for the State and None for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—This application has been preferred by the informant of Ara (Nawada) P.S. Case No. 7 of 2003, G.R. No. 65 of 2003 praying therein for quashing of order dated 12.7.2007 by Chief Judicial Magistrate, Bhojpur at Ara has been pleased to reject the petition of the petitioner for adding the charge u/s 313 I.P.C. against the O.P. No. 2 as there was sufficient evidence against the said O.P. It appears that the petitioner herein, Geeta Singh, wife of O.P. No. 2, filed a complaint case being Complaint Case No. 1 (C) of 2003 before the learned Chief Judicial Magistrate, alleging commission of offences under Sections 498A, 313, 347, 348, 307, 323, 504 I.P.C. and Section 3/4 of the Dowry Prohibition Act at the hands of the persons named as accused in the complaint. The said complaint was transmitted to the concerned P.S. u/s 156(3) Cr.P.C. on the basis whereof the instant Ara (Nawada) P.S. case came to be registered. It further appears that after due investigation the police submitted a final form on 27.6.2007 as the allegations happened to be mistake of facts, but the learned Chief Judicial Magistrate, Bhojpur, differed from the final form and by order dated 20.9.2003 took cognizance against the accused for offences punishable under Sections

498A, 347, 348, 323, 504 I.P.C. and Section 3/4 of the Dowry Prohibition Act and the case was transferred to the learned Sub-Divisional Judicial Magistrate for disposal.

2. It appears that after some witnesses on behalf of the prosecution had been examined the informant-complainant filed a petition on 28.11.2006 praying therein to add the charge u/s 313 I.P.C. against O.P. No. 2 who unfortunately happens to be her husband as there was sufficient evidence against him for adding the said charge. The said petition was opposed by the defence on the ground that it was not maintainable and that the said petition had been filed only to protract the trial.

3. It has been submitted on behalf of the petitioner that there was ample evidence from the testimony of the witnesses to bring to light the facts that O.P. No. 2 herein had also committed the offence u/s 313 I.P.C, and the court below had erred in not framing charge u/s 313 I.P.C. against O.P. No. 2.

4. Section 313 I.P.C, reads as follows:-

"Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

5. To bring home the offence u/s 313 I.P.C, the miscarriage to the woman concerned must be made without her consent. The expression "consent" has been explained in Section 90 I.P.C. Therefore, the essential ingredients of an offence under this Section are: (a) that the accused caused miscarriage to a woman with child; (b) that he did so voluntarily; and (c) that he caused miscarriage without the consent of that woman.

6. From perusal of the impugned order passed by the learned Sub-Divisional Judicial Magistrate it appears that P.W. 1 is the father of the informant, P.W. 3 is her uncle and P.W. 4 is the informant herself. From the evidence of P.W. 1 it appears that abortion was done at Loomba Maternity ENT Hospital and Ultrasound Scan, X-ray, Laparoscopy at the Test Tube Centre, Alexgendria Road, Supply Chowk, Ambala Cant on 22.9.2001 where the father of the informant was posted at that time and the informant was living at her father's home. The informant has submitted in course of her evidence that the instant case had been filed after the divorce by the informant. On the aforesaid premise the learned Magistrate held that the consent given by the then husband of the informant does not go to show that the abortion was not forcibly and it could not be said with relative force that the said miscarriage was without the woman consent and the learned Magistrate rightly held that there was no palpable evidence so as to frame a charge u/s 313 I.P.C, against the O.P. No. 2.

7. I have perused the impugned order as also the document which have been appended to this application as annexures and from the same it cannot be said in

categoric terms that an offence u/s 313 I.P.C, had been made out against O.P. No. 2.

8. Admittedly the instant case was filed after the divorce and one may presume that the divorced wife in order to pressurize or penalize her husband had sought to harass the O.P. No. 2 under the garb of a complaint case which on being transmitted to the concerned PS. has resulted in the instant criminal prosecution. Not satisfied therewith the informant to protract the litigation for long as possible by filing mischievous and malicious petition for framing charge u/s 313 I.P.C. against her husband (O.P. No. 2 herein) and not satisfied with the cogent reasons assigned by the learned Magistrate while refusing her prayer she has approached this court to give sympathy which in the facts and circumstances of the case is not possible. To my mind the action of the petitioner is an absolute abuse of the process of the Court which cannot be appreciated and entertained. Accordingly, I find no merit in this application which is dismissed.