

(2009) 07 PAT CK 0103

In the Patna High Court

Case No : Criminal Miscellaneous No. 33602 of 2005

Gopal Bihari @ Neeraj Kumar @ Gopal Pd. Bihari and
Mahendra Sah @ Mahendra Prasad

APPELLANT

Vs

The State of Bihar and Ram Chandra Prasad

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 120B, 302, 307, 323, 498A

Citation : (2009) 57 BLJR 2985

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ranjan Kumar Jha, for the Appellant; Maya Nand Jha, A.P.P and
Arbind Kumar Singh No. 1, For Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Petitioner No. 1, the husband of deceased Pratibha Devi, and petitioner No. 2, his brother-in-law, who along with others are arrayed as accused in Complaint Case No. 1383 of 2003 have prayed for the quashing of the order dated 31.7.2004 passed therein by the learned Sub Divisional Judicial Magistrate, Gaya, whereby he has taken cognizance u/s 498A and 302 I.P.C. and Section 4 Dowry Prohibition Act against all the accused including the petitioners.

2. The complainant, one Ram Chandra Prasad, impleaded herein as Opp. Party No. 2, filed the aforesaid complaint on 11.12.2003 inter alia alleging that the accused had committed offences under Sections 498A, 307, 323 and 120B I.P.C. and Section 4 of Dowry Prohibition Act at MohallaM Chand Chaura, Gaya, as also in the house of one Raj Kishore Prasad at Banka from 18.6.1993 onwards particularly on 6.11.2003 at about 1.30 P.M. According to the complainant the marriage of his daughter, Pratibha Devi, was solemnized with petitioner No. 1 at Gaya on 18.6.1993 and at the time of marriage, the family members of

petitioner No. 1 demanded a substantial amount of cash, a scooter, a television set etc. by way of dowry and also compelled him to meet all expenses of the marriage of Radha Kumari, the sister of petitioner No. 1, taking place at the same venue at Gaya. It is alleged that the complainant met all the demands except the demand of a television set and a L.P.G. connection. Nevertheless, Pratibha was tortured in order to extract the remaining demands. She was abused and assaulted on a regular basis by reason whereof her condition, both physical and mental, deteriorated. Such torture even during her pregnancy resulted in the death of the child. The sacrilege prompted Pratibha to file Complaint Case No. 616 of 1995 which on being sent to the Police Station u/s 156(3) Cr.P.C. Gaya Civil Lines P.S. Case was registered u/s 498A I.P.C. and Sections 3/4 Dowry Prohibition Act. However, upon petitioner No. 1 submitting an undertaking of good behaviour and maintaining his wife properly and with full dignity and honour, the said case ended in a compromise.

3. It is further alleged that notwithstanding the undertaking given, petitioner No. 1 continued to subject Pratibha to mental torture which was duly communicated by her to her parents and brothers who attempted to console her. However, two children were born out of the wedlock. It is alleged that Pratibha kept complaining about the ill treatment meted out to her by accused No. 1 on the instigation of accused No. 2 and on her parents enquiring about the reasons therefor, they were given to understand that a sum of Rs. 2 Lakhs was being demanded for purchasing a house at Banka. The inability of the complainant to pay the sum demanded by reason of his having undergone cardiac surgery was duly communicated to the accused which infuriated them and as a result the intensity of torture of Pratibha increased. It is further alleged that in course of her telephonic conversation Pratibha weepingly informed her parents of her woes and also requested them to take her away or else she would not be found alive.

4. At about 4 P.M. on 16.11.2003 the complainant is said to have received information over telephone from Pratibha's landlady of her having been burnt earlier at about 1.30 P.M. Later on at about 5.30 P.M. Budhdeo Sah informed him over telephone of Pratibha being referred to Mayaganj Hospital, Bhagalpur. The complainant and his family members reached Bhagalpur on 17.11.2003 and finding her condition serious requested the doctor to refer her for better management. Accordingly, she was referred to the Appolo Burn Hospital at Patna. It is said that when there was some improvement in her condition and she had regained consciousness and became mentally stable she disclosed to her parents that on the morning of 16.11.2003 she was brutally assaulted by her husband for non-fulfilment of demand who later poured kerosene oil on her and set her on fire. She also disclosed that in course of her treatment whenever she gained consciousness intermittently she would be threatened by her husband not to report him to the police or else both the children, kept in the custody of petitioner No. 2, would be killed. It is also alleged that as Pratibha was narrating the incident to her father, her husband who was present there left stealthily never to return again to attend to the ailing wife.

5. Assailing the impugned order taking cognizance, it was submitted that the allegations against the petitioners were false and vexatious. As a matter of fact, it was contended, Pratibha caught fire accidentally when the stove burst and she sustained burn injuries and at the Appolo Burn Hospital where she had been referred it was petitioner No. 1 who had signed the Risk Bond as was required and also donated blood on 22.11.2003, On this premise, the learned Counsel for the petitioners sought to whittle down the accusation of petitioner No. 1 having abandoned his ailing wife. It was also submitted that apart from donating blood petitioner No. 1 had also taken a loan of Rs. 60,000/- to cater to the treatment. Grievance was also raised against the non-examination of the doctors who had treated Pratibha and the police officers who had purportedly recorded the fardbeyan of Pratibha before cognizance was taken.

6. Unfortunately, the issues raised by the learned Counsel for the petitioners happen to be their defence which cannot be looked into or can be called for any consideration at this stage in a proceeding u/s 482 Cr.P.C. all the more so when it involves looking into disputed questions of facts which can either be proved or disproved by leading cogent evidence at the trial.

7. For the reasons aforementioned I find no merit in this application which is dismissed.