
(2010) 09 PAT CK 0111

In the Patna High Court

Case No : Criminal Miscellaneous No. 6665 of 2001

Jagdish Prasad Shukla, Manorama Shukla, Praveen Kumar
Shukla and Naveen Kumar Shukla

APPELLANT

Vs

The State of Bihar and Smt. Puja Shukla

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0111

Judgement

Rakesh Kumar, J.—Four petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 29.11.2000 passed by the Sub Divisional Judicial Magistrate, Buxar in Brahmpur P.S. Case No. 159 of 1999 arising out of G.R. No. 1557 of 1999/T.R. No. 1154 of 2000. By the said order, the learned Magistrate has taken cognizance of offence under Sections 498A and 406 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act.

2. Short fact of the case is that opposite party No. 2 filed a complain in the court of Chief Judicial Magistrate, Buxar, which was numbered as Complaint Case No. 795(c) of 1999 on 14.12.1999/16.12.1999 against the petitioners on an allegation of commission of offences under Sections 498A, 307 and 406 of the Indian Penal code. It was alleged that opposite party No. 2 was married with petitioner No. 4 on 12.2.1996 at Brahmpur Chaurasta in the district of Buxar, Bihar as per Hindu rites. It was alleged that at the time of marriage, the father of complainant was pressurized to give Rs. 51,000/-, Scooter, other ornaments as dowry and thereafter, it was fulfilled. It was further alleged in the complaint petition that at the time of Duragman after ten days of the marriage, again several articles were demanded. However, on the request of accused persons, instead of providing those materials, the accused persons took Rs. 40,000/- on the pretext that those articles will be purchased at Varanasi. The complainant had alleged that her husband had got no employment and thereafter, her father-in-law and mother-in-law persuaded the complainant to pressurize her father to provide Rs. 1,50,000/- so that the husband of the complainant may start some

business. The said amount of Rs. 1,50,000/- was paid at Brahmpur Chaurasta. Again instead of providing the said amount to the husband of the complainant for starting business, her father-in-law invested said amount for the construction of his own house. It has been alleged that when the complainant went to her in-laws house, she was physically and mentally tortured and on one occasion, the accused persons tried to set her on fire. However, after request made by the complainant, the accused persons allowed the complainant to return back to her parents house. Thereafter, on such allegation, the complaint petition was filed. After filing of the complaint petition, same was referred to the police u/s 156(3) of the Code of Criminal Procedure for its registration and investigation and, accordingly, an F.I.R. vide Brahmpur P.S. Case No. 159 of 1999 was registered on 27.12.1999 for the offence under Sections 498A and 406 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act against all the petitioners. After registering the F.I.R., police thoroughly investigated the case and thereafter, charge sheet was submitted against accused persons. While submitting charge sheet, the husband of the complainant i.e. petitioner No. 4 was shown as absconder. However, subsequently, he surrendered in the court. After examining the materials available on record, the learned Magistrate, by the impugned order, has taken cognizance of offences as indicated above.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. In the present petition, the main ground was taken by the petitioners that the husband i.e. petitioner No. 4 had already filed a case for divorce against the complainant in a court at Varanasi. On the aforesaid ground, the case was admitted for hearing on 3.12.2001 by this Court. While admitting, it was directed that during the pendency of this application, further proceeding in G.R. No. 1557 of 1999, T.R. No. 1154 of 2000 pending in the court of Sub Divisional Judicial Magistrate, Buxar shall remain stayed. The order of stay is still continuing.

4. Shri A.B. Ojha, learned Counsel appearing on behalf of the petitioners, while challenging the order of cognizance as well as entire criminal proceeding in the present case has raised following points:

- (i) No cause of action arose within the jurisdiction of Buxar Court.
- (ii) No offence u/s 406 of the Indian Penal Code is made out in view of the facts and circumstances of the case.
- (iii) There was already a judgment and decree of divorce on 6th October, 2001.
- (iv) Both the parties are now living peacefully separately and as such this Court may not unsettle their settled life.
- (v) The order of cognizance so far as Sections 3 and 4 of the Dowry Prohibition Act is not tenable on the ground that no prior sanction was obtained as per amendment made in the Act.

5. while elaborating aforesaid grounds, Shri Ojha has argued that in the entire

complaint petition, there is no averment that any cause of action arose at Brahmpur within the territorial jurisdiction of Buxar Court. It was submitted that complainant has been made accusation against the petitioners regarding pressurizing and torturing the complainant and said pressure/ torture as alleged had occurred within the territorial jurisdiction of Varanasi Court.

6. Regarding non application of Section 406 of the Indian Penal Code, it has been argued that Rs. 1,50,000/- was voluntarily given by the father of the complainant with an assurance that same amount will be returned subsequently. Therefore, it cannot be considered as a breach of criminal trust and as such in the present case, offence u/s 406 of the Indian Penal Code is not attracted.

7. Shri Ojha, learned Counsel for the petitioners has further argued that prior to filing of the present F.I.R., the petitioner No. 4 had already filed a civil case for dissolution of marriage vide Case No. 443 of 1999 in the Family Court at Varanasi. It was submitted that the case i.e. divorce case was filed on 1.12.1999 whereas the present complaint, which was subsequently registered as F.I.R. was filed on 16.12.1999 i.e. after the filing of the divorce case. It was submitted by the learned Counsel for the petitioners that the opposite party No. 2 had appeared and contested in the said case and in said case, she had also filed written statement, which was contrary to the stand taken in the present F.I.R.

8. Lastly, it was argued that after the judgment and decree of divorce, both the families are living separately peacefully and as such this Court may exercise inherent jurisdiction in favour of petitioners so that the settled live may not be un-settled.

9. It has been argued that in the present case, there is nothing on record to suggest that before taking cognizance for the offence under Sections 3 and 4 of the Dowry Prohibition Act, any prior permission or sanction from the State Government was obtained and as such the entire proceeding is liable to be set aside.

10. On the aforesaid grounds, it has been prayed that order of cognizance as well as entire proceeding in Brahmpur P.S. Case No. 159 of 1999 may be set aside. Learned Counsel for the petitioners, on the point of sanction, has relied on an order of Hon'ble Supreme Court reported in : (1997) 10 SCC 524 Rajesh Kumar Kejriwal and Ors. v. State of Bihar and Anr. Learned Counsel for the petitioners, on the point of territorial jurisdiction, has referred Navinchandra N. Majithia Vs. State of Maharashtra and Others, So far as Navin Chand M. Majithia's case (Supra) is concerned, in that case, entire cause of action arose within the territorial jurisdiction of Bombay whereas in the present case, cause of action partly arose at Brahmpura (Buxar, Bihar) and partly at Varanasi (U.P.).

11. Shri A.M.P. Mehta, learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioners. Despite the fact that the opposite party No. 2 had entered her appearance through her counsel at the time of hearing, none has appeared on her behalf. However, Shri

Mehta, learned Additional Public Prosecutor has opposed the prayer of the petitioners. It has been submitted by Shri Mehta that in the present case, part of cause of action arose within the territorial jurisdiction of Buxar, since in the complaint petition, there was specific assertion that even on the date of marriage, which was solemnized within the territorial of Buxar Court, the accused persons pressurized the parents of the complainant to give dowry of Rs. 51,000/-, Scooter and other ornaments and as such on the pressure, the dowry was given to the accused persons. It was further argued that in the present case, on the basis of averment made in the complaint petition itself, offence u/s 406 of the Indian Penal Code has been categorically made out. It has been argued that in the complaint petition, there is specific assertion that the accused persons persuaded the parents of complainant to give Rs. 1,50,000/- for the purpose of starting business by the husband of the complainant. The said amount was given to accused persons at Brahmpura, Buxar. Instead of providing that money to the husband of the complainant, the father-in-law of the complainant invested that money for the construction of his own house. It was submitted that the said amount was never returned to the complainant or her parents. It has been argued that it is true that physical torture was given to the complainant at Varanasi, but the affect of that pressure and torture continued till the complainant was ousted from her in-laws house and she returned back to her parents house. Learned Counsel for the State, in support of his argument, has referred to provision contained in Section 179 of the Code of Criminal Procedure, which is as follows:

179. Offence triable, where act is done or consequence ensues:

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.

12. However, learned Additional Public Prosecutor is not in a position to controvert the submission on the point of cognizance under Sections 3 and 4 of the Dowry Prohibition Act in absence of any sanction for prosecution. Accordingly, it has been prayed to reject the present petition.

13. Besides hearing learned Counsel for the petitioners and State, I have also perused the materials available on record. So far as none appearance of learned Counsel appearing on behalf of opposite party No. 2 is concerned, in the facts and circumstances of the present case, the court considers that it was not at all necessary. In the present case, the complaint was referred to the police and once F.I.R. was lodged and police investigated the case and thereafter, submitted the charge sheet, the case shall be treated in between State and accused persons. In the present case, the learned Additional Public Prosecutor has appeared and he has supported the prosecution of the petitioners.

14. The contents of the complaint petition itself indicates that part of cause of

action arose within the territorial jurisdiction of Buxar Court, so far as allegation of Section 406 of the Indian Penal Code is concerned. Even the contents of the complaint petition itself clarify that at least prima facie case u/s 406 of the Indian Penal Code is made out. However, while hearing a petition u/s 482 of the Code of Criminal Procedure that too, against an order of cognizance, this Court is not required to record any finding or opinion on such point. I have given above observation only with a view to give a just decision in the present case. Such observation may not be taken or considered at any subsequent stage. Regarding cognizance of offence under Sections 3 and 4 of the Dowry Prohibition Act, it is true that from the record, it is not clear as to whether any sanction for prosecution was obtained or not. Moreover, this Court is not in a position to examine those materials in detail. At least in the present case, the learned Magistrate has rightly taken cognizance for the offences under Sections 498A and 406 of the Indian Penal Code. The question regarding sanction for prosecution under Sections 3 and 4 of the Dowry Prohibition Act can be looked into by the concerned court and on the ground of non availability of prosecution sanction, entire prosecution cannot be set aside. So far as judgment and decree in Case No. 443 of 1999 is concerned, the same has been finalized subsequent to the registration of the F.I.R. and order of cognizance and as such said judgment has got no relevance for the purpose of deciding the present case. On the basis of materials available on record, the court is satisfied that petitioners have not made out an exceptional or rarest of rare case warranting exercise of power u/s 482 of the Code of Criminal Procedure in their favour and as such the petition stands rejected.

15. In view of rejection of the present petition, interim order of stay dated 3.12.2001 stands automatically vacated.

16. Keeping in view the fact that the matter remained pending before this Court for a long time, it is desirable to direct the court below to proceed with the case expeditiously so that the case may come to a logical end without any further delay.

17. With above observation and direction, the petition stands rejected.

18. In view of rejection of this petition, interim order of stay dated 3.12.2001 stands automatically vacated.

19. Let a copy of this order be sent to the court below forthwith.