

(2007) 02 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 31382 of 2005

Janardan Prasad Verma and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 143, 304(B), 323, 34, 363

Citation : (2007) 2 PLJR 704

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Kanhaiya Pd. Singh and Atal Bihari, for the Appellant; Gopesh Kumar and M/s. Anjana Prakash and Siwakar Sinha for the O.P., for the Respondent

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard. This application u/s 482 Cr.P.C. has been filed to quash the order of cognizance dated 6.11.2004 passed by S.D.J.M., Patna City in Complaint Case No. 342 of 2004 thereby and there under the court below has taken cognizance under Sections 143, 363 and 504/34 of I.P.C, against the petitioners.

2. It appears from the record that daughter of the petitioner nos.1 and 2 was married to opposite party no. 2. The daughter gave birth to a child. Thereafter, she died as a result of burn injuries. The petitioner no.1 filed a police case against the opposite party no. 2 and others u/s 304(B) of I.P.C. Thereafter, the petitioners brought son of the daughter and kept him in their custody for which the opposite party no. 2 filed a complaint case bearing No. 572(C) of 2002. The same was sent to Sultanganj P.S. u/s 156(3) Cr.P.C. The police registered case bearing No. 214 of 2002 against the petitioners under Sections 448, 323, 363 and 387/34 I.P.C. However, after investigation, the police submitted final report. The court after accepting the final report proceeded on the basis of protest petition. The same was dismissed on 3.2.2004. Thereafter, again, the opposite

party no. 2 filed another complaint case which is under challenge.

3. It also appears that the case lodged by the petitioner no. 1 against the opposite party no. 2 was registered Kotwali Bhagalpur P.S. Case No. 478 of 2002 and after investigation, the police has submitted charge-sheet against the opposite party no. 2 and his other family members. The trial of the case is going on which is pending in the Court of Sessions Judge, Bhagalpur bearing Sessions Trial No. 336 of 2004.

4. From above facts as well as the documents, it is quite clear that the complaint case in question has been filed in retaliation of the police case lodged by petitioner no. 1 for dowry death of his daughter. It is apparently malicious, vexatious and has been filed to wreck vengeance. Apart from it, the allegation contained in the complaint petition is inherently absurd and improbable. The victim is none-else but own Nati of the petitioner nos.1 and 2. The petitioners have taken in custody of the boy as his mother was killed by the opposite party no. 2. It may be a dispute with regard to custody of a child but certainly not a criminal offence. Under the circumstances, continuance of the criminal prosecution against the petitioners amounts to misuse of process of the court. Accordingly, this application is allowed and the impugned order of cognizance is hereby quashed.