

(1997) 08 PAT CK 0075

In the Patna High Court

Case No : Criminal Miscellaneous No. 15525 of 1996

Kamendra Kishore Verma

APPELLANT

Vs

The State of Bihar and Sri Kant Kumar Verma

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1998) 1 PLJR 407

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Binod Kumar Singh, Abhay Kumar Roy, for the Appellant; Ashok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—This application has been filed for quashing the order dated 13.11.1995 passed in Complaint Case No. 780/95 whereby cognizance of the offence u/s 500 of the Indian Penal Code was taken against the Petitioner.

2. Opposite party No. 2 filed the above mentioned complaint case before the Chief Judicial Magistrate, Patna stating therein that he lodged a criminal case bearing Jakkanpur P.S. Case No. 70/94 for the offence u/s 3/4 of the Dowry Prohibition Act, 1961 against the Petitioner and his family members that they refused to marry his daughter on account of non-fulfillment of demand of dowry. The case was investigated and charge-sheet was submitted on 30.4.1995 against the Petitioner and his family members for the offence u/s 3/4 of Dowry Prohibition Act and accordingly, cognizance was taken. During the course of investigation the Petitioner filed a Petitioner on 10.12.94 before the Additional Superintendent of Police, Patna wherein it was wrongly stated that his unmarried daughter had illicit relation with her brother-in-law Anil Kumar and Anil Kumar had criminal antecedent. The son of opposite party No. 2, namely, Deepak Kumar Verma and Sanjay are involved in destructive works and family members of

Opposite party No. 2 are suffering from chronic disease. The said allegations had been made in the petition only with a view to tarnish his image and to bleak future prospect of marriage of his daughter and as such the Petitioner has committed offence u/s 500 of Indian Penal Code.

3. Learned Counsel for the Petitioner contended that the learned Magistrate while taking cognizance u/s 500 of Indian Penal Code has failed to consider exception 8 and 9 of Section 499 of Indian Penal Code and as such the cognizance is bad in law. Whereas, learned Counsel for the Opposite parties contended that false allegation was made against his unmarried daughter, Anil Kumar and his sons Deepak Kumar Verma and Sanjay without making any enquiry only with a view to tarnish his image and bleak future marriage prospect of his daughter, and as such the same is not covered under exception 8 and 9 of Section 499 of Indian Penal Code.

4. It is manifest from the material on record that Opposite Party No. 2 had filed a case bearing Jakanpur P.S. Case No. 70/94 for the offence u/s 3/4 of Dowry Prohibition Act against the Petitioner and his family members in which charge-sheet was submitted and cognizance had also been taken. While the aforesaid case was under investigation, the Petitioner filed a petition before the Addl. S.P. alleging therein that unmarried daughter of the complainant-opposite party No. 2 had illicit relation with her brother-in-law Anil Kumar, Anil Kumar had criminal antecedent and also sons of the complainant Deepak Kumar Verma, Gopal and Sanjay are involved in destructive works. The allegation made in the petition was investigated by the investigating officer and thereafter charge-sheet was submitted and the Court after submission of charge-sheet took cognizance for the offence u/s 3/4 of Dowry Prohibition Act. Exception 8 of Section 499 of Indian Penal Code says that, "it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation".

Exception 9 of Section 499 of Indian Penal Code says that "it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of interest of the person making it, or of any other person, or for the public good". It is evident from the provision of law as stated above that merely making an accusation before the lawful authority is not sufficient to allow benefit of exception 8 or 9 of Section 499 of Indian Penal Code but accusation/imputation must be in good faith and to protect his interest or for the public goods. If the accusation/imputation is not made in good faith then the person cannot take advantage of the exception as indicated above. Good faith and public good is a question of fact. Simple belief or actual belief by the person making accusation/imputation is not enough rather it must have element of due care and attention, before making such accusation/imputation. Good faith has to be established as a fact that he made an enquiry before making such accusation/imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the

imputation was true.

5. In the present case noting has been brought on the record to show that the aforesaid test was complied with before making accusation/imputation. The accusation/imputation was made during investigation of a criminal case before the authority concerned for his own interest but there is nothing on the record that the said statement was made after complying with the test as indicated above and as such I do not find any merit in this application. Accordingly, it is dismissed. However, it is made clear that the observation made in this order will not prejudice the case of the Petitioner at the trial as the fact has yet to be established.