

(2006) 05 PAT CK 0022

In the Patna High Court

Case No : Criminal Miscellaneous No. 30819 of 2005

Kishori Prasad Das and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 483
Penal Code, 1860 (IPC) — Section 498A

Citation : (2006) 3 PLJR 120

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : M.Z. Ouamar, for the Appellant; Ram Priya Sharan Singh, APP, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—In this is an application u/s 482 of the Code of Criminal Procedure, 1973 (In short "the Code"), the challenge is against the order dated 21.4.2005 of the learned Sessions Judge, Purnea, passed in Cr. Rev. No. 431 of 2004 by which the revision petition challenging the order dated 20.11.2004, passed by the Chief Judicial magistrate, Kishanganj, by which he has taken cognizance of the offence u/s 498A of the Indian Penal Code, in Complaint Case No. 92-C/04, came to be dismissed. The petitioner has invoked the benefit of the provisions of Section 482 of the Code for getting the impugned order of the learned Sessions Judge, quashed on the ground that the order of the learned trial court issuing processes is not a final but interlocutory order.

2. The instant trial arises out of a complaint filed by the complainant against her husband, and other accused persons including the petitioners. The husband is not the petitioner here. It is alleged that the complainant was married with Chandan Kumar Das and out of that wedlock, a son was also born but for 4-5 months, her husband and in-laws started torturing and assaulting her and making demand for a motorcycle, and, for non-fulfilment of the same, they drove

her out from the matrimonial house. Though at that time the matter was settled and a compromise was arrived at but the accused persons again started making demand for the motorcycle and kicked her from the house.

3. Learned Counsels for the parties have been heard. The Police papers and record emerging from the present case have also been examined.

4. It is settled proposition of law that though the order of issuance of processes taking cognizance of the complaint is at an interlocutory stage but in substance, it is not an interlocutory order which can be said to be not annulled under the revisional jurisdiction, for at that stage it becomes final and, therefore, it is open for the aggrieved party to challenge it and it is subject to the revisional powers. There is no dispute about this proposition of law settled long before.

5. However, by the issuance of the process by the trial magistrate, upon a regular complaint filed by the wife, in the Court of the Chief Judicial Magistrate, Kishanganj for the alleged offence against the petitioner, mainly for the offence punishable u/s 498A of the Indian Penal Code, the learned Magistrate issued process against the petitioners. On being aggrieved by the said order of issuance of process, the petitioners filed the aforesaid revision, unsuccessfully. The only ground on which the revision came to be dismissed, as it is apparent from the tenor of the impugned order of the learned Sessions Judge, is that the revision is not maintainable on the ground of order of process, impugned in the revision, being interlocutory which runs diametrically opposite to the settled principles of law.

6. It is in these context it becomes necessary for this Court to consider the merit of the impugned order of the learned Sessions Judge.

7. There is no dispute about the fact that there is no other provision for challenging the order of the learned Sessions Judge passed in the revision. Since the revisional powers are concurrent, only remedy available, therefore for the petitioners, is u/s 482 of the Code read with Section 483 of the Code. Section 482 of the Code reads thus:

Saving of inherent powers of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

8. It is true that the inherent powers u/s 482 of the Code can be exercised only when no other remedy is available to the litigant and grave injustice is caused requiring exercise of inherent powers of the High Court or for the purpose of securing ends of justice. Even from the admitted facts and settled principles of law, about which also there is no dispute, the impugned order is illegal, requiring interference in exercise of powers u/s 482 read with Section 483 of the Code, so as to quash it and direct the learned Sessions Judge to reconsider the matter on merits.

9. Consequently, the impugned order dated 21.4.2005 of the learned Sessions Judge, Purnea, passed in Cr.Rev. No. 431 of 2004 shall stand quashed with a direction to the learned Sessions Judge to reconsider the merits of the revision afresh since the order impugned in the revision is not interlocutory, in the light of the settled proposition of law, expeditiously.

10. The application is, thus, allowed. Rule is made absolute.