
(2006) 06 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 32285 of 2005

Krishna Murari Sinha, Baidyanath Prasad @ Baidyanath
Mahto and Shravan Kumar Sinha

APPELLANT

Vs

The State of Bihar and Asha Sinha

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 177 , 178, 182(2), 184, 203
Penal Code, 1860 (IPC) — Section 114, 494, 495

Citation : (2006) 4 PLJR 30

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 21.6.2005 passed by Sri Mukesh Upadhyay, J.M. 1st Class, Bihar Sharif in Complaint Case No. 639(C) of 2001 whereby he has ordered to issue summons against the petitioners for facing trial for the offences under Sections 494 and 114 of the Indian Penal Code.

2. Heard.

3. The facts leading to this application are as follows:

Opposite Party No. 2 Asha Sinha, daughter of late Jagdishwar Prasad, P.S. Laheri, district Nalanda filed a complaint case against the petitioners and others before the Chief Judicial Magistrate, Nalanda at Bihar Sharif alleging therein that she was married to petitioner Krishna Murari Sinha on 24.6.1988. After marriage she went to her matrimonial house at Kahuara, district Nawadah. She lived peacefully for about one year. Thereafter her husband and in-laws started torturing her for which he filed Complaint Case No. 1034-C of 2000 which is pending. On 28.7.2001 one Suresh Prasad came to his father's place and informed that her husband was going to marry again on 29.7.2001 with one Mamta Kumari which

was to be solemnized at the rented house of petitioner No. 3 Sharvan Kumar Sinha, brother of her husband at village Mirzdpur, P.S. Navadah. On this Opposite Party No. 2 came to the house of Shravan Kumar Sinha and lodged protest against the marriage, but the parents of Mamta Kumari did not listen to it. Baidyanath Prasad alias Baidyanath Mahto, father-in-law of Opposite Party No. 2, petitioner Shrarvan Kumar Sinha and others were present there with some Gundas so that Opposite Party No. 2 or her relation might not go to the police station for illegal marriage. In presence of Opposite Party No. 2 and her witnesses, the marriage was performed, They were also kept confined in a room and were released on the next day.

4. After the filing of the complain, the complainant was examined on solemn affirmation. She also examine two witnesses including Suresh Kumar in support of her case. Sri Raj Kumar, Judicial Magistrate. 1st Class, Biharsharif by his order dated 28.11.2001 dismissed the complaint u/s 203 of the Code holding that the place of occurrence is situated within the district of Nawadah and, therefore, the complaint petition was not maintainable at Biharsharif, Nalanda. Opposite Party No. 2 then preferred revision application against that order. The learned 7th Additional Sessions Judge, Nalanda in Criminal Revision No. 408 of 2001 allowed the revision and directed the court below to hold further enquiry, holding that as the complainant-opposite party No. 2 had been living permanently at her father's place from before the second marriage of her husband within the district of Nalanda and hence, in view of Section 182(2) of the Code, the jurisdiction of the court at Nalanda was not barred. After receipt of the order passed in Criminal revision. Sri Mukesh Upadhaya, J.M. 1st Class, Nalanda at Biharsharif, considering the statements of the complainant and her witnesses and the documents filed by her, found a prima facie case against the three petitioners under Sections 494 and 114 of the Indian Penal Code and passed the impugned order.

5. Learned Counsel for the petitioners submitted that the impugned order is bad in law. The alleged marriage took place in the district of Nawadah and, therefore, in view of Section 177 of the Code, the court a Nawadah only has jurisdiction to make enquiry and try the case and the court at Nalanda had no territorial jurisdiction to make enquiry and pass the order. He also contended that though P.W. 1 has stated that Opposite Party No. 2 had been living separately for the last 12 years at her father's place, there is no such assertion in the complaint petition and this statement has not been corroborated by P.W 2.

6. He further submitted that. P.W. 1, who is supposed to be the most competent witness has also falsified the presence of petitioner Nos. 2 and 3 at the place of occurrence. Therefore, no offence under Sections 494 and 114 of the Indian Penal Code is made out against them. The main thrust of the submission of the learned Counsel is that the court at Nalanda had no territorial jurisdiction to make enquiry and pass the impugned order. Learned Counsel, it appears, has also relied solely on the provisions of Section 177 of the Code in this regard.

7. Now, though Section 177 of the Code provides the general rule that every offence shall be enquired into and tried by a court within whose local jurisdiction it was committed, the same is modified by the exceptions or alternatives in Section 178-184 and Section 182(2) of the Code reads thus:

Any offence punishable u/s 494 or Section 495 of the Indian Penal Code (45 of 1860) may be enquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage or the wife by the first marriage has taken up permanent residence after the commission of the offence.

8. The order dated 28.11.2001 of the Judicial Magistrate, 1st Class and the order of the Learned Additional Sessions Judge show that the complainant (Opposite Party No. 2) has been residing at her father's place in the district of Nalanda from before the second marriage of her husband. The application u/s 482 of the Code also shows that the witnesses examined by the complainant have stated to this effect. Though the contention of the learned Counsel is that there is contradiction in the statements of the two witnesses in this regard, and there is no such averment in the complaint petition, but at this stage the evidence of the witnesses cannot be meticulously examined. So, when the statements of some of the witnesses is that Opposite Party No. 2 has been permanently living at her father's place even though no such averment has been made in the complaint petition, a prima facie case, to this effect, is made out in favour of the prosecution. So, when there is prima facie case that Opposite Party No. 2 has been living permanently within the jurisdiction of district Nalanda from before the second marriage, in view of Section 182(2) of the Code it cannot be said that the court at Biharsharif (Nalanda) had no territorial jurisdiction to make inquiry into the case.

9. So far the other submissions of the learned Counsel, the complaint petition shows that the father and brother (i.e. petitioner Nos. 2 and 3) and petitioner No. 1 were present at the time of marriage and they facilitated the marriage by calling Gundas from outside. Though the submission of the learned Counsel is that this allegation has been falsified by P.W. 1, but there is nothing on the record to show that it has been falsified.

10. So, when the complaint petition discloses an offence u/s 494 of the Indian Penal Code against the petitioner Krishna Murari Sinha and the offence u/s 494/114 of the Indian Penal Code against the other petitioners and the learned Magistrate after considering the evidence has found a prima facie case under Sections 494 and 114 of the Indian Penal Code against the petitioners, there appears no reason to interfere with it.

11. In view of the discussions made above. I do not find any merit, in the case of the petitioners. This application is accordingly dismissed.