
(2010) 03 PAT CK 0153
In the Patna High Court

Madan Prasad Choudhary and Others

APPELLANT

Vs

State of Bihar and Lalita Devi

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 341, 494, 498, 498A

Citation : (2010) 03 PAT CK 0153

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Heard Mr. Mahendra Pathar, learned Counsel for the petitioner and Mr. Rajesh Kumar, learned Counsel appearing on behalf of the State.

2. In this case, earlier notice was issued to opposite party No. 2 on several occasions and finally in view of order dated 11.5.2007, opposite party No. 2 was informed by the court below. The service report has been sent by Sri P.N. Sharma, S.D.J.M., Supaul which is kept at Flag "A". Despite service of notice, the opposite party No. 2 has not appeared.

3. Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of the order of cognizance passed under Sections 323, 494 and 498A of the Indian Penal Code and 3/4 of Dowry Prohibition Act in connection with Supaul P.S. Case No. 213 of 2003 corresponding to G.R. No. 681 of 2003 pending in the court of C.J.M., Supaul.

4. By order dated 16.9.2004, the learned Magistrate, differing with the final report submitted by the police, has taken cognizance of the offences under Sections 323, 494, 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

5. Learned Counsel for the petitioners, while challenging the order of cognizance,

submits that the learned Magistrate has completely failed to appreciate that in the case, marriage of petitioner No. 1 had taken place with the complainant long back in the year 1970 and thereafter, the petitioner No. 1 solemnized the marriage with petitioner No. 2 in the year 1989. After re-marriage, the opposite party No. 2 had filed a case against petitioner No. 1 for the offences under Sections 341, 323, 498 and 494 of the Indian Penal Code. In the said case, the petitioner No. 1 was put on trial and finally, he was acquitted by the concerned court. Learned Counsel for the petitioners has referred to Annexure-6 to the petition. By order dated 23.12.1996, the petitioner No. 1 was acquitted due to the reason that prosecution did not produce evidence in support of its case.

6. Learned Counsel for the petitioners has further submitted that the opposite party No. 2, though was earlier married with this petitioner, subsequently, after several years, separated themselves. Subsequently, the opposite party No. 2 filed a petition for maintenance also, which was numbered as Maintenance Case No. 5M/89. Said maintenance case was disposed of in view of the fact that petitioner had agreed to maintain two children of the opposite party No. 2. Learned Counsel, while referring to paragraph-12 of the petition, submits that in the year 1996, the opposite party No. 2 had filed a complaint case vide Complaint Case No. 228 (C) of 1991 for the offence under Sections 494, 498A of the Indian Penal Code, but the same was dismissed for want of evidence. Accordingly, he submits that the opposite party No. 2 has filed the present case with malice and grudge. However, after investigation, the police found the allegation as untrue and thereafter, final form was submitted. Though, there were no sufficient material to proceed against this petitioner, the learned Magistrate by the impugned order has taken cognizance of the offences. Fact remains that almost on similar allegation, the complainant had filed case earlier in which the petitioner No. 1 was acquitted and as such for same allegation, the petitioner cannot be prosecuted and punished twice.

7. In view of the facts and circumstances mentioned hereinabove, I am also of the view that once the petitioner No. 1 was already acquitted by Annexure-6, the petitioner No. 1 as well as other accused persons may not be allowed to be prosecuted again. Moreover, in view of the fact that repeatedly complainant had filed a complaint against petitioner No. 1 and others and earlier complaint petition was also rejected it appears that the present proceeding has been initiated maliciously. Accordingly allowing the proceeding in the case to further proceed will amount to abuse of the process of the court and as such the order of cognizance is fit to be set aside.

8. Accordingly, the impugned order of cognizance is set aside and petition is allowed.