
(2007) 09 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous No. 15049 of 2007

Mahjabeen Quasim @ Jhinto and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 10-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 498A

Citation : (2008) 1 PLJR 495

Hon'ble Judges : Sadanand Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—Heard learned counsel for the petitioners, learned counsel for the complainant as also the learned A.P.P. This is an application for quashing of order dated 9.3.2007 passed in Complaint Case No. 1408 of 2006, wherein and whereunder, cognizance of the offence u/s 498A of the I.P.C. was taken against the petitioners and there was issuance of summons.

2. According to the complainant, his daughter was married to petitioner No. 6 on 2nd April, 2005, and the articles as well as cash were given in the form of gift. Marriage was performed in a cordial manner, however, the complainant alleged that after marriage there was demand of a Santro Car, which could not be fulfilled, and when daughter of the complainant went to her matrimonial home at Patna she was assaulted and tortured on non-complying and non-payment of demand. It is alleged that on 26th July, 2006 the accused persons physically assaulted her and also conspired to kill her, and the complainant's daughter came back to her father's place on 27th July, 2006, and the accused persons were rigid over their demand of Santro Car and refused to permit the daughter of the complainant to settle in her matrimonial house.

3. It has been submitted on behalf of the petitioners that they have been falsely implicated in this case and from bare reading of the complaint petition and

versions of enquiry witnesses it appears that there are material contradictions which were subsequently improved by recalling the witnesses in course of enquiry u/s 202 of the Cr.P.C. It has been submitted that there is absolutely no truth behind the allegation of any demand or torture or "cruelty" or misbehaviour by the petitioners or their parents. It is indicated that much before the present case u/s 498A of the I.P.C. a Matrimonial Case No. 404/2005 was filed by husband as daughter of the complainant refused to accept sexual relationship with her husband from the very beginning. Various medical prescriptions in proof of mental illness of daughter of the complainant have been annexed. It is stated that the petitioner have obtained order of divorce from the Family Court, Patna on 8.6.2006. The Family Court, Patna passed order for dissolving the marriage solemnised on 2.4.2005 by order of divorce. It has been submitted that in view of decree of divorce, there is legal bar to the institution and continuance of a complaint.

4. In the case cited by the petitioner, i.e., 1992 (1) S.C. 335 State of Haryana & Ors. vs. Bhajan Lal & Ors.) the Hon'ble Supreme Court has formulated seven categories of cases, wherein and whereunder, extraordinary power u/s 482 of the Cr.P.C. should be exercised by the Court, to prevent the abuse of the processes of any court. In the aforesaid case while enumerating the categories of cases, it has been inter alia laid down as follows:--

Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceeding and/or where there is specific provision of the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

5. It has been submitted with reference to Annexure-10, the exparte judgment u/s 7 of the Family Courts Act, 1984 and u/s-307 read with Section 323 of the Mohammadan Law, that the matrimonial relationship in between petitioner No. 6 Hamid Zakaria and daughter of the complainant Shabana Bano had already been dissolved by decree of divorce, and since petitioner No. 6 is no longer husband, Section 498A of the I.P.C. does not have any application. It has been submitted that Section 498A of the I.P.C. contemplates "cruelty" on the part of husband or relative of the husband.

6. In course of hearing, on behalf of the complainant it has not been shown that the aforesaid judgment and decree which was earlier to filing of the complaint was set aside in any manner. So far complainant's case is concerned, the complainant herself had stated in course of enquiry u/s 202 of the Cr.P.C. that she had not been divorced, whereas, documents furnished on behalf of the petitioner shows that there is decree of divorce. Although, case at this stage has to be seen from the complainant's point of view, but the fact remains that the factum of divorce could not be negated on the face of document on record (Annexures-10 and 10/A). It was further submitted on behalf of the petitioner that in view of territorial jurisdiction also the case is not maintainable. With

reference to the complaint petition as also re-examination of the witnesses u/s 202 of the Cr.P.C. it has been indicated that place of jurisdiction in this case is the matrimonial home which is Patna, and the daughter of the complainant also had stated in course of her examination that on 6.7.2006 she was assaulted by her husband at her matrimonial home and there was conspiracy to kill her and at the matrimonial home she was subjected to demand and torture.

7. u/s 498A of the I.P.C. offence is accrued where the woman is subjected to "cruelty" as defined in "the explanation" appended under this section. It has been indicated on behalf of the petitioner that the offence was committed at Patna in the matrimonial home, but the case was instituted at Siwan. In this connection on behalf of the petitioner a decision of the Hon"ble Apex Court reported in 2007(1) S.C.C. 336 have been cited to indicate principle of law that in view of Section 177 of the Cr.P.C. read with Section 178 of the Cr.P.C., place of trial shall be territorial limits of the jurisdiction in which offence has been committed. With reference to the allegation in the complaint petition and also statement of the enquiry witnesses it has been shown that the offence cannot be held to be continued where only case is that the complainant's daughter was forced to leave her matrimonial home whereas in this case complaint had not been instituted at Patna but at Siwan. It has, therefore, been contended that there is lack of territorial jurisdiction in this case. In this connection principle of law as enunciated in respect of 482 Cr.P.C. in the case of Minu Kumari and Another Vs. The State of Bihar and Others, the law deserves attention as follows:---

"Section 482 of the Criminal Procedure Code does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court," and (iii) to otherwise secure the ends of justice which is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction."

8. Under the circumstances as mentioned above, even if the territorial jurisdiction of the case is ignored, in view of bar to proceed u/s 498A I.P.C. constituted by means of divorce or dissolution of marriage as stated above, which went uncontroverted (Annexures 10 and 10/A) it will be an abuse of the process of the Court to continue with the proceeding as aforesaid decree of divorce, which has not been set aside or annulled as yet, shall come in way of the proceeding with an action u/s 498A of the I.P.C. Under the above circumstances, the proceeding in Complaint Case No. 1408 of 2006 is quashed. This criminal miscellaneous application is thus allowed.