

(2009) 06 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 25049 of 2007

Md. Haseen akhtar and Others

APPELLANT

Vs

The State of Bihar and Farhat Ara

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 406, 498A

Citation : (2009) 06 PAT CK 0009

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Aditya Nath Jha, for the Appellant; Jharkhandi Upadhaya, Assistant Public Prosecutor and Binay Kumar Bineet, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The ten petitioners, who have been arrayed as accused in Complaint Case No. 257(C) 2004, have prayed for the quashing of the order dated 25.4.2007 passed therein by Sri Suniti Singh, Sub Divisional Judicial Magistrate, Barh, whereby he has refused to discharge the petitioners from the allegations levelled against them.

2. Briefly stated the prosecution case, as made out by the complainant, Farhat Ara, the wife of petitioner No. 1, impleaded herein as Opp. Party No. 2, in the complaint filed by her is that she was married to petitioner No. 1 on 19.4.2002 whereat gifts and dowry was given according to the status of her father. It was alleged that on entry in the matrimonial home, she was subjected to torture and cruelty for non-fulfilment of their dowry demand of a motorcycle and Rs. 25,000/- in cash and for the same, Complaint Case No. 220 (C) of 2002 was lodged, but the same was disposed of on compromise on intervention of well wishers of both families. It is also alleged that on re-entry into the matrimonial

home she was initially treated with cordiality and respectability and under false representation accused Nos. 1 and 2 on 11.10.2003 took out all the money (Rs. 5600/-) from her Account No. 4539 with the Barh Branch of Central Bank of India and retained the amount with themselves. Thereafter, the behaviour and attitude of all the accused suddenly changed and she was again subjected to torture, both physically and mentally, and her food and water was occasionally stopped. At about this time, the complainant came to know about the illicit relationship of her husband with Gulshan Khatoon, petitioner No. 10 herein, who was a cousin (Mauseri sister) of her husband and allegedly on several occasions she had seen the two of them in objectionable position and when she raised objections to the illicit relationship, both the accused, petitioner Nos. 1 and 10, would jointly along with other accused abuse her in filthy language and also assaulted her. They also threatened to get her divorced. It is further alleged that at around 7 O'Clock in the evening of 27.6.2004 when she returned from visiting a neighbour she found the door of her room locked from inside and on knocking and opening of the door she found her husband and petitioner No. 10 in objectionable posture which led her to form a presumptive opinion that the two were involved in the illicit act. She started weeping and also raised alarm, whereupon all the accused assaulting her with fists and kicks forbade her from raising alarm and threatened to burn her if she kept raising alarm. When the complainant continued weeping, then all the accused allegedly took away all her ornaments and locked her in a room, but on the following day she managed to escape to her parental home from where she went to Barh Hospital for her treatment and after treatment she went to the Police Station who refused to register her case.

3. Submission of the petitioners is that the learned Magistrate on the aforesaid assertions as embodied in the complaint petition and from the materials available from the enquiry u/s 202 Cr.P.C. had taken cognizance under Sections 498A, 323, 406 I.P.C. and 3/4 of the Dowry Prohibition Act, but it would be apparent from the perusal of the complaint petition that the alleged abuse and assault of the complainant by the accused was not on account of non-fulfilment of dowry demand but because she remonstrated against the alleged illicit relationship of her husband with petitioner No. 10.

4. Admittedly, there is no assertion of any dowry having been demanded or of any cruelty resorted to against the complainant for non-fulfilment of dowry demand.

5. It has further been submitted that due to the attitude and conduct of the complainant who often threatened to implicate her husband and his entire family members in false cases, it became difficult for the husband to live with the complainant eventually divorced her on 16.1.2004 under the Muslim Law and to confirm the same, Matrimonial Case No. 131 of 2004 was filed on 10.5.2004 before the Family Court at Patna and on receipt of notice in the said matrimonial case, the instant complaint came to be filed. In other words, the instant

complaint was a counter blast to the matrimonial case.

6. It is true that initially cognizance had been taken against the petitioners and in Complaint Case No. 220 (C) of 2002 which had ended in a compromise and the present complaint relates to the aftermath of the earlier complaint case. Here, as is apparent the alleged torture or cruelty resorted to by the petitioners is not an account of any demand for dowry and non-payment thereof but is because of her objections to the illicit relationship of her husband with petitioner No. 10. Therefore, cognizance u/s 3/4 of the Dowry Prohibition Act does not appear to be reasonable.

7. Then again the offence u/s 498A I.P.C. also does not appear to have been made out since the harassment of the complainant was not with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security and failure by her or any person related to her to meet such demand.

8. Therefore, the prosecution of the petitioners u/s 498A I.P.C. and 3/4 of the Dowry Prohibition Act appears to be an abuse of the process of the court and the learned Magistrate appears to have erred in not discharging the petitioners from those offences. The learned Magistrate also ought to have taken into consideration the fact that a divorce case being Matrimonial Case No. 131 of 2004 had been filed earlier to the instant complaint petition and in all probabilities the complaint petition was a counter blast to the matrimonial case.

9. No show cause or counter affidavit has been filed Opp. Party No. 2 and oral submissions only have been advanced to justify the order of the learned Magistrate.

10. From the Judgment dated 20th August, 2007 passed by the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 131 of 2004 which has been appended as Annexure 3 series to the application, it would appear that the said Matrimonial Case had been decreed on contest and the marriage of the complainant with petitioner No. 2 had been dissolved.

11. Due regard being had to the facts and circumstances of the case and the discussions made above, I am of the opinion that the impugned order cannot be sustained in law and has to be set aside which I do or else it would lead to a travesty of justice. Accordingly, the application is allowed.