
(2010) 03 PAT CK 0039
In the Patna High Court

Mohan Singh and Most. Rajmuni Kunwar APPELLANT
Vs
The State of Bihar and Bansropan Singh RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 245, 397, 482
Penal Code, 1860 (IPC) — Section 494, 498A

Citation : (2010) 03 PAT CK 0039

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—The two petitioners have approached this Court, while invoking inherent jurisdiction u/s 482 of the Code of Criminal Procedure, with a prayer to quash the entire proceeding of Complaint Case No. 134 of 1992/Tr. No. 133 of 1994 as well as for quashing of the order taking cognizance dated 13.5.1992.

2. During the pendency of the present petition, petitioner No. 2, who was mother-in-law of the complainant, died which has been informed by Sri Ram Balak Mahto, Senior Advocate. The death occurred on 27.11.2009. This fact has not been disputed by the learned Counsel, who appears on behalf of Opp. Party No. 2. Accordingly, the case of petitioner No. 2 stands abated.

3. This quashing application was firstly heard on 3.8.1999 and on the date, while issuing notice to Opp. Party No. 2 for filing show cause, this Court ordered that till further order, further proceedings in the court below in Complaint Case No. 134 of 1992/Tr. No. 133 of 1994 shall remain stayed. Subsequently, on 7.1.1999, the case was admitted for hearing and it was directed that during the pendency of this application, the interim order dated 3.8.1998 shall continue.

4. Opp. Party No. 2 had filed a complaint case vide Complaint Case No. 134 of 1992 with an allegation that her husband who was arrayed as accused No. 1, got

married second time in the year 1992 during the life time of his first wife ,i.e. the complainant. It was further alleged that this petitioner, who was elder brother of her husband, participated in marrying the husband of the complainant for second time with accused No. 2, Mira Devi. In the complaint petition, particularly at paragraph Nos. 6 and 7, allegation of torture against this petitioner was also levelled besides making allegation against other accused persons. After examination of complainant on solemn affirmation, two witnesses were examined before the order of cognizance. The learned Magistrate after examining the material available in the complaint petition as well as on the evidence of witnesses by his order dated 13.5.1992 took cognizance of offence u/s 494 and 498A of the Indian Penal Code. After the order of cognizance before the charge, further some of the witnesses were examined and thereafter a petition for discharge was filed on behalf of the present petitioner along with others. The learned Magistrate after hearing the parties and examining the materials available on record and finding that there were no sufficient materials for their discharge, by his order dated 4.4.1994 rejected the discharge petition.

5. Aggrieved by the order dated 4.4.1994, whereby discharge petition of petitioner was rejected, a revision petition was filed before the court of the learned Sessions Judge. By an order dated 26.5.1998, the revision petition filed by the petitioner and other accused persons was also rejected by the learned Addl. Sessions Judge 7th, Rohtas at Sasaram.

6. The learned Sr. Counsel appearing on behalf of the petitioner submits that the marriage of the complainant, i.e. Opp. Party No. 2 with accused No. 1, namely, Shiv Kumar Singh was solemnized on 8th May, 1977. He submits that for a long time there was no allegation of torturing or commission of offence u/s 498A of the Indian Penal Code against any of the accused persons including this petitioner. Dispute arose only when accused No. 1 Shiv Kumar Singh married with accused No. 2, Mira Devi and thereafter, according to the learned Senior Counsel appearing on behalf of the petitioner, a concoction was made to file the present case and, accordingly, false case against the petitioner and other family members was filed by the complainant. It was argued that since the complaint petition was filed maliciously, the entire proceeding is liable to be set aside.

7. Learned Counsel appearing on behalf of Opp.Party No. 2 has vehemently opposed the prayer of the petitioner. He has firstly argued that the order of cognizance was passed long back on 13.5.1992. There was no defect in the order of cognizance. He also submits that the witnesses, who were examined in support of the complainant before the cognizance, gave specific averments implicating all the accused persons including this petitioner who was elder brother of the husband of the complainant.

8. I have also examined the complaint petition, order whereby discharge petition was rejected as well as order dated 26.5.1998, whereby criminal revision filed against the order of rejection of discharge petition was rejected.

9. At the very outset, I am of the view that in the garb of invoking inherent jurisdiction of this Court virtually the petitioner has filed Second revision, which according to Section 397(3) of the Code of Criminal Procedure is barred. Surprisingly, though revision petition was rejected, in the prayer portion of the present petition, the petitioner has not made any specific averment for quashing of the order dated 26.5.1998, whereby revision petition was rejected. Besides this, there is specific averment in the complaint petition, which indicates that the petitioner was involved in commission of offence of torturing. The order dated 4.4.1994, which was passed by the learned Judicial Magistrate 1st Class, assigns a detail and sound reasons for rejection of the discharge petition. Moreover, while hearing a petition of discharge, the court was only required to see as to whether, there is material to proceed against the accused persons or not and in case of discharging an accused, a reason is to be assigned by the concerned Court. Meaning thereby that while rejecting a discharge petition, no reason is required to be assigned as per provisions contained in any of the Sections relating to discharge, i.e. Section 227 Cr.P.C. or Section 239 Cr.P.C. or Section 245 Cr.P.C. Since the Revision petition was also rejected, it was expected that the petitioner should have challenged the said order, but instead of making any specific averment for quashing of the order of rejection of revision petition, it has been prayed to quash the entire proceedings as well as order of cognizance dated 13.5.1992.

10. I do not find any error in the order dated 4.4.1994, whereby the discharge petition was rejected nor there is any material on record to suggest that no offence against this petitioner is made out.

11. Accordingly, there is no merit in the petition and petition stands rejected.

12. In view of rejection of this petition, the interim order of stay stands automatically vacated.

Let this order be communicated forthwith.