
(2006) 08 PAT CK 0062

In the Patna High Court

Case No : Criminal Miscellaneous No. 18951 of 2001

Naresh Tanti and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 379, 494, 498A, 504

Citation : (2006) 4 PLJR 36

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure, 1973 for quashing the order dated 21.5.2001 passed by the Sub-divisional Judicial Magistrate, Jamui in Complaint Case No. 138-C of 2001 by which he has taken cognizance under Sections 498-A, 494, 379 and 504/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act against the petitioners. Heard both sides.

2. The case of the complainant Opposite Party No. 2 in the complaint petition in short is that she was married to petitioner No. 1 Naresh Tanti on 31.3.1993. During marriage dowry was given. After some time of the marriage, the husband and father-in-law started demanding further dowry and for that the petitioners started torturing her. On 20.6.1999 petitioner Naresh Tanti contracted a second marriage with accused No. 11 Punam Devi and when Opposite Party No. 2 protested, she was tortured. On 10.2.2001 she was driven out of the matrimonial house saying that unless she brought Rs. 20,000/- and a radio, she would not be allowed to live in the house. It is also said that on 13.2.2001 Opposite Party No. 2 returned to her matrimonial house with Rs. 5000/- but on 14.2.2001 she was again driven away after keeping the ornaments etc.

3. It appears from the impugned order that the complainant was examined on solemn affirmation and she examined four witnesses in support of her case. The learned Sub-divisional Judicial Magistrate after perusing the complaint petition and the statement of the complainant on solemn affirmation and the statements of the witnesses found a prima facie case against the petitioners under sections 494<, 498-A, 379 and 504/34 and Section 3/4 of the Dowry Prohibition Act and passed the impugned order.

4. Learned counsel for the petitioners submitted that the entire case is false. The petitioners never demanded any dowry. They never tortured Opposite Party No. 2. Petitioner No. 1 also did not contract second marriage as alleged. He admitted that the application u/s 125 Cr.P.C. filed by Opposite Party No. 2 (attached with the record) before Family Court, Calcutta would show that she lived with her husband only for two months after her marriage and then went to her father's house. Hence, there is no question of torture or demand of dowry in between 26.6.1999 to 14.2.2001 as alleged in the complaint petition. He further referred to the order dated 11.7.1976 of the Family Court, Calcutta to show that in Misc. Case No. 15 of 1995 u/s 125 Cr. P.C., Opposite Party No. 2 was granted maintenance at the rate of Rs. 300/- per month. He also referred to the Annexures to show that the Opposite Party No. 2 filed Misc. Execution Case No. 174 of 2000 for realisation of the arrear amount of maintenance and the case remained pending from 9.11.2000 to 14.3.2001 and during the pendency of the case, Opposite Party No. 2 appeared in the Family Court at Calcutta on 9.11.2000, 29.12.2000 and 2.2.2001 and submitted that as Opposite Party No. 2 was pursuing execution case against petitioner No. 1 and was at Calcutta during the period in which the occurrence is said to have been committed, how can it be said that she was tortured at her matrimonial house in the district of Jamui (Bihar). He further referred to the order dated 14.3.2001 and order dated 30.3.2006 of Family Court, Calcutta to show that he had been paying maintenance regularly since passing of the order of maintenance and for default of only a few months, Opposite Party No. 2 had filed Misc. Execution Case and submitted that when petitioner No. 1 had been paying maintenance to Opposite Party No. 2, no question of her living with the petitioners arises and, therefore, there was also no question of any demand of dowry and torture during the period in question.

5. Learned counsel also referred to the order dated 30.3.2006 of the Family Court, Calcutta passed in Misc. Execution Case No. 53 of 2004 for realising the arrear of maintenance and submitted that the order would show that petitioner No. 1 had filed a Matrimonial Suit No. 33 of 1995 for divorce on the ground that Opposite Party No. 2 was living in adultery and the divorce was allowed on 13.5.2003. His contention, hence, is that for this matrimonial case, Opposite Party No. 2 in retaliation filed the present case against the petitioners.

6. Opposite Party No. 2 has filed counter affidavit to show that in 1995 she was driven out of the matrimonial house and as such she had filed a maintenance

case u/s 125 Cr. PC. Thereafter there was settlement but again she was driven out for non-fulfilment of dowry on 20.6.1999. But as I have already mentioned above, the period of occurrence in this case is in between 20.6.1999 to 14.2.2001. Therefore, this counter affidavit is of no consequence.

7. On a perusal of the documents referred to by the learned counsel (which are either admitted documents or certified copies of the order-sheets of the Family Court, Calcutta and, therefore, unimpeachable documents), I find substance in the submission of the learned counsel for the petitioners. The documents show that Opposite Party No. 2 had filed a maintenance case in the Family Court in the year 1995 which was allowed on 11.7.1996. They also suggest that the petitioner husband had been paying maintenance and whenever failed to pay, misc. execution cases were registered for realising the arrear and the order dated 30.3.2006 of the Family Court, Calcutta also shows that the petitioner No. 1 had paid maintenance upto September, 2003 and on account of divorce based on adultery, he left paying maintenance thereafter. So, when Opposite Party No. 2 had been receiving maintenance during the period of occurrence, it is absurd that she would at that time live in her matrimonial house and would be tortured.

8. Therefore, so far as the allegations for the offence under sections 498-A, 379 and 504/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act are concerned, they appear to be false and motivated but so far as the offence u/s 494 of the Indian Penal Code is concerned, the allegation in the complaint petition is that petitioner No. 1 Naresh Tanti contracted a. second marriage on 20.6.1999. The learned Magistrate also found a prima facie case u/s 494 of the Indian Penal Code and the order dated 30.3.2006 shows that the decree of divorce was passed on. 13.5.2003. Therefore, petitioner No. 1 Naresh Tanti, the husband, could not legally marry another woman on 20.6.1999. In view of the above discussion, this application is allowed in part. The impugned order so far as it relates to all the petitioners except petitioner No. 1 Naresh Tanti, is quashed. As regards Naresh Tanti, the case in the trial court will proceed against him but only for the offence u/s 494 of the Indian Penal Code.