

(2018) 01 PAT CK 0082

In the Patna High Court

Case No : Criminal Miscellaneous No. 9278 Of 2017

Pawan Kumar

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 362, 482
Indian Penal Code, 1860 — Section 34, 307, 323, 379, 498A, 504
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2018) 2 PLJR 99

Hon'ble Judges : Arvind Srivastava, J

Bench : Single Bench

Advocate : Ajay Kumar, Amir Alam, Soni Srivastava, Ravi Bhardwaj, Jharkhandi Upadhyay

Final Decision : Dismissed

Judgement

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 10.11.2011 passed by Chief Judicial Magistrate, Nawada in Sirdala P.S. Case No. 34 of 2010, whereby and whereunder the learned Magistrate has made certain correction in the earlier order of cognizance dated 08.08.2011, whereby cognizance was taken under section 498A, 323, 307, 504 and 379 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act and further for quashing of the order dated 09.12.2016 passed in Cr. Misc. No. 56 of 2016 by which the learned Sessions Judge, Nawada has dismissed the Cr. Misc. Case filed by the petitioner against the order dated 10.11.2011.

Facts of the case, in short, is that a first information report was lodged against 12 named accused persons vide Sirdala P.S. Case No. 34 of 2010 for the offence punishable under sections 498A, 323, 307, 379/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act. After investigation, police submitted

charge-sheet against this petitioner. Accused No. 4, Saryug Prasad has been shown dead and the remaining accused persons have not been sent up for trial. However, the learned Magistrate differing with the final form/charge-sheet took cognizance of the offence under sections 498A, 323, 307, 379, 504 I.P.C. against all the accused persons except one Saryug Prasad, who has been shown dead. Thereafter vide order dated 10.11.2011, learned Magistrate modified his order dated 08.08.2011 adding the name of Mala Devi and Sandhya Devi and also added sections 3/4 of the Dowry Prohibition Act against all the accused persons.

Learned counsel appearing for the petitioner submits that learned Magistrate has committed serious error by way of amending the order of cognizance by subsequent order i.e. the order dated 10.11.2011. Though the learned Magistrate has mentioned that this order has been passed for making correction of clerical error, but in sum and substance he has passed a fresh order of cognizance, which is not sustainable in the eye of law. In terms of section 362 Cr. P.C., learned Magistrate is not authorized to modify or review his earlier order. Learned counsel further submits that learned Sessions Judge has also failed to consider this point and has dismissed his miscellaneous petition vide order dated 09.12.2016. As such, learned counsel submits that the aforesaid orders under challenge are fit to be quashed.

Learned counsels appearing for the opposite parties opposes the prayer of the petitioner. It is submitted that the by the subsequent order the learned Magistrate has only tried to make correction of clerical error and under section 362 Cr.P.C. he was well competent to make such correction. Moreover, petitioner had the remedy of filing criminal revision before the Court, which he has not availed. Further, learned counsel has placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court in the case of Gurpreet Kaur and others Vs. Jalandhar Development Authority, reported in 2015 SCC OnLine P & H 4205, to submit that "if any one is declared as an absconder or proclaimed offender in terms of section 82 of the Code, he/she/they are not entitled to discretionary relief under section 482 of the Code". The present case was registered in the year 2010 and up-till-now petitioner has not surrendered before the Court below and has been filing petition before the Court below and this Court. In the above background, this petition is fit to be dismissed.

Considering the facts and circumstances of the case, the materials available on record and the submissions advanced on behalf of the parties, this Court finds that the submissions advanced by the learned counsel for the petitioner has no force. By the subsequent order dated 10.11.2011, learned Magistrate has only corrected the clerical error occurred in the order and he was very much competent to do so. It appears that the present first information report was lodged against 12 named accused persons, namely, (1) Pawan Kumar, the present petitioner, (2) Manohar Prasad (3) Subhash Chandra, (4) Saryug Prasad, (5) Banarsi Devi, (6) Sandhya Devi, (7) Punam Devi, (8) Radha Devi, (9) Anil Kumar, (10) Prateek Aryan @ Deepu, (11) Mala Devi & (12) Vikram Kumar vide

Sirdela P.S. Case No. 34 of 2010 for the offence punishable under sections 498A, 323, 307, 379/34 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act. Police after investigation submitted charge-sheet against the present petitioner for the offence under sections 498A, 323, 307, 379, 504 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act. Accused No. 4, Saryug Prasad has been shown dead and against other accused persons, police submitted final form. Learned Magistrate differing with the police report has taken cognizance against all the accused persons except accused, Saryug Prasad, who has been shown dead, for the offence under sections 498A, 323, 307, 379, 504 of the Indian Penal Code. It appears that sections 3/4 of the Dowry Prohibition Act has not been mentioned inadvertently and the same is a clerical error. Moreover, if petitioner was aggrieved by the order taking cognizance or the subsequent order, the proper course available to the petitioner was that he should have filed criminal revision challenging the aforesaid orders. Instead, the petitioner filed criminal miscellaneous petition before the Sessions Judge. Learned Sessions Judge has specifically mentioned in his order dismissing the criminal miscellaneous case that petitioner should have filed a criminal revision challenging the order taking cognizance, and as such, the present criminal miscellaneous case is not maintainable. Now, the petitioner has come up before this Court challenging the aforesaid order passed by the learned Sessions Judge virtually making it an alternative for second revision, which is also not maintainable. Further, if any one is declared as an absconder or proclaimed offender in terms of section 82 of the Code, he/she/they are not entitled to discretionary relief under section 482 of the Code as held by the Hon'ble Punjab & Haryana High Court in the case of Gurpreet Kaur and others Vs. Jalandhar Development Authority, reported in 2015 SCC OnLine P & H 4205.

In view of the discussions made above, this Court does not find any ground to interfere into the matter by exercising its extraordinary jurisdiction under section 482 Cr.P.C. The application, accordingly, stands dismissed.