

(2016) 02 PAT CK 0031

In the Patna High Court

Case No : Criminal Miscellaneous No. 40086 of 2015

Prabhash Kumar and other

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

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

Citation : (2016) 2 ECrC 60

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : S.M. Rahman, APP, Seema, Adv. Ranjkan Kumar Jha Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Singh, J. (Oral) - Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Opposite Party No. 2.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C."), the petitioner seeks quashing of the order dated 10.07.2015 passed by the learned Sub Divisional Judicial Magistrate, Patna in G.R. No. 3693 of 2013 arising out of Shastri Nagar P.S. Case No. 253 of 2011, whereby the learned Sub Divisional Judicial Magistrate, Patna has rejected the application filed by the petitioner under Section 239 of the Cr.P.C. for discharge.

3. It has been contended by the learned counsel for the petitioner that the present case has been instituted in retaliation to the matrimonial suit being Matrimonial Case No. 481 of 2011 filed on behalf of the petitioner prior to the lodging of the present case. It is further contended that the allegations made in the FIR are absolutely false. The informant had earlier lodged information to the police pursuant to which Station Diary Entry No. 658 of 2011 was made and thereafter during enquiry of the said Station Diary Entry the police had called for

the call data record of Mobile No. 7739469532. On the basis of the call data record furnished by the service provider (Airtel) of the aforesaid mobile number, the complainant has instituted the present FIR just to humiliate and harass the petitioner. He has further contended that since initial report made to the police was the earliest version, the FIR ought to have been instituted on the basis of that and subsequent report on the basis of which the FIR has been instituted is bad in the eyes of law.

4. Learned counsel for the Opposite Party No. 2 has contended that the informant of the case was married to the petitioner on 09.07.2010 and since the date of marriage she was being subjected to cruelty in various ways. The FIR contains the allegations of demand of dowry and subjecting the informant to cruelty for non-fulfilment of the same. The institution of the matrimonial case mentioned above by the petitioner seeking divorce was never disclosed to the informant and the same was also a part of cruelty meted out to her.

5. I have heard the respective counsel for the parties and perused the materials available on record.

6. The allegations made in the FIR are quite serious. They clearly attract the ingredients of the offence punishable under Section 498-A of the Indian Penal Code. The police conducted investigation of the case and found the allegations to be true and on the basis of the materials collected during investigation, the learned Magistrate took cognizance of the offence. The order of cognizance was challenged by the petitioner before this Court in Cr. Misc. No. 22486 of 2014 but the same was dismissed by a coordinate Bench of this Court.

7. The learned Sub Divisional Judicial Magistrate, before whom the application under Section 239 of the Cr.P.C. for discharge was filed, has recorded in the order that the witnesses examined during investigation have fully supported the allegations made in the FIR and in that view of the matter, he has refused to discharge the petitioner.

8. It is a settled position in law that if upon consideration of the record of the case and documents submitted therewith the Court considers that there is sufficient ground for proceeding against the accused, the application for discharge cannot be allowed. It is also well settled that the defence of the accused cannot form the ground for discharging him from the prosecution if sufficient materials are collected against the accused for proceeding against him during trial.

9. Having seen the offences alleged in the FIR and the impugned order passed by the court below, I do not find any merit in the case. Accordingly, the application, being devoid of any merit, is dismissed.