
(2010) 02 PAT CK 0042
In the Patna High Court

Rajgir Singh

APPELLANT

Vs

State of Bihar and Dr. Harendra Prasad Srivastava, Addl.
CMO, Sadar Hospital

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 198, 227
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 494

Citation : (2010) 02 PAT CK 0042

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Judgement

Samarendra Pratap Singh, J.—Heard learned Counsel for the parties.

2. The petitioner prays for quashing order dated 11.3.2004, passed by the Chief Judicial Magistrate, Jehanabad in Jehanabad Police Station case No. 12 of 2003, passed in GR No. 500/2003/Tr No. 507 of 2004 for offences u/s 494, 420, 467, 468 and 471 of the Indian Penal Code as well as subsequent order dated 25.1.2005 rejecting the petition of discharge u/s 227 Cr.P.C. Notice was issued to Opp. Party No. 2 who did not appear to contest the case.

3. The petitioner is a vaccinator in office of A.C.M.O. Sadar Hospital, Jehanabad. He submits that Opp. Party No. 2 who is Government official has no locus in view of Section 198 Cr.P.C. to file a case u/s 494 I.P.C. He contends that in facts and circumstances of the case, no offence u/s 420, 467, 468 and 471 I.P.C. is made out.

4. Before I advert to the submissions of petitioner it would be necessary to notice the prosecution case in brief.

5. One Sheo Kumari Devi, w/o Rajgir Singh (petitioner) filed a complaint before the Director in chief, Health Services that her husband has given status of wife to another woman. On the basis of the aforesaid complaint, the Director in chief issued show cause to the petitioner who was working as vaccinator in the

Primary Health Centre, Kako, Jhanabad. Pursuant to the notice, the petitioner submitted his explanation. The director in chief being dissatisfied with the same, directed opposite party No. 2, the Additional Chief Medical Officer, Sadar Hospital, Jehanabad to lodge an FIR with further direction to remit half of his total salary to Shiv Kumari Devi towards maintenance. The opposite party number 2, the ACMO, Jehanabad accordingly lodged a case against the petitioner under Sections 494, 420, 467, 468, 471 I.P.C. In the FIR it is alleged that the petitioner in his explanation submitted a false plea that he has not granted status of a wife to another woman. Police after investigation submitted charge sheet on 28.2.2004 under aforesaid sections. The learned Magistrate vide his order dated 11.3.2004 took cognizance of the offence under Sections 494, 420, 467, 468 & 471 of the Indian Penal Code. The case thereafter was committed and transferred to the court of Judicial Magistrate, Jehanabad. The petitioner filed an application for discharge. The application for discharge was also rejected vide order dated 25.1.2005.

6. Counsel for the State submits that the petitioner has made two prayers in the same application and he should have limited his prayer to one relief. He states that the materials on record do make out a case u/s 494, 420, 467, 468 & 471 I.P.C.

7. Heard the parties.

8. Section 198 of the Cr.P.C. deals with prosecution for offence against marriage. Sub-section (1) of Section 198 Cr.P.C. states that no court shall take cognizance of an offence punishable under Chapter XX of the I.P.C. (45 of 1860), except upon a complaint made by some person aggrieved by the offence, save as provided in Sub-section 1(a), (b) & (c) of Section 198 Cr.P.C. Sub-section 1(a) states that if a person is under the age of eighteen years, or is an idiot or a lunatic, or on account of sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf. Sub-section 1(b) speaks of circumstances in which a person serving in the Armed Forces can authorize a person to file complaint. Sub-section 1(c) states that if the person aggrieved by an offence punishable u/s 494 or 495 I.P.C. is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or her father's or mother's brother or sister, or with the leave of the Court, by any other person related to her by blood, marriage or adoption in view of 1978 amendment.

9. In the case in hand, opposite party number 2 does not fall in any of categories mentioned in proviso contained in Sub-section 1(a)(b) & (c) to Section 198 Cr.P.C. for lodging a complaint u/s 494 I.P.C. Opp. Party No. 2 is a Government official and not related to aggrieved person, the wife of the petitioner. Even as per Section 198(1) a person can file a case u/s 494 I.P.C. on behalf of a woman, subject to two limitations. Firstly, such complaint must be filed with leave of the

court. Secondly, the complainant must make out a case that such woman suffers from disabilities mentioned in Section 198(1). The direction of Director in chief, Health Services nor the complainant states that wife of petitioner was otherwise unable to make complaint on account of being a minor, infirm or lunatic or local customs or manner of living.

10. So far as other Sections are concerned there is no material on record to show that the petitioner committed any offences under Sections 420, 467, 468, 471 I.P.C. Mere view of the Director in chief holding that explanation offered by the petitioner that he has not given status of a wife to another woman is not tenable, does not disclose any ingredient for booking or prosecuting a person under Sections 420, 467, 468 and 471 I.P.C.

11. In the result, this application is allowed. Impugned order taking cognizance under Sections 494, 420, 467, 468 & 471 I.P.C. dated 11.3.2004 as well as subsequent order dated 25.1.2005 rejecting the application of discharge in Jehanabad Police Station case No. 132 of 2003 is set aside.