

(2007) 09 PAT CK 0138

In the Patna High Court

Case No : Criminal Miscellaneous No. 5824 of 2007

Rajiv Kumar @ Rajiv Sinha and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4, 5

Penal Code, 1860 (IPC) — Section 120B, 323, 337, 34, 379

Citation : (2008) 1 PLJR 77

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Judgement

S.C. Jha, J.—Rajiv Kumar @ Rajiv Sinha and Varuna Kumari @ Varuna Sinha, both resident of Mohalla Daudpur Kothi, P.S. Bramhapura, Dt. Muzaffarpur, have filed this application for quashing the cognizance order dated 6.4.2005 and the entire criminal proceeding initiated against the petitioners and others, whereby on the basis of consideration of complaint petition and the statement of the complainant on oath, the learned Judicial Magistrate, Kishangunj, has taken cognizance under Sections 498A, 323, 379, 384, 120B of Indian Penal Code in Complaint Case No. C245/2005. Heard learned counsel for the petitioners, O.P. No. 2 and learned Additional Public Prosecutor for the State.

2. O.P. No. 2 Archana Sinha had filed a complaint petition before the Chief Judicial Magistrate, Kishangunj, bearing Complaint Case No. C245/2005 against her husband Aditya Kumar Sinha and others including these petitioners in respect of her torture, humiliation and assault due to non-fulfillment of dowry demand under Sections 498A/34, 323, 379, 406, 337, 384 of Indian Penal Code as also Sections 4 and 5 of the Dowry Prohibition Act.

3. Learned Magistrate, Sri N. Mehatar, has passed the impugned order just on perusal of the complaint petition and the statement of the complainant on oath and arrived at this conclusion that a prima facie case is made out under Sections 498A, 323, 379, 384, 120B of Indian Penal Code against the accused persons.

4. In the complaint petition, names of five witnesses have been cited. But none of them have been examined by the learned Magistrate.

5. Heard learned counsel for the petitioners, OP. No. 2 and learned Additional Public Prosecutor for the State.

6. As per complaint petition of O.P. No. 2 Archana Sinha, her marriage with Aditya Kumar Sinha was solemnised on 17.6.1998 as per Hindu religion, caste and customs. She has stated that after death of her father in the year 1985, family affairs was being looked after by her brother Prabhakar Sinha, who is posted as Cashier in Rural Gramin Bank, in the district of Kishangunj, where she was residing with her brother. Petitioner Rajiv Sinha and Baruna Sinha, happen to be the Nandosi and Nanad respectively of the complainant. At the time of her marriage on the demand of the accused persons, in all Rs. 3,41,000/- was spent and the Bank Draft was prepared in the name of Chandra Kishore. Sinha, her father-in-law, which was deposited in the State Bank of India, Kalambag Road Branch, Muzaffarpur, in his account. She spent about ten days in her Sasural on her first visit and she came back to her Naihar. On 6.3.1999 she was brought to Muzaffarpur by her husband, but there she was pressurised either for a Motorcycle or Rs. 50,000/- by the accused persons with extent of threat for such fulfillment. On some pretext or the other, the complainant Archana Sinha was used to be assaulted by her Nanad, Mother-in-law with fist and slaps and they also used to hurl abuses on her parents. Such torture became a regular feature committed at the behest of the family members of the accused persons. Anyhow, she could inform her brother Prabhakar Sinha who came down to her Sasural and attempted to pacify the situation on 28.3.1999. But in turn, he was also humiliated and the complainant was driven away from her matrimonial house. At the time of her departure, she was again abused, assaulted and stripped off her ornaments. She wrote several letters to her husband and attempt to pacify the situation on Telephone by her family members was made, but all went in vain. Rather, hurling of abuses and demand of Rs. 50,000/- became a regular feature. Even, the husband of the complainant pretending that the matter has been reconciled, he took the complainant to his house after attending the marriage ceremony of the daughter of the complainant's sister at Purnea. But again she was tortured in her Sasural both mentally and physically and this became a regular feature and at one point of time, the complainant was forced to sign and make some endorsements on some blank papers on pressure. On 31.8.2001 she anyhow came to her Naihar with her brother and, thereafter, none from her Sasural side came to take her back for restoration of the relationship between the complainant and her husband. Lastly, on 20.3.2005 her brother Prabhakar Sinha again went to the Sasural of his sister, but returned on being abused and humiliated.

7. The complainant-Archana Sinha has supported such factum of allegation in detail by giving a graphic account of events. She also came to know that her husband has married some other lady.

8. Contention has been advanced on behalf of the petitioners that Petitioner No. 1 is Nandosi whereas Petitioner No. 2 is Nanad of the complainant respectively. Their marriage had taken place in the year 1991 and so they have no concern with the family of the husband of the complainant. They have virtually no relationship with the in-laws members of the complainant-O.P. No. 2.

9. The complaint was filed after inordinate delay. The allegation against the Petitioner No. 1 is to the effect that he abused the complainant and threatened on phone whereas his wife Petitioner No. 2 snatched gold chain of the complainant. The demand in respect of Motorcycle has no purpose for the petitioners. The complainant Archana Sinha has also made a complaint before the Spud. of Police, Muzaffarpur, and in that complaint, nothing has been alleged against these two petitioners. The learned Magistrate has taken cognizance without appreciating the facts and circumstances of the case.

10. Emphasis has been given that deliberately the case has been lodged at Kishangunj so that the petitioners may be dragged at Kishangunj. It has been alleged that no part of the occurrence is said to have been committed in the territory of Kishangunj district and the facts and circumstances in respect of absurdity and malicious prosecution of the petitioners is squarely covered and fit to be quashed on the basis of the decision reported in AIR 1993 SC 604.

11. Reference of two decisions reported in Ramesh and Others Vs. State of Tamil Nadu, , besides Manish Ratan and Others Vs. State of M.P. and Another, , have been cited on behalf of the petitioners regarding territorial jurisdiction of the court passing cognizance order. It has been submitted that at best petitioners could be said to have paid no heed to the request made by the complainant Archana Sinha for active indulgence in pacifying the situation for her decent living. So far Petitioner No. 2 Varuna Sinha, wife of Petitioner No. 1 Rajiv Sinha is concerned, it has been submitted that she is equally innocent for the reason that she has been living separate after her marriage since 1991 and have no concern with the affairs of Maika i.e. inlaws of the complainant. She has been simply roped in the case by making general allegation to this effect that she snatched a gold chain from the neck of the complainant on 28.3.1999.

12. On the other hand, learned counsel for O.P. No. 2 has also referred to a decision reported in Shankar Prasad Das and Others Vs. The State of Bihar and Another , so as to show the guilt and torture meted out to the victim-complainant at her Sasural which had forced her to live at her Naihar.

13. So after having considered the aforesaid factual narration and events, transaction, ultimately leading to her ouster from matrimonial house, torture, humiliation, assault and abuses remained unabated right from the day after she started living in her Sasural, the date when all efforts to pacify went in vain, so, the prosecution case and, thereby, cognizance of the case is not hit by law of limitation. Secondly, it is also manifest that Prabhakar Sinha the brother of the complainant, too, resides in the district of Kishangunj and the visit of the

complainant from Sasural to Naihar would mean that whenever such occasion arose after she was driven out from Sasural, she had come down to the place of her brother Prabhakar Sinha which has been described as Naihar and that falls under the territorial jurisdiction of Kishangunj.

14. But so far the allegation against these two petitioners is concerned, they happen to be brother-in-law (Nandosi) and sister-in-law (Nanad) of the complainant. The demand is solely directed, due to non-fulfillment of Rs. 50,000/- cash or Motorcycle in the alternative. Her torture, as alleged, commenced due to non-fulfillment of further dowry demand of Rs. 50,000/- or a Motorcycle.

15. I find force and substance in such contention advanced on behalf of the petitioners that such fulfillment or non-fulfillment of demand in the form of Motorcycle would not have affected the status of these petitioners in either way. The petitioners in such situation, would not have enjoyed ride of such Motorcycle when there are other members in-laws family of the complainant to use such Motorcycle. Marriage of these petitioners had taken place long back in the year 1991. So, any expectation from their inlaws i.e. father-in-law of the complainant is out of imagination. Nobody expects anything from his Sasural after nine or ten years of marriage, in the given situation, when there exists unmarried Nanad and Dewar, the same may happen. In that background of the facts and circumstances, the husband of Baruna Sinha, i.e. Rajiv Sinha is not alleged to have done anything save and except, that once the complainant requested to intervene into the matter and he abused with the saying that he would arrange another marriage of his Sala (Brother-in-law), on telephone.

16. Such allegation against Rajiv Sinha and his wife Baruna Sinha who were not supposed to live in the Sasural of the complainant, seems to have been made only to implicate them for facing trial, as contended.

17. The allegation against the petitioner Rajiv Sinha definitely stands on far lesser footing than that of the other accused persons in the complaint petition including his wife Baruna Sinha. There is specific allegation against Baruna Sinha in the complaint petition of having snatched a gold locket chain weighing about two bhars and the accused Sarita Kumari snatching ear-rings weighing about six annans. So, some offence is made out against the petitioner Baruna Sinha, but so is not the case of the petitioner Rajiv Sinha. The case of the petitioner Rajiv Sinha is definitely on different and better footing than that of the other accused persons.

18. In the facts and circumstances, no case is made out against the petitioner Rajiv Sinha in view of the fact that there is no direct interaction or conversation between him and the complainant. Moreover, the petition addressed to the Superintendent of Police, Muzaffarpur, by the complainant Archana Sinha also does not reveal anything against this petitioner, Rajiv Sinha.

19. In the circumstances, the very continuance of the proceeding against

Petitioner No. 1 Rajiv Sinha without any basis will only amount to abuse of process of law and wastage of valuable time of the court. In the result, the application in respect of Petitioner No. 1 Rajiv Sinha @ Rajiv Kumar stands allowed and the proceeding against him is quashed. So far application of Petitioner No. 2, Varuna Kumari @ Varuna Sinha is concerned, the proceeding against her will continue and the said application against her stands dismissed.