

(2017) 04 PAT CK 0011

In the Patna High Court

Case No : 42528 of 2013

Raju Singh S/O Late Ram Narayan Singh Resident

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 08-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173\(2\)](#) - Report of police officer on completion of Investigation

[Indian Penal Code, 1860](#), [Section 34](#), [Section 498A](#)

Citation : (2017) 04 PAT CK 0011

Hon'ble Judges : Ashwani Kumar Singh

Bench : SINGLE BENCH

Advocate : Ganesh Prasad Singh, ?Dr. Mayanand Jha

Final Decision : Allowed

Judgement

1. The present application is against the order dated 23.05.2011 passed by the learned Sub-divisional Judicial Magistrate, (West) Muzaffarpur in Kanti P.S.Case No. 120 of 2010 whereby cognizance has been taken against the petitioners under Section 498-A read with 34 of the Indian Penal Code (for short " IPC ") and Sections 3 and 4 of the Dowry Prohibition Act.

2. One Ram Sagar Singh submitted his written report on 16th May, 2010 to the Officer-in-Charge, Kanti Police Station pursuant to which Kanti P.S.Case No. 120 of 2010 was registered under Section 498-A read with 34 of the IPC against the petitioners of the present case. According to the written report, the informant had

married his daughter Rinku Devi with petitioner no.1 Raju Singh. There is allegation that after marriage the accused persons started harassing his daughter for non-fulfillment of demand of motorcycle and Rs.50,000/- in cash. Ultimately, Rinku Devi was driven out of her matrimonial house on 15th May, 2010 which was informed to the informant by his elder daughter Sangita Devi, who was also married in the same locality.

3. On completion of investigation, the report under Section 173(2) of the Code of Criminal Procedure was submitted in the court of Magistrate pursuant to which cognizance of the offence was taken under Section 498-A read with 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act vide order dated 23rd May, 2011 and the petitioners were summoned to face trial.

4. It is submitted by the learned counsel for the petitioners that petitioner no.2 Shatrughan Singh is elder brother of petitioner no.1 Raju Singh and petitioner no.3 Beena Devi is the wife of petitioner no.2 whereas petitioner no.4 Shanti Devi is the mother of petitioner no.1. He submitted that the First Information Report was instituted on the basis of false and concocted evidence, which would be evident from the fact that the daughter of the informant herself filed a matrimonial case on 20th July, 2010 before the Principal Judge, Family Court, Muzaffarpur in which she has given a completely different story. In the matrimonial case the victim Rinku Devi has alleged that her husband Raju Singh was having extra-marital affair with his bhabhi Beena Devi (petitioner no.3) and when a complaint was made in this regard, her husband assaulted her and said that he would continue his relationship with his bhabhi. He submitted that there is no allegation in the matrimonial case that the victim was ever subjected to cruelty for non-fulfillment of demand of dowry.

5. On the other hand, Dr. Mayanand Jha, learned

Additional Public Prosecutor appearing for the State submitted that the informant of the case has made specific allegation regarding demand of motorcycle and Rs.50,000/- in cash. He submitted that the contents of the matrimonial case were not examined by the Investigating Officer of the case and hence the same cannot be made a ground for quashing of the prosecution against the accused persons. He submitted that the allegations made in the matrimonial case may be of some help to the petitioners during trial but the same cannot be used by the accused persons for holding the prosecution of the petitioners to be bad at this stage.

6. I have heard learned counsel for the parties and perused the record.

7. The petitioners have brought on record the plaint of Matrimonial Case No.230 of 2010 filed by the victim Rinku Devi under Section 13 of the Hindu Marriage Act, 1955 in the court of Principal Judge, Family Court, Muzaffarpur and annexed the same as Annexure-5 to the application. From perusal of Annexure-5, it would be evident that there is matrimonial discord and incompatibility between the husband and wife. In the plaint of the matrimonial case the victim has alleged that she was assaulted by her husband in the matrimonial home but she has not uttered a word against other petitioners that they ever assaulted her at any point of time or that there was demand of dowry by any of the accused persons.

8. Considering the facts and circumstances of the case, I am of the opinion that the implication of petitioner nos. 2 to 4 in the present case has been made only because they happen to be family members and relatives of petitioner no.1 Raju Singh. In that view of the matter, in the opinion of this Court, their prosecution for the offences alleged would be an abuse of the process of the Court.

9. Accordingly, the impugned order dated 23.05.2011

passed by the learned Sub-divisional Judicial Magistrate, (West) Muzaffarpur in Kanti P.S. Case No. 120 of 2010 is quashed so far as the summoning of petitioner nos. 2 to 4, namely, Shatrughan Singh, Beena Devi and Shanti Devi are concerned.

10. The application in respect of petitioner no.1 Raju Singh is dismissed. The learned Sub-divisional Judicial Magistrate (West), Muzaffarpur is directed to proceed with the trial of petitioner no.1 Raju Singh forthwith.

11. The application stands allowed to the extent indicated above.