

(2009) 04 PAT CK 0075

In the Patna High Court

Case No : Criminal Miscellaneous No. 35267 of 2006

Ram Prakash Sharma and Others

APPELLANT

Vs

The State of Bihar and Ragini Sharma

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 244, 244(1), 245, 245(2)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 316, 34, 384, 498A

Citation : (2009) 57 BLJR 2264 : (2009) 3 PLJR 806

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Saghir Ahmad and Sailendra Kr. Dwivedi, for the Appellant;
Mayanand Jha, Assistant Public Prosecutor, for the Respondent

Judgement

Abhijit Sinha, J.—This application for quashing is directed against order dated 3.7.2006 passed by the learned Sub Divisional Judicial Magistrate, Muzaffarpur (East) in connection with Kazi Mohamadpur P.S. Case No. 187 of 2002 registered under Sections 498A/34 IPC and 3/4 Dowry Prohibition Act, whereby the learned Magistrate has been pleased to reject the petition of the petitioners dated 22.4.2006 in an arbitrary and mechanical manner without applying his judicial mind.

2. It appears that on the basis of a handwritten report submitted by one Ragini Sharma, impleaded herein as O.P. No. 2, the aforesaid police case was registered against 9 FIR named accused under Sections 384, 316, 498A/34 IPC and Section 3/4 Dowry Prohibition Act on the statement that the complainant had been married to one Sanjeev Kumar Sharma on 1.12.2000 whereat considerable ornaments and other gifts were given. It was alleged that on 5.12.2000 her husband and the in-laws started making a demand for presentation of a Maruti Car and one katha land by way of dowry and the dowry demand was conveyed by her to her parents. It is also alleged that the husband and in-laws had also threatened to file a divorce case if the demand was not fulfilled. It is said that

her father having managed to gather a sum of Rs. 2 lacs handed it over to her father - in - law for purchase of a Maruti Car and also expressed his inability to fulfill the remaining demand. Annoyed thereby she was tortured and subjected to cruelty in various ways and she having contacted her brother over telephone, the brother came and took her back to the parental home. However, a few days thereafter her husband came over and took her back to the matrimonial home where she soon became pregnant. This situation was not palatable to the in-laws who forcibly made her consume medicine in order to terminate the pregnancy by means of mis-carriage. She was again taken back to her parental home for proper treatment and recovery. Later on she was taken by her father and brother to the matrimonial home where the in - laws left the house locking all rooms leaving one room open for her living. They allegedly also extended threats of dire consequences if the demands were not met. It has also been alleged that her husband, being a lawyer, was making all efforts to secure a divorce.

3. It appears that after due investigation and supervision of superior police officers including the Superintendent and Deputy Superintendent of Police, the police submitted a final form in respect of these five petitioners whereas a chargesheet was submitted against the remaining four persons figuring as accused u/s 498A/34 IPC only. It further appears that after the submission of the charge sheet two petitions were filed on behalf of the informant under the signature of a counsel not conferred with power praying therein to take cognizance against these five petitioners also and learned Chief Judicial Magistrate on the basis of unauthorized petition also took cognizance against these five petitioners u/s 498A/34 IPC and 3/4 Dowry Prohibition Act and they were also summoned to face the trial. It further appears that against the order issuing summons Cr. Misc. No. 28572 of 2004 was filed before this Court by all the 9 FIR named accused and this Court while dismissing the case by order dated 10.5.2004 without going into the merit of the case gave liberty to the petitioners to raise all these issues at the appropriate time of hearing on charge.

4. Notwithstanding the order of this Court only these five petitioners filed a petition on 22.4.2006 before the learned Sub Divisional Judicial Magistrate, Muzaffarpur (East) for their discharge as there was no ground available in the police report against them to frame charge and the learned Court without perusing the police report submitted u/s 173 Cr.P.C. and the case diary dismissed the said petition on the ground that the learned Chief Judicial Magistrate while taking cognizance perused the case diary back against them had directed for issuance of summons.

5. Section 245 Cr.P.C. reads as follows:

245 When the accused shall be discharged

(1) if, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall

discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

6. We are concerned with Sub-section (2) only since Sub-section (1) relates to the empowerment of the Magistrate to discharge the accused after all evidence for the prosecution has been recorded u/s 244(1) Cr. P.C.

7. Admittedly it would appear from the impugned order of the learned Magistrate that the petition for discharge filed by the petitioners was dismissed only on the ground that the learned Chief Judicial Magistrate by his order dated 10.5.2004 on perusal of the case diary had found a prima facie case and sufficient materials therein to proceed against all the 9 FIR accused and no fresh materials had been brought on record thereafter for considering the question of discharge. Such orders in my opinion is neither warranted nor can be sustained. The Magistrate entertaining a petition u/s 245 Cr.P.C. was required to apply his own independent and judicial mind to the submissions advanced on behalf of the petitioners and consider the materials available on record including the case diary. He could not have escaped this procedural aspect and dismissed the prayer for discharge only because the Chief Judicial Magistrate had earlier taken cognizance on perusal of the case diary.

8. Although O.P. No. 2 after valid service of notice appeared to contest the case by filing Vakalatnama, yet, curiously, during the hearing of the matter none was present on behalf of O.P. No. 2 and as such there is no opposition to the submissions advanced by the learned Counsel for the petitioners. Even the learned A.P.P. notwithstanding his Herculean task has not been able to satisfy or show any material to justify the impugned order.

9. Due regard being had to the facts and circumstances of the case and in view of the reasons assigned for non maintainability of the impugned order I am constrained and compelled to set aside the same and remit back the case to the court below for fresh consideration of the petition filed by these five petitioners in the light of the observations made above and the propositions of Sub-section (2) of Section 245 Cr. P.C.

10. In the result the application is allowed in terms stated in the foregoing paragraph.