

(2007) 02 PAT CK 0171

In the Patna High Court

Case No : Criminal Miscellaneous No. 33252 of 2003

Rameshwar Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 392, 498A

Citation : (2007) 2 PLJR 69

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Birendra Kumar Srivastava, for the Appellant; J. Upadhaya, for the Respondent

Judgement

Abhijit Sinha, J.—This application u/s 482 of Cr.P.C. is directed against the order dated 12.8.2003 passed by the Judicial Magistrate, 1st Class, Katihar in C.A. Case No. 1234 of 2003 whereby the learned court has summoned the petitioners on finding a prima facie case under sections 323 and 392 of the Indian Penal Code to have been made out against them. The prosecution case can be culled out from the complaint petition filed by one Krishna Nand Mandal (opposite party no. 2 herein). It has been stated that having superannuated from the Armed Forces as a Junior Warrant Officer the complainant was presently residing in Buddhu Chak, P.S. Korha, District-Katihar, where he claimed to reside with his family in the house he had constructed. It has been stated that after his retirement all his official works are done through the "Zila Sainik Kalyan" Bhagalpur. It has further been stated that on 8.7.2003 at about 12 noon he reached Bhagalpur from Katihar in connection with some official work on his motorcycle and accompanied by his son, Amrendra. It is further said that at around 3.30 P.M. after he had finished his official work one Pappu Mandal met him with Rs. 31,000/- towards part reimbursement of Rs. 40,000/- of complainant's money which was due with Pappu Mandal's father which he put in his bag and sat at a tea shop to have tea along with Pappu. It is further stated

that while taking tea accused nos.1 and 2 arrived and claimed to be acquainted with the complainant and after initial talk accused no.1 disclosed his name as Rameshwar Prasad Singh and the other Luxman Prasad Singh both of Village-Kapsona, R.S. Sahkund within the District of Bhagalpur. It is alleged that when the complainant was receiving the money from Pappu Mandal both these two accused persons were present. It is further alleged that having purchased some household articles the complainant left Bhagalpur for Katihar at around 5.30 P.M. and as he reached Naugachiya the rains started falling whereupon he along with his son took shelter in a pan shop near Naugachiya Bus Stand. It is said that soon accused no. 2 with other accused persons arrived on motorcycle and joined him in the shelter. On a query being made accused no. 2 gave out that they were also going to Katihar and introduced his colleagues as Upendra Prasad Yadav, Mahendra Prasad Singh and Vinay Prasad Singh. It is further said that as the velocity of the rain lessened at around 6.45 P.M. the accused persons on the pretext of getting delayed the complainant acceded to their demand of accompanying them and accordingly they started off and as they reached village-Gerabari at around 8.30 P.M. the complainant's motorcycle developed some problem for which he took the motor cycle to a mechanic for repairs. The mechanic on seeing the defects gave out that it will take lots of time for the repairing job and advised the complainant to stay the night there. However, accused no. 2 allegedly offered to carry the complainant on his motorcycle and induced by the offer the complainant agreed and took a ride on their motor cycle. It is alleged that as soon as they reached the place 2 Kms. from Kolasi Chowk the accused persons stopped the motor cycle and accused no. 4 taking out a pistol pointed the same at the temple of the complainant and asked him to part with the bag and when he refused accused nos. 2,3 and 5 started assaulting the complainant and his son and eventually accused Vinay Prasad Singh with the help of the other accused snatched the bag from the complainant and fled away. The complainant claims to have walked to Kolasi O.P. at around 10.15 P.M. to lodge information about the theft but as money was demanded and he refused to dole out the same the police officer advised the complainant to approach the court and accordingly the complaint was filed on 9.7.2003.

2. It has been submitted on behalf of the petitioners that they are innocent and the instant complaint case was by way of a counter blast to the complaint case no. 835 of 2003 filed by Meera Devi, the daughter of accused no., Rameshwar Prasad Singh who had been married to Arvind Kumar Mandal, the son of the complainant. The Complaint Case No. 835/03 had been filed on 1.7.2003 before the learned Chief Judicial Magistrate, Bhagalpur u/s 498A of I.P.C. and provisions of the Dowry Prohibition Act against the in-laws and wherein Meena Devi and her witnesses had been examined and the instant complaint case was filed one week thereafter. In the complaint case at Bhagalpur Meena Devi alleged torture in the hands of her in-laws and of the husband having illicit relationship with another lady and her witnesses were none other than Upendra Prasad Yadav, Luxman Prasad Singh and Vinay Prasad Singh who had been impleaded as accused in the

instant case. It was also submitted that the petitioners were in possession of several photographs taken on the occasion of the marriage performed on 12.7.2001 which would be produced in court if so required. Lastly it has been submitted that it would be apparent that the complainant Krishnanand Mandal had filed a false case by suppressing material facts only to counter the earlier complaint filed by Meena Devi and apparently the criminal proceeding against the petitioners was an abuse of the process of the court.

3. Admittedly, the extraordinary power u/s 482 of Cr.P.C. are not to be exercised when other remedy is possible or is available and ordinarily the High Court will not interfere at an interlocutory stage of criminal proceeding in a subordinate court and it is only an exceptional circumstance which will warrant such interference.

4. So far as the instant case is concerned the petitioners have merely been summoned to face trial and the complainant has been directed to file necessary requisites.

5. At present moment I am not inclined to interfere with the impugned order as the petitioners will have ample opportunity of proving the falsity of the instant complaint case at the time of framing of the charge and they at that moment can raise all these issues which are sought to be raised in the instant application. Due regard being had to the observations made above I am not inclined to interfere with the impugned order at present and dispose of the application in terms of the observations made above.