

(2010) 10 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 13386 of 2007

Rita Sen and Gautam Sen

APPELLANT

Vs

State of Bihar and Subrato Basu

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 304B, 307, 323, 331

Citation : (2010) 10 PAT CK 0033

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The Petitioner No. 1, who was sister of wife of opposite party No. 2 and Petitioner No. 2, husband of Petitioner No. 1, have approached this Court by filing the present petition u/s 482 of the Code of Criminal Procedure with a prayer to quash an order dated 25.08.2006 passed by Judicial Magistrate, Ist Class, Patna in Complaint case No. 1955 C of 2006. By the said order, learned Judicial Magistrate has taken cognizance of offences under Sections 323, 363, 406, 417 and 420 of the Indian Penal code.

2. The opposite party No. 2 has filed a complaint in the Court of Chief Judicial Magistrate, which was numbered as Complaint Case No. 1955 C of 2006 against two Petitioners and one Dr. Ajay Kumar for the offence under Sections 307, 331, 361, 363, 406, 420 and 120B of the Indian Penal Code. It was disclosed in the complaint petition that the complainant was made an accused in a case relating to offence u/s 304B of the Indian Penal Code in respect of death of his wife. While the complainant was taken into custody, the minor female child of complainant was handed over by the police on proper receipt to the Petitioner No. 1. It has been disclosed in the complaint petition that subsequently, the complainant was put on trial and he was held guilty in the said case and was also convicted and sentenced. Against the order of conviction and sentenced he

preferred an appeal, which is pending before this Court. It was disclosed that when he was released on bail and wanted to take back custody of his child, the accused persons one way or the other refused to hand over the custody of the girl of the complainant to him. It has also been alleged that accused No. 3 along with few unknown persons had threatened the complainant and also assaulted him.

3. On aforesaid allegation complaint petition was filed. After conducting enquiry, the learned Judicial Magistrate, by its order dated 25.08.2006, took cognizance for the offence under Sections 323, 363, 406 and 420 of the Indian Penal Code.

4. Aggrieved with the order of cognizance, the aforesaid Petitioners approached this Court by filing the present

3. Petition. On 12.07.2007, while issuing notice to opposite party No. 2, this Court directed that till next date, further proceeding in Complaint Case No. 1955 C of 2006 shall remain stayed. On 11.09.2008 the petition was admitted for hearing. At the time of admission itself, opposite party No. 2 had already appeared. While admitting the case, it was directed that in the meantime, further proceeding in Complaint Case No. 1955 C of 2006 pending in the court of Sri A.K. Singh, Judicial Magistrate, Ist Class, Patna shall remain stayed. While admitting, this Court also noticed that a Guardianship Case No. 150 of 2006 was pending in the court of District Judge, Tis Hazari Court, New Delhi. This Court observed that the order of stay will not preclude the Court of District Judge, Tis Hazari Court, New Delhi to proceed with the Guardian Ship Case No. 150 of 2006.

5. Mr. Krishna Prasad Singh, learned senior counsel appearing on behalf of both the Petitioners submits that the opposite party No. 2 in the complaint petition, has admitted that he was made accused in Gardanibagh P.S. Case No. 564 of 1998 registered u/s 304B of the Indian Penal Code in which wife of complainant who was sister of Petitioner was killed. It has been submitted that the complainant was put on trial vide Sessions Trial No. 1439 of 1998 and he was convicted and sentenced by the Trial Court. Subsequently, the opposite party No. 2 preferred an appeal vide Criminal Appeal No. 523 of 2000 (DB), which is still pending before this Court. The complainant was released on bail in view of order passed by this Court in Criminal Appeal. It has been submitted that at the time of arrest of the complainant, his daughter was minor and as such with a view to take proper care of the said Baby child, the custody of said child was handed over to the Petitioner No. 1 being sister of deceased wife of the complainant (Maushi).

6. Learned senior counsel further submits that after the release of the complainant on bail, at subsequent stage, the Petitioner No. 1 filed Guardianship case in the Court of District Judge, Tis Hazari, New Delhi. Learned Counsel for the Petitioner, while referring to supplementary affidavit filed on 9.7.2008, submits that till the disposal of the Guardianship Case, custody of the said Baby child was given to the Petitioner No. 1 by the competent Court. Learned Counsel

for the Petitioner submits that the said Guardianship case No. 150 of 2006 has been allowed in favour of the Petitioner No. 1 on 20.04.2006. It has been submitted that in view of the facts indicated hereinabove, it can be said that no criminal offence was committed by either of the Petitioners. It has further been submitted that so far as allegation of assault is concerned, in the complaint petition, it has been specifically asserted against the Petitioner No. 3, not against both the Petitioners. Accordingly, it has been prayed to set aside the order of cognizance due to reason that the complaint was filed with oblique motive.

7. Despite the fact that opposite party No. 2 has appeared in the present case through advocate, at the time of hearing, none appeared on his behalf.

8. I have heard Mrs. Indu Bala Pandey, learned Additional Public Prosecutor appearing on behalf of the State.

9. In view of the facts and circumstances particularly in view of the fact that the Petitioner No. 1 was own sister of deceased wife of complainant, the court is of the opinion that on the allegation of keeping the girl of the complainant by the Petitioner No. 1 (Mousi), it cannot be said that any criminal offence was committed by both Petitioners. Besides this, the subsequent development. i.e. the order passed by the District Judge, Tis Hazari Court, New Delhi in Guardian Case No. 150 of 2006 in which the complainant opposite party No. 2 had also appeared, is sufficient to indicate that in the present complain petition nothing remains against the Petitioners. The Court is of the opinion that present complaint petition was filed with oblique motive that too without disclosure of any offence against both the Petitioners. The Court is of the opinion that allowing prosecution of Petitioners in the present complaint petition will amount to allowing abuse the process of the Court.

10. Accordingly, order of cognizance dated 25.08.2006 passed by Sri A.K. Singh Judicial Magistrate, Ist Class, Patna in Complaint Case No. 1955 C of 2006 is hereby set aside and petition stands allowed.