
(2009) 08 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 51635 of 2007

Seema Kumari and Others

APPELLANT

Vs

The State of Bihar and Ashutosh Kumar @ Santosh Kumar

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 451

Citation : (2009) 08 PAT CK 0109

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Binit Kumar, for the Appellant; Mayanand Jha, Assistant Public Prosecutor for the State and Ram Prasad Singh, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—All the five petitioners, who are arrayed as accused in Complaint Case No. 1073(C) of 2006, have prayed for the quashing of the order dated 2.1.2007, passed therein by the learned Sub Divisional Judicial Magistrate, Nalanda at Biharsharif, whereby he has taken cognizance of the offence under Sections 380 and 451 I.P.C. against all the petitioners.

2. One Ashutosh Kumar alias Santosh Kumar, impleaded herein as O.P. No. 2, filed the aforesaid complaint inter alia stating that his marriage with Seema Kumari was solemnized on 9.5.2003 at Barbigha whereafter the newly wedded couple travelled to husband's home at Village Naurojpur in the district of Nalanda. Having spent a few days in matrimonial bliss the complainant travelled to Goa for earning his livelihood leaving his wife at the matrimonial home and, at Goa having secured a job of a driver, he brought his wife over to Goa to join him in the month of May, 2004. However, it is alleged, having spent 2-3 months together the wife called her father over telephone and returned to her parental home without the consent of her husband. It is stated that having spent a few days in her parental home Seema went to the matrimonial home where her mother-in-law was living alone as the father-in-law was employed at Ranchi and

she brought her mother-in-law over to Goa in the month of December, 2004 to join the husband. On inquiry, the complainant gathered that his wife Seema was entangled with the brother-in-law (sala) of her elder brother as a result whereof her attitude towards the complainant did not behave that of a wife towards the husband notwithstanding the fact that the complainant made all attempts to keep her happy. Eventually, it is alleged that Seema demanded a sum of Rs. 2,00,000/- in lieu whereof she would willingly grant divorce to the complainant which completely surprised the complainant. Gradually, the chasm between the husband and wife kept increasing and she kept pressurizing her husband for the money who expressed his inability to arrange such a huge amount but Seema remained adamant and ordered him to arrange for the same by whatever means possible. It is further alleged that in December, 2005 Seema with her brother-in-law (bahnoi) returned to her parental home without obtaining permission or consent of the complainant. It is also stated that when the complainant had questioned Shailendra as to why he had taken her away he had replied that Seema was not interested in living with him. It is alleged that the complainant by this time had become sanguine that Seema did not want to live with him and made representation before the National Dalit Human Rights Commission, Patna, who after inquiry found the allegations imputed by the complainant against Seema to be true.

3. It is further alleged that the village home of the complainant used to remain locked since his father was living at Ranchi and his elder brother, Manoj Kumar, an Engineer, also lived in Goa with his family where he was in employment with a private concern. It is further alleged that when the informant returned to his village home on 4.10.2006 he found on entering the house that the locks of 4 of the rooms were broken open and the articles stored therein worth Rs. 3,00,000/- were missing. It is further alleged that on enquiry he came to know from witness Pramod Kumar that in the afternoon of 1.10.2006 Seema alongwith the other accused had come over to the house of accused Arvind Prasad and after having waited for some time the accused persons committed theft in the house of the complainant by climbing over the walls with the help of a ladder.

4. It has been submitted on behalf of the petitioners that it would be apparent from perusal of the complaint petition itself that there had been a complete break down in the matrimonial relationship between the complainant and Seema and it was only with the purpose of harassing and putting pressure on his wife and in-laws that the instant complaint had been filed on concocted allegations and as a counter blast to the earlier complaint case No. 7(C) of 2006 filed by the wife against the complainant and his family members on 10.1.2006 alleging of being subjected to cruelty and torture for non fulfillment of the dowry demand of Rs. 1,00,000/- and the instant complaint came to be filed on 9.10.2006. It was also submitted that as a matter of fact, the wife has also filed a Matrimonial Case on 18.7.2006 bearing No. 9(M) of 2006 dated 18.7.2006 claiming maintenance from him and that these material facts had been suppressed by the complainant in the complaint petition.

5. Admittedly, the fact of Seema having filed the earlier complaint case and the maintenance case are not mentioned in the complaint petition although the two cases filed by Seema were much prior to the filing of the complaint case by the complainant. Therefore, he does not appear to have approached the Court with clean hands and wanted to make hay while the sun shines. It also appears from perusal of the recital in the complaint petition that the complainant came to know about the theft in his house by the accused persons from neighbour Pramod Kumar but curiously this Pramod Kumar does not figure as a witness of the complainant in the complaint petition.

6. Having given my anxious thoughts to the matter in issue, it appears that the complainant-O.P. No. 2 filed the instant complaint against the petitioners only with the sole motive of vexing and harassing them since Seema had filed two earlier complaints against the complainant which the complainant surreptitiously suppressed from mentioning in his complaint petition. In view of the fact that the complainant has not approached this Court with clean hands and the instant complaint case having been brought to vex and harass the petitioners which appears to be writ large, the prosecution of the petitioners, in my opinion, appears to be an abuse of the process of the court.

7. Accordingly, the entire criminal proceeding is hereby quashed and the application, so far as these petitioners are concerned, is allowed....