
(2006) 03 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 40421 of 2005

Sharma Thakur, Saheb Thakur, Mostt. Laxmina and Basanti
Devi

APPELLANT

Vs

The State of Bihar and Smt. Sarita Devi

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 432
Penal Code, 1860 (IPC) — Section 323, 498A

Citation : (2006) 03 PAT CK 0038

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—Heard.

2. This is an application filed u/s 432 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 26.7.2005 passed by Sri D.K. Mishra, J.M. 1st Class, Bettiah in Complaint Case No. 1715-C of 2001 by which he has ordered to issue summons against the petitioners to face trial for the offences under Sections 498A and 323 of the Indian Penal Code.

3. The case of the complainant-Opposite Party No. 2 Smt. Sarita Devi, in short, is that she was married to petitioner No. 1 Sharma Thakur. The other petitioners are her mother-in-law, elder brother of her husband and his wife. After Gauna when she went to her Sasural, the petitioners demanded Rs. 20,000/- and for that they started torturing her in various ways. The father of the complainant paid Rs. 10,000/- but in spite of that they did not stop torturing her. Ultimately, she was driven out of the house after assault.

4. The complainant was examined on solemn affirmation. She also examined three witnesses in enquiry u/s 202 of the Code. The learned Magistrate after considering their statements found, a prima facie case under Sections 498A and

323 of the Indian Penal Code against the petitioners and passed the impugned order.

5. Learned Counsel for the petitioners submitted that the allegations are false. It does not look probable that after seven years of the marriage, dowry will be demanded and cruelty would be committed. He submitted that, in fact, the Opposite Party No. 2 was not in good terms with her mother-in-law. On 5.4.2001 she went to her father's house to see her mother and when petitioner No. 1 went to take her back she told him that as she was not in good terms with her mother-in-law, she would not go back and she would live with him only when he lives separate from the other family members. It was further submitted by the learned Counsel that petitioner No. 1 again went to the father's house of the complainant to bring her back but she refused to accompany him and he filed a Matrimonial Case No. 21 of 2004 in the court of the District Judge, West Champaran at Bettiah for restitution of conjugal rights. The contention of the learned Counsel is that the above facts and circumstances clearly show the (sic) of the allegations made by the complainant.

6. The law is well settled that at the time of issuance of processes the Magistrate cannot consider the defence of the accused. Neither he nor this Court in its inherent jurisdiction, at this stage, can consider the defence of the accused. At this stage the Magistrate is required only to consider the complaint petition, statement of the complainant on solemn affirmation and the statements of the witnesses, if any, examined u/s 202 of the Code and considering this if he finds a prima facie case, he has to issue processes against the accused persons. In this case also the impugned order shows that the learned Magistrate found that the complainant in her statement on solemn affirmation has supported the allegations made in the complaint petition. He further found that there witnesses examined u/s 202 of Code have supported the allegations.

7. Hence, when considering the above statements, the learned Magistrate has passed the impugned order. I do not find any infirmity in the impugned order. This application is accordingly dismissed.