
(2009) 08 PAT CK 0066

In the Patna High Court

Case No : Criminal Miscellaneous No. 14941 of 2007

Shiv Nandan Keshari and Others

APPELLANT

Vs

The State of Bihar and Suman Kumar

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 34, 406, 420, 504

Citation : (2009) 08 PAT CK 0066

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Anjani Kumar, for the Appellant; Jharkhandi Upadhaya, Assistant Public Prosecutor and Indu Bhushan, for Opp. Party No. 2, for the Respondent

Judgement

Abhijit Sinha, J.—The six petitioners who have been named as accused in the F.I.R. of Harnaut P.S. Case No. 110 of 2005 have prayed for quashing of the order dated 12.1.2007 passed therein by learned Chief Judicial Magistrate, Nalanda at Bihar Sharif whereby he has taken cognizance against the petitioners under Sections 323, 504, 406, 420/34 I.P.C. as also Section 3/4 of the Dowry Prohibition Act.

2. The aforesaid case was registered on the basis of a written report submitted by one Suman Kumar on 12.6.2005 inter alia alleging that he had negotiated the marriage of his sister Neelam Kumari with Anand Madhav @ Dablu in the year 2004 and he had given Rs. 2,05,001/- in two installments to Nawalji towards expenses to be incurred at the marriage and for purchase of goods at the house of his Sarhu Ramakant Sinha of village Rupaspur P.S. Harnaut. It is further alleged that when he went in March, 2004 to the house of Nawalji along with three members of his family to fix the date of the marriage, then he was informed by Nawalji, his father and four sons that the marriage with his sister was not possible since another party had agreed to pay Rs. 5 Lacs, and notwithstanding the pleadings of the informant they remained adamant

whereupon the informant requested for return of his money. They requested for time of two months for returning the money, thereafter they again sought for five months time and in this manner they continued to seek time. It is said that in the meantime the informant got his sister married elsewhere on 5.7.2005. Thereafter, the informant with his relatives Sudesh Kumar and Hitendra Kumar went to the house of Nawalji requesting for return of money, but Nawalji expressed his inability to pay since he had not been able to arrange the funds and promised to return the same by 10.6.2005 at the house of Ramakant Singh of Rupaspur. On 10.6.2005 Nawalji and his father Shiv Nandan Keshri along with his sons Anand Murti, Anand Shashi Bhushan and Anand Ravi Bhushan along with Mukul Prasad and 4-5 others came to the house of Ramakant where Sudesh and Hitendra were present to receive the money and they in terse tone refused to return the money as a result whereof there was exchange of hot words and they started abusing and assaulting Sudesh and Hitendra with slaps and also threatened them to do anything they liked. On the aforesaid premise the informant was apprehensive that the accused persons had misappropriated the money in the garb of marriage of the son and were arranging to marry him elsewhere.

3. It has been submitted on behalf of the petitioners that if the story as propounded by the informant is believed then there is no reason explaining the inordinate delay in submitting the written statement on 12.6.2005 when the money was given in early 2004 and that too after solemnization of Neelam Kumari's marriage elsewhere. It has also been submitted that there had only been fallen of marriage but nothing definite had been agreed upon and it was only with mala fide intention that the case has been filed in retaliation to the rejection of the marriage proposal. It was also submitted that the petitioners being followers of Buddhism there was no question of asking for dowry since it was strictly prohibited in that religion. The learned Counsel further sought to raise the issue of alibi and status of each of the petitioners in order to show their bona fides. Paragraphs of the case diary were also shown to me in order to support the plea that none had come forward to say why the marriage had been refused or why there had been such inordinate delay in filing the case. It was also submitted that since the entire allegation arose due to the petitioners refusing to marry Dablu with Neelam and now that Neelam had been married elsewhere no grievance should be available to the informant. It was also pointed out that since Neelam had been married elsewhere the Investigating Officer had rightly submitted the final form finding the case to be false. But the learned Chief Judicial Magistrate for reasons best known to him differed from the same and took cognizance the reasons wherefor has not been furnished.

4. As held by the Apex Court in the case of Reena Agrawal v. Anupam reported in 2004 (2) PLJR 64 (SC) the definition of "Dowry" cannot be confined to be demand of money, property or valuable security made at or after the performance of marriage but would also cover any money, property or valuable Security given as a consideration for marriage before at or after the marriage. It

was also held that mere demand of dowry is sufficient to be ring home the offence.

5. In the instant case money had allegedly been demanded by the accused and also received by them for marriage expenses and purchase of gifts. It is another matter that the marriage did not take place between Neelam and Dablu. Similarly, the money allegedly was not returned by the accused persons. They allegedly also resorted to abuse and assault.

6. It is also true that the police had submitted a final form but the learned Magistrate differed from the same and took cognizance, by referring to certain paragraphs of the case diary without stating what were the materials in those paragraphs that were adverse to the petitioners. It is by now well settled that reasons ought to be assigned in such matters so that a superior court can examine the bona fide of the said order.

7. In the instant case, since the learned Magistrate has not assigned what materials in the case diary were available for differing with the police report, the impugned order cannot be sustained in law.

8. Accordingly, the impugned order is set aside and the matter is remitted back to the court below to act in accordance with the observations made above and pass fresh orders in respect of taking cognizance in accordance with law.