
(2010) 10 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 11409 of 2007

Sita Ram Yadav and Others

APPELLANT

Vs

The State of Bihar and Rasho Devi

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 149, 307, 323, 406, 498A

Citation : (2010) 10 PAT CK 0026

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Six Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 23.3.2006 passed by learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2216(C) of 2005. By the said order, learned Magistrate has taken cognizance of offence under Sections 323 and 498A of the Indian Penal Code. The Petitioners have also prayed for quashing of order dated 9.1.2007 passed by learned Sessions Judge, Begusarai in Cr. Revision No. 159 of 2006, whereby the revision preferred against the order of cognizance was rejected.

2. Short fact of the case is that Opp. Party No. 2, who was wife of Petitioner No. 1 filed a complaint in the court of learned Chief Judicial Magistrate, Begusarai, which was numbered as Complaint Case No. 2216C of 2005 against the Petitioners on allegation of commission of offences under Sections 149, 323, 307, 498A and 406 of the Indian Penal Code. It was disclosed in the complaint petition that marriage of Opp. Party No. 2 was solemnized with Petitioner No. 1 in the year 1997 and thereafter the complainant was tortured by accused persons. Accused persons were demanding further dowry. It was alleged that accused persons had also assaulted the complainant. After filing of the

complainant, enquiry was conducted and the learned Magistrate by its order dated 23.3.2006 took cognizance of the offence under Sections 323 and 498A of the Indian Penal Code. After the order of cognizance, the Petitioners filed a revision vide Cr. Revision No. 159 of 2006 which stood rejected on 9.1.2007 by the order passed by learned Sessions Judge, Begusarai.

3. Aggrieved with the order i.e. order dated 23.3.2006 passed by the learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2216(C) of 2005, whereby cognizance of under Sections 323 and 498A of the Indian Penal Code was taken and order dated 9.1.2007 whereby the revision preferred by the Petitioners against the order of cognizance was rejected, the Petitioner approached this Court by filing present petition u/s 482 of the Code of Criminal Procedure.

4. Sri Anil Kumar Singh, learned Counsel appearing on behalf of the Petitioners, while challenging both the orders at the very outset, has submitted that the present complaint petition was filed maliciously by Opp. Party No. 2. Learned Counsel for the Petitioners submits that prior to filing of the present complaint petition, a divorce case was filed by Petitioner No. 1 vide Matrimonial (Divorce) Case No. 20 of 2005. It has been argued that in the divorce case, Opp. Party No. 2 appeared and filed an affidavit, wherein it was indicated by Opp. Party No. 2 that it is difficult for her to reside with Petitioner No. 1. It was also admitted by Opp. Party No. 2 in her affidavit that mentally it was difficult to adjust with Petitioner No. 1. In sum and substance, she agreed for dissolution of marriage with Petitioner No. 1. Learned Counsel for the Petitioners has referred to Annexure-2 to the petition, which is a photo copy of the certified copy of affidavit dated 4.10.2005, which was sworn by Opp. Party No. 2 and filed in Divorce Case No. 20 of 2005. Learned Counsel for the Petitioners has also referred to Annexure-3 to the petition, which is a photo copy of decree prepared in Matrimonial (Divorce) Case No. 20 of 2005. It was submitted that finally the decree for divorce was prepared on 27.1.2006. It has further been submitted that since the Judgment and decree of the divorce has already been prepared, it appears that Opp. Party No. 2 has left her interest in the present proceeding and, accordingly, at the time of hearing, none had appeared on behalf of Opp. Party No. 2. On the aforesaid grounds, it has been prayed to quash both the aforesaid orders.

5. In this case despite the fact that Opp. Party No. 2 has appeared through her Advocate, none has appeared on her behalf at the time of hearing of the present petition. In the present case, on 5.7.2007, while issuing notice to Opp. Party No. 2, it was directed that till next date, further proceeding in the court of Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2216 (C) of 2005 shall remain stayed. Subsequently, on 8.4.2009 the case was admitted for hearing and it was noticed that since notice on Opp. Party No. 2 has been validly served, no notice is required to be issued afresh. It was further directed that till further order, further proceedings in Complaint Case No. 2216 (C) of 2005 pending in

the court of learned Judicial Magistrate, 1st Class, Begusarai, shall remain stayed. At the time of hearing none has appeared on behalf of Opp. Party No. 2.

6. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appears on behalf of the State.

7. Besides hearing learned Counsel for the Petitioners and the State, I have also perused the materials available on record. It is evident that Opp. Party No. 2 prior to the filing of the present complaint had already filed an affidavit in the family court, Begusarai in Matrimonial (Divorce) Case No. 20 of 2005, wherein she had agreed for dissolution of marriage. In the said affidavit/petition, she had not made any allegation either of demand of dowry or atrocities. Subsequently, matrimonial case was decreed and marriage was finally dissolved vide Annexure-3 to the petition.

8. In view of the facts and circumstances of the present case, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the Petitioners and, as such, both the orders, i.e. order dated 23.3.2006 passed by learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2216(C) of 2005 and order dated 9.1.2007 passed by learned Sessions Judge, Begusarai in Cr. Revision No. 159 of 2006 are hereby set aside and the petition stands allowed.