
(2004) 07 PAT CK 0106
In the Patna High Court
Case No : Cr. Misc No. 26848 of 2003

Smt. Bela Poddar and Another	Vs	APPELLANT
State of Bihar and Another		RESPONDENT

Date of Decision : 26-07-2004

Acts Referred:

Citation : (2004) 07 PAT CK 0106

Final Decision : Dismissed

Judgement

Navin Sinha, J.—The present application on behalf of two petitioners seeks quashing of the proceedings and the order of cognizance dated 17.6.2002 in Complaint Case. No. 2105(C) of 2001 pending before the Judicial Magistrate, Patna, under Sections 498A and 304B of the Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act.

2. Complaint case No. 2105(C) of 2001 was filed before the Judicial Magistrate Patna on 8.11.2001 by the Opposite Party No. 2, father of the deceased girl, who is said to have died on 3.8.2001 at Patna, Cognizance was taken on the complaint by the Judicial Magistrate, 1st Class, Patna, under Sections 498A and 304B of the Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, by order dated 17.6.2002. The proceedings rest at his stage when the petitioners have preferred the present application.

3. The averments in the complaint case are that the deceased daughter of the complainant was married on 16.1.2001 according to Hindu rites to the son of the petitioner No. 1 and brother of petitioner No. 2, who are impleaded as accused Nos. 3 and 4 in the complaint. The marriage was solemnised at Calcutta. The deceased was student of B. Tech (Chemistry) Second year. The accused persons including the petitioners started torturing the deceased mentally and physically on the ground that insufficient dowry had been given. This was despite the fact that adequate dowry had been given; details whereof are mentioned in the complaint. A demand was made for additional dowry of Fifty thousand rupees for which the torture continued. The deceased came to Patna to live with her

husband and was so residing at the time of her death. The torture continued at Patna also and the deceased informed the complainant of the torture and harassment over the phone. On 3.8.2001 at about 8.30 p.m. the complainant was informed by a friend of accused No. 2 (the father-in-law of the deceased) that the daughter of the complainant had met with an accident in Patna and was no more. The complainant visited the petitioners at Calcutta and was told that his daughter had committed suicide. There appeared no remorse on the face of the petitioners. The complainant came to Patna and took the body of his deceased daughter to Calcutta alone and cremated her at Calcutta. Neither did the husband of the deceased nor the present petitioners or any member of their family participated in the cremation ceremony. The complainant further stated that he was surprised to learn that no regular case had been drawn up against the accused persons and that simply an UD Case No. 1/2001 had been recorded by the S.K. Puri Police at Patna on the basis of a report given by the husband of the deceased to the local Police Station at S.K. Puri.

4. One fact which stands out starkly is that the deceased, a newly married girl, with visions of a bright and eventful married life to commence, died within seven months of her marriage. In the entire consideration of the conspectus of the case this fact cannot be lost sight of. The entire case is at the very threshold and the petitioners seek the protection of this Court at the very inception of the proceedings u/s 482, Cr PC with the relief that the prosecution be not permitted to ascertain the reasons and guild for the death of a young newly married girl within approximately seven months of the marriage.

5. The contention of the learned counsel for the petitioners is that after death of the deceased the matter was reported to the local police which registered UD Case No. 1/2001. Placing reliance on Annexure 3, a simple hand written communication dated 10.4.2002 from Srikrishnapuri Police Station to the Officer Incharge, North 24 Parganas (West Bengal), it was submitted that the Police at Patna investigated the case and found it to be a case of mere hanging and suicide without any provocation from her husband or anyone from the family of the husband. There was thus no justification to submit the petitioners to a repeated prosecution for the same allegation in the present case. Additionally it was submitted that the complainant had filed a Complaint Case No. 1243/2001 before the CJM North 24 Parganas, Barasat (West Bengal). This was under Sections 498, 304B and 34 of the Penal Code. The complaint was referred to the Police for investigation u/s 156(3) of the Cr PC on 3.10.2001. A copy of the complaint filed at West Bengal is available on the record. The Court finds that the averments in the present complaint and the one filed at Calcutta are the same. The Police at Calcutta did commence investigation in the case and found the same to be untrue. Notwithstanding the same the present complaint was instituted at Patna concealing the fact that a complaint had already been instituted at Calcutta and was pending investigation. In view of the finding of the UD case that the deceased committed suicide of her own volition there was no justification for institution of the present complaint at Patna. Lastly it was

submitted that the petitioners reside at Calcutta and the husband of the deceased was at Patna temporarily for a job. The parties were married in West Bengal and therefore Patna Courts had no territorial jurisdiction in the matter.

6. Learned counsel appearing on behalf of the Opposite party No. 2 contended that the Calcutta Police under investigation after being entrusted u/s 156(3), Cr PC submitted report that it lacked territorial jurisdiction in the case. Learned counsel referred to Annexure 5 of the present application and submitted that the undisputed fact recorded by the Calcutta Police even during investigation was that the Calcutta police was denied access to original documents when it came to Patna to investigate. The UD case proceeded on the basis of a suicide note allegedly written in Pencil by the deceased. The Calcutta Police inquiring into the matter was denied access to the same by the Patna Police. Efforts to obtain the same through the process of Court also was not affirmative. Thus on 20.3.2003 the SDJM in the Calcutta Court accepted the final form that the Calcutta Court lacked territorial jurisdiction in the matter. The documents relied upon by the petitioners in this regard itself reads that "let investigation and the proceedings pending in Patna proceed in its way of law in the interest of justice."

7. Learned counsel for the Opposite Party No. 2 then submitted that no regular FIR was drawn up in the UD case. The investigation in the said case never commenced as per law and no conclusion or report was arrived at in pursuance of any investigation as per the procedure and provisions of the Cr PC. The so called report of the S.K. Puri Police Station at Annexure 3, dated 10.4.2002 was therefore of no consequence at all.

8. Having considered the rival submissions of the parties this Court is inclined to hold that as of date there is only one prosecution of the petitioners in the present case. The UD case strenuously relied upon by the petitioners was not registered as a regular case. It is apparent from Annexure 3 that it was a simple handwritten alleged report by the local Police given to the Calcutta Police. No formal FIR was drawn up and filed in the Court and no report was submitted in this UD case No. 1/2001 to the local Court at Patna. Quite obviously much is left to be desired and said about the UD case at this stage. The Court would refrain from any further comments with regard to the conduct of the concerned police officials at this stage in view of pendency of the present complaint before the competent Court at Patna.

9. Reliance upon the report of the Calcutta Police and the orders passed by the Magistrate at Calcutta is also misconceived. Even from the said report it would appear that the deceased was alleged to have committed suicide and left behind a suicide note in pencil in her hand. Yet the local Police at Patna even denied visible access to the Calcutta Police of he said note during investigation. In any event the Calcutta Police simply recommended that in the facts and circumstances jurisdiction lay with the Patna Courts and that the case would proceed as per law in the case already filed at Patna. Investigation before the Calcutta Court obviously remained inconclusive and was based only on restricted

information released by the Patna Police. Quite rightly, the Courts at Calcutta dropped the proceedings on the recommendation of the Calcutta Police, to be continued in the present proceedings at Patna.

10. The fact that the deceased had been married for a little over seven months only cannot be lost sight of. Whether it be a case of suicide or whether it be a case of dowry death. In both cases, the law would raise presumption under Sections 113A and 113B against the accused. The present is therefore, a case which must be allowed to continue and reach a logical conclusion to arrive at the truth, in a duly constituted trial.

11. It stands settled and reiterated times without number that power u/s 482, Cr PC has to be exercised with caution. Interference or quashing at the initial stage is an exception. The facts calling for interference at this stage would have to be glaring on the face of it. There should be no presumption in law contrary to which interference should be called for. The normal rule would be that if the allegations, and the surrounding circumstances as in the present case, constitute prima facie materials calling for a trial, interference in exercise of powers u/s 482, Cr PC would not be in the interest of justice and would clearly be contrary to law. This Court holds that the present case is not of a nature which falls within the parameter of the guidelines contained in State of Haryana and others Vs. Ch. Bhajan Lal and others, and reiterated time and again.

12. In the result, the present application fails. The petition is dismissed. The trial of the petitioners shall proceed in accordance with law.