

(2009) 08 PAT CK 0035

In the Patna High Court

Case No : Criminal Miscellaneous No. 4547 of 2008

Sudhir Kumar, Satish Kumar and Sunaina Devi

APPELLANT

Vs

The State of Bihar, Raj Kumar Bhagat and Anju Kumari

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 363, 366(A), 376, 380, 498(A)

Citation : (2009) 08 PAT CK 0035

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Pankaj Kumar Das, for the Appellant; Jharkhandi Upadhyay, Assistant Public Prosecutor for State and Ajay Kumar Thakur and Imtiyaz Ahmad for O.P. No. 2, for the Respondent

Judgement

Abhijit Sinha, J.—This application by three of the F.I.R. named accused of Darbhanga (Town) P.S. Case No. 168 of 2006 is for the quashing of the order dated 10.4.2007 passed therein by the Chief Judicial Magistrate, Darbhanga, whereby he has taken cognizance of offences under Sections 498(A), 363, 366(A), 376 and 380 I.P.C. and Sections 3/4 of the Dowry Prohibition Act only against the petitioners herein and has dropped the proceedings of the case against the remaining three accused by accepting the final form submitted against them by the police.

2. The aforesaid case was registered on the basis of a written report submitted by one Raj Kumar Bhagat, impleaded herein as O.P. No. 2, who stated that from amongst his two daughters and three sons, the marriage of his eldest daughter, Ranjana alias Guria, was solemnized with petitioner No. 2, Satish Kumar, on 6.7.2006 and at the time of the marriage ceremony itself bickerings over dowry demands had ensued. It is alleged that thereafter on 7.8.2006, Satish Kumar forcibly brought Ranjana from his home at Muzaffarpur to the informant's home at Darbhanga against the wishes of the informant and left her there. Thereafter,

Satish off and on visited his sasural, but the other accused used to extend threats over the telephone that Ranjana would not be taken back unless the demand was fulfilled and Satish is alleged to have extended threats to the extent that if the demand was not met he would kidnap the informant's second daughter, Anju.

3. It is further alleged that on 18.10.2006, in the absence of the informant and his wife from the house, petitioner Nos. 1 and 2 along with three others arrived at their home at about 8 P.M. and took away cash worth Rs. 20,000/- ornaments worth Rs. 40,000/- clothes worth Rs. 25,000/- kept in two V.I.P. Cases, other articles and important documents and while departing forcibly took away his second daughter, Anju Kumari, aged 17 years, who had offered resistance, at the point of pistol and by gagging her mouth. The informant claims to have made attempts to rescue his daughter but without any success. He has expressed his apprehension that the accused may commit rape on her or forcibly marry her off or sell her to another or kill her.

4. Apart from asserting that the petitioners are innocent and have been falsely implicated in this case on allegations which were palpably general and omnibus in nature great stress was sought to be placed on the alibi of the petitioners. It was lastly submitted that the parties had compromised their disputes and differences amicably out of court and as a matter of fact, petitioner No. 2 and Anju, impleaded herein as O.P. No. 3 had tied the nuptial knot and were husband and wife legally since the first wife Ranjana had died in the meanwhile. It was also submitted that a compromise petition had already been filed in court, a copy whereof has been appended as Annexure-5 to the application.

5. So far as the question of alibi is concerned, it is a weak type of defence and is generally viewed with suspicion and it must be proved with absolute certainty so as to completely exclude the possibility of presence of the person concerned, i.e., the accused at the time and place of occurrence. In any event, the plea of alibi requires strict proof for establishing the same and the burden to prove the same lies heavily on the accused which can be done only by leading cogent evidence which again can only be possible in course of a full dressed trial. Accordingly, the plea of alibi cannot be looked into by this Court in a proceeding u/s 482 Cr.P.C.

6. Now, the only question is of the parties having entered into compromise out of court. It must be stated that the court exercising powers u/s 482 Cr.P.C. should not act as a deterrent where parties have amicably settled their disputes and differences. One reason for same would be that by having compromised the case, the prosecution parties would be reluctant to lead evidence in support of its case and in that event no gainful purpose would be served by keeping the proceeding pending. However, in the instant case, there is one difficulty. The compromise petition (Annexure-5) reveals that it has been signed by only one of the accused, namely, Sudhir Kumar (petitioner No. 1). The other two are not signatories to the compromise. Therefore, in the absence of the other two accused having signed on the compromise petition it cannot be taken for granted

that the parties have compromised their disputes and differences. There can be no part compromise in criminal cases.

7. In the aforesaid circumstances, in my opinion, if the parties have really compounded their disputes and differences, it would only be proper that they approach the court in seisin of the case and file a fresh compromise petition duly signed by all the accused and the informant and his daughter and in the event of such a compromise petition being filed, the court will pass orders in accordance with law keeping in view the fact that the parties having compromised their disputes and differences no gainful purpose would be served by keeping the proceeding pending.

8. With the aforesaid observations, this application is disposed of.