

(2011) 09 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous No. 6916 of 2009

Sujeet Kumar @ Sujeet Kumar Thakur @ Sujit Thakur and
Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 254
Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 2, 4
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 323, 34, 341, 498(A), 504

Citation : (2011) 3 DMC 622

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Kumar Srivastava, J.—This is an application u/s 482 of the Cr.P.C. for quashing order dated 20.12.2008 passed by learned Chief Judicial Magistrate, Darbhanga in Manigachhi P.S. Case No. 15 of 2008 corresponding to G.R. No. 209 of 2008 by which and whereunder learned Chief Judicial Magistrate, Darbhanga has taken cognizance of the offences under Sections 498(A) of the Indian Penal Code and Sections A3/4 of Dowry Prohibition Act against the petitioners. The brief fact of the case is that Opposite Party No. 2, namely Smt. Asha Kumari@ Asha Thakur filed complaint case bearing Complaint Case No. 91 of 2008 on 22.1.2008 in the Court of Chief Judicial Magistrate, Darbhanga against the petitioners and three others alleging therein that her marriage was solemnized on 17.6.2005 with petitioner No. 1 according to Maithil Brahmin rites and rituals and her Duragman was performed on 24.6.2005 and she went to her matrimonial home from where she came at Patna along with petitioner Nos. 1 and 2. On 8.4.2006, she gave birth to a female child at her natal place and informed her husband as well as other in-laws but neither her husband nor any family member of her husband came at her natal place to attend Chhathi

ceremony. She further alleged that her husband and other in-laws started demanding rupees two lacs for starting business and in the meantime, she again conceived and at the direction of her in-laws, her father gave rupees one lac to her father-in-law. She further alleged that on 29.10.2007, she gave birth to second female child but again demand of rupees two lacs for starting business was made by her in-laws and her husband and they also threatened her that if their demand is not fulfilled, they would solemnize another marriage of her husband. Then, she filed the above stated complaint case.

2. The learned Chief Judicial Magistrate, Darbhanga sent the aforesaid complaint petition to the concerned police station for institution of first information report and investigation and later on. Manigachhi P.S. Case No. 15 of 2008 under Sections 498(A) of the Indian Penal Code and Section A3/4 of Dowry Prohibition Act was registered against petitioners and three others. The police after due investigation, submitted charge-sheet for the offences under Sections 498(A) of the Indian Penal Code and Section A3/4 of Dowry Prohibition Act against the petitioners whereas rest three accused persons were found innocent and, accordingly, they were not sent up for trial. Having receipt of the above stated charge-sheet, the learned Chief Judicial Magistrate, Darbhanga took cognizance of the offences against the petitioners whereas proceeding in respect of three other first information report named accused persons was dropped, passing impugned order dated 20.12.2008 against which present petition u/s 482 of the Cr.P.C. has been tiled. The notice was issued to Opposite Party No. 2, namely, Smt. Asha Kumari @ Asha Thakur vide order dated 23.8.2010. Although, Opposite Party No. 2 made her appearance in this case by filing Vakalatnama but she chose not to appear before this Court at the time of hearing.

3. Learned Counsel appearing for petitioners assailed the impugned order submitting that the Opposite Party No. 2 has brought the above stated case just only to harass and put pressure upon the petitioners because petitioner No. 1 has filed Matrimonial Case No. 336 of 2007 against Opposite Party No. 2 for decree of divorce under the provision of Section 13(iii) of the Hindu Marriage Act and when Opposite Party No. 2 got notice in the aforesaid matrimonial case, she filed the above stated Manigachhi P.S. Case No. 15 of 2008 to put pressure upon petitioner No. 1 for withdrawal of the aforesaid Matrimonial Case No. 336 of 2007.

4. It is also contended by him that even if, the prosecution case is taken to be true at its face value, then also, the alleged demand does not come under the ambit of dowry and, therefore, Section A3/4 of Dowry Prohibition Act is not applicable in this case and the cognizance taken by the learned Chief Judicial Magistrate, Darbhanga under the aforesaid section is bad in law.

5. It is further contended by him that before taking cognizance no sanction order was obtained by the learned Chief Judicial Magistrate, Darbhanga. So, the cognizance order is hit by Bihar Amendment Act, 1976 as the pre-requisite condition for taking cognizance under Sections A3/4 of Dowry Prohibition Act in State of Bihar is sanction order of the State Government. On contrary, learned

Additional Public Prosecutor supported the impugned order submitting that the learned Chief Judicial Magistrate, Darbhanga has rightly passed the impugned order and there is no ground and scope for this Court to interfere into the impugned order under the jurisdiction vested to this Court u/s 482 of the Cr.P.C.

6. It is an admitted position that petitioner No. 1 is husband whereas petitioner Nos. 2 and 3 are parents-in-law of Opposite Party No. 2 and furthermore, after due investigation police submitted charge-sheet against them for the offences under Section 498(A) of the Indian Penal Code and Section A3/4 of Dowry Prohibition Act. It is also an admitted position that on the basis of charge-sheet and police paper submitted before the Court below, the learned Chief Judicial Magistrate, Darbhanga has passed the impugned order. As stated above that the impugned order has been assailed by the petitioners on the ground that no sanction order was taken before passing cognizance order. In this connection. I would like to say that in Section 4 of Dowry Prohibition Act, 1961 there was a proviso clause that no Court shall take cognizance of an offence u/s 4 of Dowry Prohibition Act, 1961 except with the previous sanction of the State Government or of such officer as the State Government may by general or special order, specify in this behalf. The aforesaid Dowry Prohibition Act, 1961 is a Central Law. The State of Bihar enacted Act 4 of 1976 substituting new section for Section 4 of Dowry Prohibition Act, 1961 and in the aforesaid Act of 4 of 1976, there was a proviso clause that no Court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government may, by general or special order, specify in this behalf.

7. Later on the Parliament of this country enacted Act 63 of 1984 and substituted Section 4 of Dowry Prohibition Act, 1961 by new section and requirement of prior sanction for prosecution for the offence u/s 4 of Dowry Prohibition Act, 1961 was taken away.

8. It is well-known that Article 254 of the Constitution says that Parliament can repeal the State Law and if it has not expressly been repealed by the Central Act, the State Law will be void if it is in conflicts with the Central Act, Admittedly, in Dowry Prohibition Act, 1961, which is a Central Act, there was a provision of taking prior sanction for taking cognizance and in the light of the aforesaid Act, the State of Bihar also enacted the Act in 1976 and made it mandatory to obtain sanction before taking cognizance but subsequently, the Act of 63 of 1984 lifted the bar of prior sanction before taking the cognizance and according to Act 63 of 1984, no sanction is required before taking cognizance and, therefore, the law made by the State of Bihar is repugnant and as such to that extent it is void. The aforesaid question has already been decided by this Court in a Division Bench judgment reported in Jai Prakash @ Kuku Vs. The State of Bihar and Another, in which this Court has held that no sanction is required for taking cognizance under the provision of Section 4 of Dowry Prohibition Act. Therefore, there is no force in the submission of learned Counsel for the petitioners that the impugned

order cannot sustain in the eye of law in absence of sanction order.

9. Learned Counsel for the petitioners has also challenged the impugned order on the ground that much prior to institution of Manigachhi P.S. Case No. 15 of 2008, the petitioner No. 1 had filed Matrimonial Case No. 336 of 2007 and the above stated Manigachhi P.S. Case No. 15 of 2008 has been brought by Opposite Party No. 2 with a view to harass and pressurize the petitioners but in my view, the aforesaid contention of learned Counsel for the petitioners has no leg to stand because a cognizance order is not said to be an illegal order only on the ground that prior to launching of prosecution, accused had filed another case against the informant and further I am of the opinion that only on the basis of this fact that there is case and counter case between the parties, a cognizance order cannot be quashed.

10. Learned Counsel for the petitioners has also challenged the impugned order on the ground that according to prosecution case itself, the alleged demand was made by the petitioners to start a business and, therefore, the aforesaid demand does not come under the ambit of dowry. In this connection, I would like to refer Section 2 of Dowry Prohibition Act which runs as follows:

Definition of dowry--In this Act, "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to an other person, at or before or at any time after the marriage in connection with the marriage of the said parties, but does not include Dower or Mehar in the case of persons to whom the Muslim Personal Law (Shariyat) applies--

Explanation (1). xxx xxx xxx xxx xxx

Explanation (2). xxx xxx xxx xxx xxx

In the aforesaid definition, it is manifest that if any property or valuable security are given or agreed to be given directly or indirectly at or before or at any time after the marriage in connection with marriage of the parties, the aforesaid property or valuable security would come under the ambit of Dowry subject to explanation given in Section 2 of Dowry Prohibition Act. Therefore, the key word appears in the aforesaid Section is "in connection with marriage.

11. In the present case, the demand of rupees two lacs was made after the marriage to start a business with threatening that if the aforesaid demand is not fulfilled, another marriage of petitioner No. 1 shall be solemnized. Therefore, the aforesaid demand was obviously in connection with marriage of the petitioner No. 1 and Opposite Party No. 2. So, I am of the view that the aforesaid demand comes under the ambit of definition of dowry as given in Dowry Prohibition Act. In course of hearing, learned Counsel appearing for petitioners points out that father of Opposite Party No. 2 has lodged Manigachhi P.S. Case No. 189 of 2010 against the petitioners for the same occurrence and the continuance of the

present proceeding would amount to double jeopardy and, therefore, the proceeding of Manigachhi P.S. Case No. 15 of 2008 including the impugned order dated 20.12.2008 are liable to be quashed.

12. It would appear from Annexure-2 to the supplementary affidavit filed on behalf of the petitioners that on 15.11.2010 father of Opposite Party No. 2 gave written report to Officer-in-Charge of Manigachhi Police Station, District Darbhanga alleging therein that his daughter, namely, Smt. Asha Kumari @ Asha Thakur was subjected to cruelty and harassment by the petitioners and other accused on account of non-fulfillment of illegal demand of rupees two lacs and on the basis of aforesaid written report, Manigachhi P.S. Case No. 189 of 2010 was registered for the offences under Sections 341, 323, 504, 498(A)/34 of the Indian Penal Code and Section A3/4 of Dowry Prohibition Act against the petitioners and other accused. Admittedly, the present case i.e. Manigachhi P.S. Case No. 15 of 2008 was registered on 3.2.2008 whereas Manigachhi P.S. Case No. 189 of 2010 was registered on 15.11.2010. So, Manigachhi P.S. Case No. 15 of 2008 was lodged before institution of Manigachhi P.S. Case No. 189 of 2010 and, therefore, if the petitioners want to save themselves from double jeopardy, they may raise the above stated question in Manigachhi P.S. Case No. 189 of 2010 and, in my view, they cannot take protection of principle of double jeopardy in the present case. No doubt, it is settled principle of law that this Court can exercise its power vested u/s 482 of the Cr.P.C. to prevent the abuse of the process of law and to meet the ends of justice but in the present case, there is nothing on the basis of which it can be said that continuance of proceeding of Manigachhi P.S. Case No. 15 of 2008 is an abuse of the process of law and, furthermore, if the cognizance order is left to stand, the injustice would be caused to the petitioners.

13. On the basis of aforesaid discussions, I am of the opinion that this petition is liable to be dismissed and, accordingly, this petition is hereby, dismissed.

Let this order be communicated to the concerned Court for needful.