
(2006) 12 PAT CK 0057

In the Patna High Court

Uma Shankar Singh @ Shivji Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482, 56

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 120B, 198, 304, 306, 34

Citation : (2007) 1 PLJR 395

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Judgement

Ghanshyam Prasad, J.—Heard.

2. This application u/s 482 Cr.P.C. has been filed to quash the order of cognizance dated 22.3.2005 passed by Shri Ram Surat, Judicial Magistrate Ist Class, Chapra in Complaint Case No.C-784 of 2004 thereby and thereunder the learned Magistrate has taken cognizance u/s 498(A) I.P.C. and Section 3 and 4 of Dowry Prohibition Act against the petitioners.

3. Opposite party No. 2 Chandra Dev Singh is the father of the deceased Kevanti Devi. She was married with petitioner No. 3, Devraj Singh. She died on 18.1.2000 as a result of poisoning. On the basis of her statement recorded by the police in Emergency Ward of Sadar Hospital, Chapra, the police registered case u/s 306 I.P.C. only against the petitioner No. 1 bearing Bhagwan Bazar P.S. Case No. 6 of 2000. The police after investigation submitted chargesheet u/s 306 I.P.C.

4. A few days after the police case, the opposite party No. 2 filed a separate complaint case before the court of C.J.M., Chapra bearing Complaint Case No. 112 of 2000. All the three petitioners have been made accused. The same was sent to the police for institution and investigation u/s 56(3) Cr.P.C. The police registered case under Sections 304(B)/120B and 34 of the I.P.C. This case was registered on 18.7.2003. The police after investigation submitted final form

mainly on the ground that in earlier police case chargesheet has already been submitted. However, on the basis of the protest, the present complaint case was instituted and after enquiry u/s 202 Cr.P.C., cognizance has been taken against the petitioners through impugned order.

5. The learned counsel for the petitioners challenged the impugned order and prayed for its quashing mainly on the ground that both the aforesaid cases arise out of the same incident and in earlier police case cognizance has already been taken. It was further submitted that the victim herself in her statement before the police did not support the allegation levelled in the present complaint case.

6. On perusal of the record it appears that though both the cases have been filed as a result of same incident but the allegations of both the cases are entirely different. Number of accused is also different. Police case is with regard to abetment of suicide where in the present case has been lodged by father of the deceased in which apart from allegation of poisoning, there is also allegation of demand of dowry and torture. The learned lower court after enquiry has taken cognizance only u/s 198(A) of the I.P.C alongwith Sections 3 and 4 of the Dowry Prohibition Act, which is quite distinct from the section under which cognizance has been taken in police case.

7. It is well settled that the right of the complainant to agitate the matter through the complaint cannot be taken away by filing of a chargesheet by the police under different section of the law. Therefore, right of the Magistrate to summon the accused under some other sections than under which the accused have been chargesheeted is fully secure by the court and there is no such bar.

8. Thus, on consideration of the facts and circumstances and materials available on the record, I am of the view that there is no illegality in the impugned order. No case is made out for interference in the matter. Accordingly, this application stands rejected.