
(2011) 07 PAT CK 0269
In the Patna High Court
Case No : Cr. Misc. No. 32346 of 2009

Vijay Prasad

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0269

Judgement

Hemant Kr. Srivastava, J.—High Courts records of this petition was eaten away by the white ants and it was reconstructed when a notice with regard to the same was given to the counsel who provided the court with the copy of the petition for consideration.

2. Heard learned counsel appearing for the applicants as well as learned counsel appearing for the Opposite Party No. 2.

3. This petition has been preferred u/s 482 of the Cr.P.C. against the order dated 23.9.2007 passed by Sri O. Srivastava, J.M., 1st Class, Gaya in Complaint Case No. 971 of 2008 whereby and whereunder, he, having found prima facie case u/s 498A of the Indian Penal Code, ordered to issue processes against the applicants and other accused to procure their attendance for facing trial for the abovesaid offence. The applicants have invoked the inherent jurisdiction of this court for quashing the above-said order dated 23.9.2007.

4. Brief facts of the case are as follows:

O.P. No. 2 filed complaint case bearing Complaint Case No. 971 of 2008 against the applicants and two other accused stating therein that the marriage of Opposite Party No. 2 was solemnized with accused Ajay Prasad @ Krishna Prasad in the year, 1992 according to Hindu Rites and Rituals and after marriage, Opposite Party No. 2 went to her matrimonial home and started leading her conjugal life alongwith her husband and after sometimes, she gave birth to a male child. Subsequently, her husband developed illicit relationship with Applicant No. 2 who happens to be sister-in-law (Gotani) of the Opposite Party

No. 2 and when she made protest, the applicants and other accused subjected her to cruelty and harassment in both ways; mentally and physically and also started demanding Rs. 25,000/- for starting a business. Furthermore, when the father of Opposite Party No. 2 visited house of the applicants, the same demand was made by the applicants and other accused and also they (applicants) misbehaved with him. The father of the Opposite Party No. 2 filed an Informatory Petition in the court of SDM, Gaya and when the applicants and other accused got knowledge about the filing of aforesaid informatory petition, they ousted the Opposite Party No. 2 from her matrimonial home and after that, the Opposite Party No. 2 filed the abovesaid case. It is also the case of Opposite Party No. 2 that applicant No. 1 was residing at Kolkata in connection with his business and he oftenly used to visit his house.

5. Learned court below having conducted an inquiry u/s 202 of the Cr.P.C. passed the impugned order in the manner as stated above.

6. The contention of learned counsel for the applicants is that Applicant Nos. 1, 2 and 3 are; brother-in-law, sister-in-law and mother-in-law of the complainant respectively and as a matter of fact, entire allegation centres around against the husband of Opposite Party No. 2 because according to complainant's case itself, the alleged occurrence took place on account of so-called illicit relationship of the husband with the Applicant No. 2. It is further contended on behalf of the applicants that the present case does not come under the purview of section 498A of the Indian Penal Code because now-a-days, it has become a fashion to implicate almost all the in-laws even if a trivial dispute took place between the husband and the wife.

7. Learned counsel for the applicants heavily relied upon a decision reported in Preeti Gupta and Another Vs. State of Jharkhand and Another, in which the Apex Court of this country has held that,

if there is no specific allegation made against the appellants in complaint, and none of the witnesses attributing any role to them-Held, their implication was only meant to harass and humiliate husband's relatives.

8. The learned counsel for the applicants also relied upon decision reported in Neelu Chopra and Another Vs. Bharti, in which it has been held by the Apex Court of this country that;

.....for lodging a proper complaint mere mentioning of relevant sections and language of 498A and others are not sufficient.....

9. On the other hand, learned counsel appearing for Opposite Party No. 2 supported the impugned order and submitted that learned court below has rightly held that a prima facie case is made out against the applicants. It is further contended by him that if the applicants have any grievance in respect of taking cognizance of the offence u/s 498A of the Indian Penal Code, they may raise the aforesaid grievance at the time of framing of charge.

10. Having heard rival contentions of the parties, I have gone through the record. It is well-known fact that Section 498A of the Indian Penal Code has been enacted to check the dowry related offence. In the present case, the dispute between the husband and the wife arose on account of so-called illicit relationship of husband of the Opposite Party No. 2. So even if the contents of complaint are taken into consideration, then also it cannot be said that the dispute between the Opposite Party No. 2 and her husband arose on account of non-fulfillment of illegal demand. Furthermore, I find that according to complaint case itself, the applicant No. 1 was residing at Kolkata and at the time of alleged occurrence, he often used to come at his home and apart from this, no specific overt act has been attributed against these applicants.

11. In the aforesaid circumstance, I am of the view that it is a fit case in which this court must exercise the power vested under it u/s 482 of the Cr.P.C. to check the abuse of the process of law.

12. On the basis of aforesaid discussions, this Cr. Misc. Case is allowed and the order dated 23.9.2007 passed by Shri D. Srivastava, J.M., 1st Class, Gaya in connection with Complaint Case No. 971 of 2008 stands quashed in respect of the applicants only.