

(2012) 06 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 56169 of 2006

Vijay Shankar, Ravi Shankar and Sheo Kumari Devi

APPELLANT

Vs

The State of Bihar and Pratima Bharti

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 192, 200, 202

Penal Code, 1860 (IPC) — Section 323, 379, 420, 504

Citation : (2012) 06 PAT CK 0050

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : S.B.K. Manglam, Anita Kumari, for the Appellant; Aditya Sharan, Mr. Prabhat Kumar Sharan, Mr. Hemant Kumar Sharan, For the Opposite Party and Md. Aslam Ansari, Assistant Public Prosecutor For the State, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioners, Mr. Aditya Sharan, learned counsel for opposite party no. 2 and Md. Aslam Ansari, learned A.P.P. for the State. The petitioners by invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure have prayed for quashing of the order dated 10.10.2006 passed by Sri S.P. Mishra, the learned Judicial Magistrate, Ist Class, Patna in complaint Case No. 2082 (C)/2006 whereby and whereunder the learned Magistrate finding a prima facie case to be made out under Sections 323, 379, 420 and 504 of the Indian Penal Code has directed for issuance of process against them.

2. The prosecution case was initiated on the basis of a complaint instituted by the opposite party no. 2 on 25.7.2006 before the learned Chief Judicial Magistrate, Patna. The complainant has alleged in the complaint, inter alia, that she was married to petitioner no. 2 on 28.11.2003. Her father had given

sufficient gift at the time of marriage but immediately, after the marriage, she was being subjected to cruelty in her matrimonial home for non-fulfilment of demand of Rs. 2,00,000/- as dowry. She has further alleged that in the month of February, 2004, petitioner no. 1 who is father-in-law of the complainant called upon her parents and she was sent to her parental home, as she was having some abdominal pain. At her parental home, her mother took her to a lady doctor, who upon examination, told that she was pregnant. A message in this regard was sent to the petitioners by her mother. Her husband came to her parental house and on the next day she was brought to her matrimonial home and her pregnancy was got aborted against her will by her husband. It has also been alleged that her husband was having pre-marital relation with a girl and even after marriage their relationship continued.

3. The complainant has further alleged that her signature was taken on blank papers by the accused persons on some pretext or other and those papers were utilized for procuring a decree of divorce.

4. The complainant has further alleged that she was forcibly taken to the Family Court in July, 2005 and under threat she was coerced to state before the Court that she had voluntarily offered for divorce and had signed the divorce petition with consent. She alleges that she was sent to her parental house ultimately on 16.1.2006 and on the very next date, she received a notice through which she came to know that her marriage with petitioner no. 2 got dissolved. On 23.7.2006 at about 7 p.m. petitioner nos. 1 and 2 came to the parental house of the complainant along with 4-5 unknown persons and they misbehaved with her father.

5. The learned C.J.M., Patna after institution of the complaint made over the case u/s 192 of the Code of Criminal Procedure to the court of Sri S.P. Mishra, learned Judicial Magistrate, Patna, who after recording the statement of the complainant on oath u/s 200 of the Code of Criminal Procedure and deposition of the witnesses examined u/s 202 of the Code of Criminal Procedure found a prima facie case to be made out under Sections 323, 379, 420 and 504 of the Indian Penal Code against the petitioners and summoned them to face trial by order dated 10.10.2006. The petitioners have challenged the aforesaid order dated 10.10.2006.

6. Mr. S.B.K. Manglam, learned counsel for the petitioners submits that it is true that the complainant was married to petitioner no. 2 in 2003 but after the marriage, the complainant and her husband realized that it was not possible to continue with the relationship and thus, with consent of parties, matrimonial Case No. 115 of 2004 was filed before the learned Principal Judge, Family Court, Patna for dissolution of the marriage. The Principal Judge, Family Court, Patna issued notice to the complainant and after service of notice, the complainant and petitioner no. 2 appeared before the court. The learned Principal Judge, Family Court, Patna took efforts for re-conciliation but, it failed and thereafter he recorded separate statement of the complainant and the petitioner no. 2 on 8th

July, 2005.

7. Learned counsel for the petitioners submits that the learned Principal Judge, Family Court, Patna by his judgment dated 19.7.2005 allowed the matrimonial suit and held that the parties are entitled to a decree of dissolution of their marriage with mutual consent.

8. I think it proper to quote para 4, 5 & 6 of the aforesaid judgment passed by the learned Principal Judge, Family Court, Patna, which reads as follows:-

4. The Court tried to reconcile the parties but the reconciliation failed as the girl admitted that she has some pre-marital affairs with another boy and she wants to marry him after dissolution of marriage. Similar was the view of the husband.

5. Both parties were examined on oath as witness nos. 1 and 2 respectively and both have stated that they want divorce with their mutual consent and they will marry to some other partner after dissolution of their marriage.

6. Considering the facts and circumstances of the case the court is of the view that parties are entitled for a decree of dissolution of their marriage with mutual consent and the same is accordingly granted. However, there is no order as to the cost.

Let a decree be prepared accordingly.

9. After the judgment was passed in the matrimonial suit, a decree of divorce was prepared on 20.7.2005 and the marriage was dissolved. It is to be noted that the petitioners have brought on record the joint petition of the Matrimonial Suit No. 115 of 2004, the deposition of the complainant and petitioner no. 2, the judgment passed in the matrimonial suit and the decree passed in the original suit which are marked as Annexure -2, 2/1, 2/2 Annexure-3 and Annexure-4 respectively to the petition.

10. It is submitted that despite dissolution of marriage, the opposite party no. 2 was creating undue pressure upon her husband and in-laws. She used to frequently threaten them. Referring to the deposition of the complainant as contained in Annexure-2/1 of the petition, learned counsel submits that she has categorically stated in court that she out of her own free will wants to divorce the petitioner and she had willingly put her signature over the petition filed in the court. She has also deposed that after obtaining the decree of divorce she would marry some one else. He submits that there is absolutely no truth behind the allegation that the accused persons either coerced her for putting signature on the petition filed in the court or threatened her in any manner to depose before the court. The allegation in this regard is baseless. He also submits that the judgment passed in matrimonial suit clearly reflects that the learned Presiding Officer tried for re-conciliation between the parties but failed as the complainant admitted that she had some pre-marital affairs with another boy and she wanted to marry him after dissolution of the marriage. He further submits that after obtaining the decree of divorce when the boy with whom complainant had pre-

marital affairs refused to marry, she changed her mind and wanted to thrust herself again upon petitioner no. 2. In order to put undue pressure, she implicated the petitioners in the present case with oblique motive.

11. On the other hand, Mr. Aditya Saran, learned counsel appearing for the opposite party no. 2 submits that there is no illegality in the impugned order passed by the learned Magistrate. He has taken cognizance of the offence on the basis of materials available before him. Since, a prima facie case is made out, the petitioners were summoned to face trial. He further submits that at this stage, it would not be proper to consider as to whether the case would end in conviction or acquittal. The decree of divorce was obtained by playing fraud upon the court.

12. A counter affidavit has also been filed on behalf of the opposite party no. 2. Referring to the counter affidavit, it is submitted that complainant was confined by the accused persons in a room and was not allowed to meet anyone. The advocate who appeared on her behalf was also engaged by her husband. The Principal Judge, Family Court, Patna made no effort for re-conciliation in order to settle the dispute between the husband and wife in presence of the complainant. The address of complainant in the matrimonial suit was the address of the petitioners. Her signatures were taken on separate pages which were blank and were later on converted into petition. The complainant never consented to the proposal of divorce knowingly. The consent, if any, was obtained by practicing fraud upon her. He submits that after the decree of divorce, the complainant was in the house of her husband till the period of appeal was over and, thereafter, she was released from her husband's house and is now residing with her parents.

13. Learned A.P.P. supports the contention made on behalf of opposite party no. 2 and defends the impugned order.

14. Having heard the parties, it is to be seen as to whether the learned Magistrate was justified in summoning the petitioners to face trial. It is admitted fact that the marriage took place between the complainant and the opposite party no. 2 on 28.11.2003. There is also no dispute that pursuant to a joint petition filed on behalf of the parties, a decree of divorce has already been granted by mutual consent by a court of competent jurisdiction.

15. In the counter affidavit filed on behalf of O.P. No. 2 allegation has been made that the decree of divorce was obtained by practicing fraud but no averment has been made that the complainant has ever challenged the said decree before any court. The decree of divorce in the matrimonial suit is, thus, a valid decree till it is set aside by any judicial pronouncement. The complainant has taken no steps for setting aside the judgment and decree passed in the matrimonial suit but has initiated a criminal complaint which clearly appears to be mis-placed. The criminal proceeding launched against the petitioners appear to be wanting in bonafides and is frivolous, vexatious and oppressive. The law is well-established that a complaint petition lacking in bonafides based on false averments

constitutes flagrant abuse of the process of court.

16. It is well-established that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Apex Court has in various decisions examined the scope of the power u/s 482 of the Code of Criminal Procedure.

17. In case of State of Haryana vs. Bhajan Lal, since reported in 1992 suppl (1) 335, the Apex Court in para 102 has given the following categories of case, which have been stated by way of illustration wherein the extra-ordinary powers under Article 226 or the inherent power u/s 482 of the Code of Criminal Procedure can be exercised by the High Court to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. In the facts and circumstances of the present, I find that the case falls within category (5) and (7) for the aforesaid case. From the facts discussed hereinabove, it is apparent that the conduct of the complainant in launching the criminal prosecution is not bonafide.

19. Taking into consideration the special features which appear in the present case and law laid down by the Apex Court for exercise of powers u/s 482 of the Code of Criminal Procedure, I am of the view that the court cannot be utilized for oblique purposes. It is found expedient and in the interest of justice not to allow the present prosecution to continue. In the result, the application is allowed and the order dated 10.10.2006 passed by Sri S.P. Mishra, the learned Judicial Magistrate, Ist Class, Patna in complaint Case No. 2082 (C)/2006 is, thus, quashed.