
(2009) 05 PAT CK 0024

In the Patna High Court

Case No : Criminal Miscellaneous No's. 715 and 827 of 2007

Vikas Dubey @ Saroj Dubey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 341, 379, 406, 448

Citation : (2009) 3 PLJR 842

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Y.V. Giri and Ashok Kumar Dubey, for the Appellant; Abdus Salam (in 715) and Mr. R.P.S. Singh (in 827) for the State, M/s. Awadhesh Kumar and Arun Kumar Mandal for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Both these cases have been taken up together since the parties in both the cases happen to be the same and involve common questions of law and having been heard together they are being disposed of by this common order. The facts of the case may be stated in brief.

Cr. Misc. No. 715 of 2007:

2. This application has been filed by the petitioners who have been impleaded as accused in Complaint Case No. 397 of 2003 which on being sent to the concerned police station u/s 156(3) Cr.P.C. Nasriganj (Rajpur) P.S. Case No. 144 of 2003 has been registered under Sections 498A, 323 and 406 I.P.C. as also Sections 3/4 of the Dowry Prohibition Act.

3. The allegation by the complainant/ informant, Sabita Devi, the wife of petitioner No. 1, Vikas Dubey alias Saroj Dubey, impleaded herein as O.P. No. 2, is that her marriage with petitioner No. 1, Vikas Dubey alias Saroj Dubey was

solemnized on 1.5.1995 and gauna was performed on 29.2.1996 and by way of gift motorcycle, ornaments, clothes and household articles were given. Petitioner Nos. 2 and 3 are the parents-in-law and petitioner Nos. 4 and 5 are the sisters of the husband and they alongwith the husband did not appear to be satisfied with the gifts given by the father of the informant and they started torturing the informant mentally and physically. It is said that two sons were born out of the wedlock and being minors are living with opposite party No. 2. It is also alleged that she was oft and on assaulted by the petitioners as her father was not able to provide another motorecycle and very often she was deprived of food and water. It was further alleged that at the instigation of the in-laws the husband dropped her alongwith the children at her parental home on an understanding that he would return after 20 days to take her back and it was expected that by that time her father would be in a position to arrange a motorcycle. It is further said that some time in May she was brought back alongwith the sons to the matrimonial home and in view of the demand of motorcycle not being fulfilled, petitioner Nos. 2, 4 and 5 tried to prevent her from entering into the house which however was frustrated. It is further alleged that the petitioners continued with their torturing as a result whereof she became ill and went back to her parental home for getting treated. It is said that she filed Complaint Case No. 136(C) of 2001 on 11.5.2001 before the learned Sub-Divisional Judicial Magistrate, Bikramganj which, however, was subsequently withdrawn on verbal assurances given by the petitioners that she would not be subjected to further torture and that she would be taken back immediately. However, although the case ended on 15.2.2002, she was never taken back to the matrimonial home. In the meanwhile, her father expired on 10.12.2002 and when she went to the matrimonial home she was further assaulted and she was given to understand by the husband that as he had filed a divorce case against her she would not be permitted to remain in the matrimonial home. Around this time she also came to know that the husband wanted to enter into another marriage. Efforts by the well wishers of O.P. No. 2 to compromise and compound the differences met with no success.

Cr. Misc. No. 827 of 2007:

4. The petitioners who are the same as that of Criminal Misc. No. 715 of 2007 have prayed for the quashing of the order dated 7.1.2006 passed in Complaint Case No. 59 of 2005 by Sri Binod Kumar Mishra, Judicial Magistrate, First Class, Rohtas at Sasaram wherein cognizance was taken for commission of offences under Sections 323 and 379 I.P.C. In the instant case, the self-same Sabita Devi filed the complaint case on 20.1.2005 inter alia alleging that her marriage with petitioner No. 1 was solemnized on 1.5.1995 and the gauna took place on 29.2.1996 and two sons were born out of the wedlock. After reiterating the facts stated in the earlier case she has further alleged that the petitioners had in categoric terms stated that the petitioner No. 1 would enter into matrimonial relationship with another and she would not be allowed to remain in the matrimonial home and she was pressurized to give divorce to him. It is further

alleged that as she did not agree to the proposal she was assaulted with fists and slaps by petitioner Nos. 4 and 5 and petitioner No. 3 is alleged to have taken away a titan wristwatch worth Rs. 1,000/- from her wrist. It is further stated that petitioner No. 5 had taken away two tops from her ear worth Rs. 7,500/- and she was assaulted by petitioner Nos. 3 to 5. The further allegation is that petitioner No. 2 wanted her signature on certain papers by force.

5. Opposite Party No. 2 has appeared in both the cases and whereas she has filed a counter affidavit in Criminal Misc. No. 715 of 2007, no counter affidavit has been filed in Criminal Misc. No. 827 of 2007.

6. The primary issue raised by the petitioners is that the present cases have been filed by the opposite party No. 2 with the mala fide intention of wreaking vengeance and to extract money from the petitioners. This would be apparent from the fact that a series of cases have been filed by opposite party No. 2 against the petitioners. In this connection, it was submitted that Complaint Case No. 359(C) of 2001 under Sections 498A and 448 I.P.C. and 3/4 of the Dowry Prohibition Act had been filed by the father of opposite party No. 2 against the petitioners which was subsequently dismissed as the complainant did not wish to proceed with the case any further. Thereafter Complaint Case No. 136(C) of 2001 was filed on 11.5.2001 against the petitioners under Sections 498A, 323 and 406 I.P.C. which was also dismissed as withdrawn subsequently. Thereafter Complaint Case No. 397 of 2003 was filed which gave rise to Nasriganj (Rajpur) P.S. Case No. 144 of 2003 (which gave rise to Criminal Misc. No. 715 of 2007). Not satisfied therewith Sasaram Nagar P.S. Case No. 511 of 2006 under Sections 341, 323, 379, 498-A I.P.C. was filed against the petitioner Nos. 1, 2 and 3 as also against one Sri Jitendra Dubey, an Advocate of Sasaram Court who was conducting the cases on behalf of the petitioners. Thereafter Complaint Case No. 59 of 2005 (the subject matter of Criminal Misc. No. 827 of 2007) was filed.

7. On perusal of the allegations made in all these cases through complaint petitions and fardbeyan annexed by the petitioners, it is apparent that opposite party No. 2 in both the cases had deliberately filed these cases against the petitioners practically on the same set of allegations which prima facie leads to a presumptive opinion that the same were not bona fide. It clearly goes to show that these allegations are a modus operandi manifestly with the ulterior motive of wreaking vengeance on the petitioners and of pressurising and forcing them into frivolous and vexatious litigation. The attempt by O.P. No. 2 and her father to implicate the petitioners in a series of litigation based manifestly on similar facts, time and again, only goes to show the frivolous and vexatious approach and mentality that they are carrying to get the petitioners somehow or the other implicated and convicted by whatever means possible. A court of law cannot be silent spectator to such atrocious acts which virtually amounts to an abuse of the process of the court.

8. I am clearly of the opinion in view of the various decisions of the Apex Court as also this Court that the allegations propounded by O.P. No. 2 are not only

untrustworthy but are attempts with specificity to engage the petitioners into frivolous and vexatious litigation which clearly indicate that the petitioners were indulging in misusing the law courts in blatant abuse of the process of the court. In the result, the impugned orders in both the cases are hereby quashed and both the applications are allowed.