

(2005) 04 JH CK 0009

**Jharkhand High Court****Case No:** Criminal Miscellaneous No. 2578 of 1999 (R)

Kausik Sinha and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

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**Date of Decision:** April 28, 2005**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 210, 210(1), 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 323, 326, 34, 406, 498A

**Citation:** (2005) CriLJ 4789 : (2006) 1 DMC 97 : (2005) 4 JCR 219**Hon'ble Judges:** Hari Shankar Prasad, J**Bench:** Single Bench**Advocate:** R.S. Mazumdar and I. Sen, for the Appellant; A.K. Sahani, G. Devi and Malti Chourasia, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Hari Shankar Prasad, J.

This application u/s 482, Cr PC has been filed for quashing the order dated 23.3.1999 passed in C.P. Case No. 918/98, whereby the whereunder the learned Judicial Magistrate, First Class, Dhanbad took cognizance under Sections 498-A: 323 and 406 of the Indian Penal Code and for quashing the entire criminal proceeding initiated against the petitioners.

2. Facts leading to the filing of the complaint case are that the opposite party No. 2 filed a complaint stating, inter alia, therein that her marriage was solemnized with the petitioner No. 1 on 7.6.1995. She was leading a peaceful marriage life at her matrimonial home but a few months thereafter petitioner started expressing his views that the dowry given in the marriage is meagre and the petitioner Kausik Sinha, at the instigation of others; started demanding Rs. 5.00 lacs for investing the said amount in business. They also started demanding a share in the house of the

father of opposite party No. 2 for the purpose of using the same as the office cum showroom of business. It is further stated that complainant's father had already given some articles specifically demanded by the accused persons such as Titan wrist watch, Videocon colour T.V. etc. besides gold ornaments. Due to non-fulfilment of demand the accused persons stated calling the complaint opposite party No. 2 as mad and committed torture on her and the torture went to the climax when on 3.1.1997, when she was passing through her early stage of pregnancy, petitioner Kausik, Sinha poured kerosene oil on the body of the complainant and petitioner Smt. Kalpana Sinha went to bring a match box but the complainant fled away and saved her life. Complainant's father was out of Dhanbad and when he returns back, she narrated the occurrence to her father. The complainant's father went to her sasural and she came with her father to her naihar for some time. The complainant did not go to her sasural immediately, as she was pregnant. On 11.6.1997, on the occasion of "jamai sasti", petitioner Kausik Sinha was expected to come to the house of the parents of the complainant, as per Bengali custom and the mother of the complainant had to remain in fasting till the petitioner Kausik Sinha does not take meal and sweets at the house of the complainant paternal home. It is stated that petitioner Kausik Sinha came to the house of the complainant but he demanded further dowry and when inability was expressed, petitioner Kausik Sinha assaulted the complainant, who was at advance stage of pregnancy. She was sent to nursing home and after treatment she was released very next day and she stayed in her naihar and gave birth to a female child. When on the repeated request nobody came from her sasural, then she on 26.11.1997 went to her sasural with her father but there also the abused persons again started abusing and designing plan to kill the complainant and also started maltreating her. It is further stated that on information being sent to her father, her father come to her sasural and she came back to her naihar, where she is staying till now.

3. Learned Counsel appearing for the petitioners submitted that prior to filing of this complaint case being C.P. Case No. 918 of 1998, this complainant had earlier lodged an FIR which was registered as Dhanbad P.S. Case No. 337 of 1998 corresponding to G.R. No. 1422 of 1998 for the offences alleged to have been committed u/s 498(A)/34 of the Indian Penal Code and u/s 3/4 of the Dowry Prohibition Act. It is further submitted that after investigation, final form was submitted which is still pending before the learned Chief Judicial Magistrate, but during the pendency of this final form, O.P. No. 2 complainant has filed this complaint case, as aforesaid. It was further pointed out that date of occurrence in the FIR has been given as January, 1997, whereas in the complaint petition the date of occurrence has been shown as 5.1.1998 and, therefore, for the same set of occurrence, this complaint case will not lie and the learned Court below should not have passed any order taking cognizance. It is further pointed out that this case has been filed only with the sole purpose to harass the petitioner and if the case is allowed to continue, then petitioners will suffer irreparable loss and injury.

4. In course of submission, learned Counsel for the petitioner submitted that during the pendency of a police case, a complaint case is also filed, then it becomes bounded duty of the learned Court below to see that when this fact is brought to its knowledge that for the same occurrence a complaint case has also been filed, then the proceeding of the complaint case should be stayed. Here in the instant case, an FIR was already lodged and after investigation, final form was submitted which was pending before the learned Chief Judicial Magistrate and soon thereafter a complaint case was filed, in that circumstances the learned Chief Judicial Magistrate should have stayed the proceeding of the complaint case filed on behalf of the complainant and, cognizance taken including the provisions of Section 210, Cr PC is fit to be quashed. In this connection, reliance was placed upon *Shishir Kumar Choudhary v. State of Bihar and Ors.* 2000 (2) ECC 795 (Pat). Reliance was also placed upon *Tokan Mahto v. State of Bihar* 1994 (2) ECC 25 (Pat), wherein it has been held that cognizance was taken on complaint without calling for any report from the police and after trial, conviction was sustained but when the matter was brought before the High Court, even judgment was set aside.

5. On the other hand, learned Counsel for the O.P. No. 2 complainant submitted that cognizance taken in complaint case is not without jurisdiction because there is sufficient compliance of Section 210, Cr PC. In this connection, he placed reliance upon 1992 Cr LJ 2204, wherein it has been held that complaint case and police investigation in relation to the same offence and the Magistrate instead of staying proceeding u/s 210(1) proceeding with complaint case and took cognizance or directing inquiry u/s 202, Cr PC, is not without jurisdiction, in this connection my attention was drawn to Para 2 which is quoted herein-below :

"2. The petitioners" case in brief is that an arson took place in the Harijan Busti on 8.4.1988 and on the basis of an information to that effect, the police registered a case and started investigation. While the police was proceeding with the investigation, a complaint was filed by opposite party No. 2 on 19.4.1988. The Magistrate recorded the initial statement of the complainant on 20.4.1988 and instead of issuing process directed an enquiry u/s 202 of the Code of Criminal Procedure. In the enquiry the complainant produced his witnesses. Finally on the basis of the available materials the Magistrate took cognizance of the offences by the impugned order dated 8.3.1989. The G.R. case which had been registered and was being investigated into by the police ended in submission of a final form by the police on 19.8.1988. After the cognizance was taken in complaint case, the petitioners have approached this Court for quashing of the cognizance."

6. Learned Counsel for the O.P. No. 2 further submitted that when the petitioners approached this Court for quashing of the cognizance, then ultimately it was held that cognizance taken in the case, is not without jurisdiction. Reliance was further placed upon *Mahesh Chand v. B. Janardhan Reddy and Anr.* 2003 (1) ECC 113 (SC), wherein same proposition of law has been propounded.

7. In the instant case also, final form is pending before the learned Chief Judicial Magistrate and the cognizance in the case has been taken, therefore, cognizance taken by the learned Court below is within jurisdiction. In that view of the matter, this application is dismissed, but in the circumstances without any order as to costs.