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(2007) 01 PAT CK 0190

Patna High Court

Case No: Criminal Miscellaneous No. 26026 of 2005

Rima Devi		APPELLANT
	Vs	
State of Bihar and Another		RESPONDENT

Date of Decision: Jan. 11, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Dowry Prohibition Act, 1961 - Section 4
- Penal Code, 1860 (IPC) - Section 498, 498A

Citation: (2007) 2 PLJR 262

Hon'ble Judges: Abhijit Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

Heard Mr. Krishna Prasad Singh, learned senior counsel for the petitioner, Sri Jharkhandi Upadhyay, learned A.P.P. for the State and Sri D.K. Tandon, Opposite Party no.2 (complainant). It appears that a complaint petition bearing No. 378/03 was filed by Ram Jatan Tiwary, O.P. No.2 herein which u/s 156(3) Cr.P.C. was sent to the concerned P.S. and Dhaka P.S. case No. 58/2003 was registered. It further appears that after due investigation police submitted charge sheet No. 86/2003 against Bankey Bihari Tiwary, Nand Kishore Tiwary and Kalawati Devi against whom cognizance was taken and the investigation remained pending as against the other accused. Thereafter on 6.11.2003 a supplementary charge sheet No. 119/2003 was submitted in which the petitioner herein and two others were not sent up for trial. However, the learned S.D.J.M. Sikrahana, on the basis of a petition filed by the complainant/informant took cognizance against the petitioner herein and

discharged the remaining two.

2. From the impugned order dated 12.9.2004/13.9.2004 it appears that the learned Magistrate found sufficient materials in paragraph nos. 7, 8, 20, 22, 23 and 25 of the case diary which prompted him to take cognizance also against the petitioner herein.

3. The petitioner has moved this application for quashing of the order taking cognizance on the ground that there is no iota of evidence in the case diary so as to activate the learned Magistrate to take cognizance against her after her revision before the learned Court had been dismissed. In this connection it was sought to be pointed out that the reference by the learned Magistrate to paragraph 25 of the case diary appears to be fully erroneous because paragraph 25 only speaks of the I.O. closing the case diary. He also refers to paragraph 7 of the case diary which is the statement of Shakuntala Devi, the victim girl who in her statement had stated that it was Rima Devi, the petitioner herein, who had demanded money from the father of the victim but this does not find corroboration from the statement of Ram Jatan Tiwary the father of the victim girl and the complainant. The learned counsel also refers to paragraphs 20 and 23 which are omnibus allegations against the family members of Banke Bihari Tiwary, husband of the victim lady. The learned counsel also refers to paragraphs 58 of the case diary which is the final form which reveals that Rima Devi had gone to Nepal after her marriage long back and had not returned.

4. The learned counsel for the opposite Party No.2 has opposed the submissions advanced by the learned counsel for the petitioner and has submitted that there are sufficient materials in the case diary to implead the petitioner herein as one of the accused. In this context he refers to the fact that on the basis of the demand having been made Rs. 50,000/- was paid to the family members of Bipin Bihari Tiwary, the husband of the victim lady, Shakuntala Devi, out of which they had purchased land and in that view of the matter the allegation of torture of Shakuntala Devi cannot be disbelieved. It is also his submission that due to the cruelty and torture that Shakuntala Devi had to fact in her marital home she had aborted.

5. Be that as it may the fact remains that Rima Devi after her marriage had gone to Nepal and had not returned. It also assumes importance that the fact of demand of money as deposed by victim Shakuntala Devi has not been corroborated by her father who is the complainant. It is also surprising that the learned Magistrate has referred to para 25 of the case diary which is merely a noting of the I.O. to show that he was closing the case diary. Apparently the learned Magistrate does not appear to have applied his mind.

6. That apart learned counsel refers to the decision of the Apex Court in the case of Ramesh and others vs. The State of Tamil Nadu (2005)3 SCC 507 where their Lordship have observed that allegations against sister-in-law only relating to

causing insult, making derogatory remarks or abetting in the offence u/s 498A do not make out an offence either u/s 498A or Section 498 of I.P.C. and Section 4 of Dowry Prohibition Act.

7. I am in respectful agreement of the decision of the aforesaid Judgment of the Apex Court. In the result, the application succeeds and the cognizance so far as the petitioner herein is concerned as also the order dated 10.5.2005 passed in Cr. Rev. 452/2005 are hereby quashed.