

Patna High Court - Orders

Suresh Yadav @ Suresh Kumar Yadav vs State Of Bihar & Anr on 8 August, 2013

Patna High Court Cr.Misc. No.37966 of 2012 (4) dt.08-08-2013

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37966 of 2012

=====

Suresh Yadav @ Suresh Kumar Yadav, son of Late Hare Krishna Yadav,  
Resident of Mohalla-9, Shiv Colony, Tijara Phatak, Tijara Road, Police  
Station- Shivaji Park, Post Office, Shivaji Park, District-Alwar, P.O.  
301001, Rajasthan.

Versus

1. State of Bihar.
2. Smt. Asha Devi, wife of Suresh Yadav @ Suresh Kumar Yadav,  
daughter of Shiv Pujan Singh, resident of Mohalla-Rajiv Nagar, Ro  
No. 15E, Police Station- Digha, District- Patna, P.C. 800 024.

.... .... Opposi

=====

Appearance :

For the Petitioner.	: 1. Mr. Indu Bhushan, Advocate. 2. Mr. Sunil Kumar, Advocate.
For the State	: Mr. Madhura Nand Jha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD  
ORAL ORDER

4 08-08-2013 Heard.

1. This is an application for quashing the order dated 10.07.2012 passed by the learned Sub-Divisional Judicial Magistrate, Patna, in Complaint Case No. 3293(C) of 2006 by which the petition to discharge the petitioner on the ground that witnesses have not supported the occurrence and their statements are contradictory to each other has been rejected.

2. The prosecution case as alleged in the complaint petition that the complainant-opposite party no. 2 that marriage of the complainant was solemnised with the petitioner on 01.05.2011 by Hindu Religious Rites. Thereafter, she was subjected cruelty for non-fulfillment of demand of Rs. 1,00,000/-. During the period of marriage the complainant blessed with children, but it is alleged even she was tortured and subjected her to cruelty to be continued by assault and not giving food. Further allegation she was assault and tried to burn her. Thereafter, she was driven out of matrimonial house along with children. The petitioner is husband of the complainant.

3. After lodging the complaint, the complainant was examined on Solemn Affirmation and after examination of the witnesses, cognizance was taken and processes were order to be issued. After appearance of the petitioner a petition for discharge has been filed which has been rejected holding

there is sufficient material for charge under Section 498A of Indian Penal Code as well as Section 4 of Dowry Prohibition Act as the witnesses have supported the prosecution case.

4. Learned counsel for the petitioner however challenged the order that allegation made in the complaint is absurd, false and frivolous. The witnesses during enquiry have made statements which are contradictory to each other, though, allegation has been made for subjecting cruelty on 07. 05. 2001 but date of filing of the complaint on 16.11.2006. It is further contended that petitioner has filed divorce petition at Alwar in Rajasthan on 15. 11. 2006 and the copy of the petition was filed at the time of filing of discharge petition on 07. 05. 2012 and had submitted before the court below that in the said divorce petition he has specifically asserted that wife is living separately since 2004 and hence contends that allegation made in the complaint filed by the wife is absurd in view of the fact that she has asserted that she was subjected cruelty since 2001 to 2006, whereas he was living separately since 2004. It has further been asserted that prior to the filing of the complaint the petitioner has filed divorce case. Hence complaint petition has been filed after filing of the divorce petition and hence it has been filed malafidely to wreck vengeance. He has placed reliance upon decision reported in 2011 (3) PLJR SC (100) for proposition that where public document or other material relied upon by the defence are beyond suspicion or doubt the court can look into material under jurisdiction under Sections 397 and 482 of Cr.P.C. to prevent injustice by the abuse of the process of the court. Hence assails order impugned on ground that court is required to look in the divorce petition filed by the petitioner. He has further relied upon decision reported in 2012 (1) PLJR (346) and has asserted that divorce petition has been filed prior to the institution of this complaint hence the entire proceeding arising out of the complaint is required to be quashed.

5. However taking into consideration the submissions made by the learned counsel for the petitioner and point raised, it is well settled that learned Magistrate at the stage of framing of charge is not required to look into any document filed by the accused and trial court at the stage of framing of charge filed by the prosecution during investigation or enquiry only to see whether on the basis of material collected during investigation on enquiry prima facie case is made out against the petitioner for framing of the charge and Court concern can neither appreciate the evidence nor meticulously examined the material found during enquiry in stage.

6. However, in this regard it is relevant to quote para 17 and 18 of the decision reported in SCC 2005(1) 568 (quote para 17 and 18).

" 17. .... the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Article 14 and 21 of the Constitution and to save the said provisions from being declared untra vires, the reasonable interpretation to be placed thereupon is the one which gives a

right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced.

The scheme of the Code and object with which Section 227 was incorporated and Section 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge. If the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

7. Hence, it is well settled that trial court at the stage of framing of charge is only required to look into the police paper or paper produced by prosecution during enquiry and investigation and to only see prima facie whether the material collected makes out an offence. The Court at that stage can neither meticulously examine the evidence nor appreciate the evidence, nor can look into the defence of accused nor can take into consideration any material or document filed by the accused. The trial court at the stage also cannot go into the question whether allegations made are true or false which is the function of trial court. This Court may in exceptional case sparingly in exercise of inherent jurisdiction in the interest of justice can look into the document if the document is of unimpeachable character of sterling quality to do ex debito justice.

8. However, having regard to the submissions and going into the statement of the witnesses as well complaint itself, apparently makes out an offence under Section 498A of the Indian Penal Code and prima facie on the face value it can well be inferred that allegation made in the complaint is true. However, learned counsel for the petitioner has relied upon decisions reported in 2011 (3) PLJR 100

shows that if High Court while exercising inherent jurisdiction under Section 482 Cr.P.C. or while exercising jurisdiction under Section 397 Cr.P.C. can look into document filed by the petitioner if the document is of unimpeachable character of sterling quality. However, only document filed by the petitioner is plaint of divorce case. However, document can be looked into for the fact that petitioner has filed a divorce case on 15.11. 2006 but whatever statement made in the said plaint cannot be deemed to be true as the averment made in those documents is required to be tested at the trial on the basis of evidence adduced and after it stood the cross-examination by the other side.

9. However, having regard to the fact that petitioner has filed divorce case on 15. 11. 2006 in Rajasthan, the complainant may not have any knowledge of that case which was filed in Rajasthan whereas the complaint was filed by the complainant on 16. 11. 2006 and hence it cannot be said that complainant filed the complaint in retaliation of divorce case filed by the petitioner in Rajasthan on 15.11.2006 and hence it cannot be said that this complaint petition has been filed with mala fide intention with knowledge of the filing of the divorce case by husband. However, it is absurd to hold that whatever the petitioner made averment in the said divorce case that he is living separately since 2004 as a gospel truth. On that basis it cannot be held that complaint filed by complainant is maliciously to harass or subjecting cruelty to the petitioner. Hence the averments made are defence of accused to be tested only at trial.

10. Learned counsel for the petitioner however relied upon decision reported in 2012 (1) PLJR

346. The fact of the case with allegation that husband filed a case in which allegation has been made that wife along with her mother committed theft in the house of husband in that circumstance, it was held that allegation appears to be absurd that wife along with her father and mother will go to the house of the husband to commit theft and in that circumstance decision relied upon by the learned counsel for the petitioner reported in 2012 (1) PLJR page 346 is not at all applicable. Hence under the fact and circumstance of the case, the allegation made in the complaint that the husband subjected the complainant to cruelty neither absurd nor improbable to interfere with the order taking cognizance.

11. Regard being had to the fact and circumstance, I do not find any merit to interfere with impugned order. This petition is, accordingly, dismissed.

m.p.

(Gopal Prasad, J)