

SUPREME COURT OF INDIA

Baikunth Singh

Vs.

State of Bihar

Crl.A.No.2035 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

15.12.2008

JUDGMENT

Dr.Arijit Pasayat, J

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Patna High Court quashing the order passed by learned Judicial Magistrate, First Class, Jehanabad taking cognizance of offence punishable under Section 406 of the *Indian Penal Code, 1860* (in short the `IPC') and issuing summons against the applicants-respondents Nos. 2 and 3. The High Court exercised power under Section 482 of the *Code of Criminal Procedure, 1973* (in short the `Code'). The High Court was of the view that the case might have been filed by the complainant in order to pressurize the petitioners before the High Court not to proceed with the case which was lodged under Section 304-B ,201/34 IPC r/w Sections 3 and 4 of *Dowry Act* against the complainant and others.
3. Various points were urged in support of the appeal. Primarily it was submitted that the petition was disposed of without issuing notice to the complainant. It is submitted that the exercise of power under Section 482 of the Code was not warranted on the facts of the case.
4. Learned counsel for the respondents 2 and 3 supported the order of the High Court. Learned counsel for the State on the other hand supported the stand of the appellant.
5. It is not in dispute that the present appellant was impleaded as a party in Criminal Miscellaneous No.9428 of 2006 which was filed by respondents 2 and 3. Strangely, without issuing any notice the petition was disposed of.
6. The High Court has come to a conclusion which appears to have been more on presumptions and surmises that the case might have been filed to pressurize the applicants before the High Court. There was no material in this regard and in any event the stage for deciding that question had not arisen.

7. It cannot be said to be a case where the complainant was not required to be heard. It is more so because the proceedings were initiated on the basis of the complaint filed by the appellant which was registered as Complaint Case No.272 of 2002.

8. In the circumstances, without expressing any opinion on the merits of the case, we set aside the impugned order. We direct the parties to appear before the High Court without any further notice on 21st January, 2009. The Chief Justice of the High Court is requested to allot the matter to an appropriate Bench.

9. The appeal is accordingly disposed of.