BAIKUNTH SINGH

v.

STATE OF BIHAR AND ORS.

(Criminal Appeal No. 2035 of 2008)

DECEMBER 15, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Criminal Procedure, 1973 – s.482 – Petition under – Manner of disposal – Challenge to – Pursuant to a complaint, trial court took cognizance under s.406 IPC and issued summons against the accused – They filed petition under s.482 CrPC – Complainant impleaded as a party – High Court quashed the order of trial court without issuing notice to the complainant – Justification of – Held: Not justified – Complainant was required to be heard – Parties directed to appear before High Court on stipulated date without any further notice – Penal Code, 1860 – s.406.

Pursuant to a complaint filed by the appellant, the trial court took cognizance under s.406, IPC and issued summons against respondents 2 and 3.

Respondents 2 and 3 filed petition under s.482 CrPC, impleading appellant as a party therein. The High Court came to a conclusion that the appellant might have filed the complaint case in order to pressurize the respondents 2 and 3 not to proceed with their cross-case against appellant under ss.304B, 201/34 IPC r/w ss.3 and 4 of Dowry Act and quashed the order passed by the trial court.

The order passed by the High Court was primarily challenged in the present appeal on the ground that it was passed without issuing notice to the appellant. It was contended that the exercise of power u/s.482 CrPC was not warranted on the facts of the case.

A **Disposing of the appeal, the Court**

HELD: The High Court came to a conclusion which appears to have been more on presumptions and surmises that the case might have been filed to pressurize the respondents 2 and 3. There was no B **material in this regard and in any event the stage for deciding that question had not arisen. 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** C **appellant which was registered as Complaint Case No.272 of 2002. In the circumstances, without expressing any opinion on the merits of the case, the parties are directed to appear before the High Court on stipulated date without any further notice. [Paras 6, 7 and 8] [563-D-G]**

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2035 of 2008.

From the Judgment and Order dated 21.07.2006 of the High Court of Judicature at Patna in Criminal Misc. No. 9428 of 2006.

E Nagendra Rai, Anshul Raj, Shantanu Sagar, Abhishek Anand and T. Mahipal for the Appellant.

Gopal Singh, Manish Kumar, Braj Kishore Mishra, Abhishek Jha, Vikram, Tansuhree Sinha, Ujjwal K. Jha and Aparna Jha for the Respondents.

F The Judgment of the Court was delivered by

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 G 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'). H 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. A

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. B

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. C

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. D

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. E

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. F

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. G

9. The appeal is accordingly disposed of.

B.B.B. Appeal disposed of.