

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 914 OF 2018
(Arising out of SLP(Cr1.)No.5165 of 2017)

SHAILESH KUMAR

Appellant(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the parties.

Respondent No.2 herein has filed case No.462/12 before the Sub-Judicial Magistrate, Munger, Bihar. The Magistrate took cognizance thereof vide Order dated 18th May, 2013. That order was challenged by the appellant by filing Cr1.Misc. No.31014 of 2013 in the High Court of Judicature at Patna under Section 482 of the Cr.P.C. The High Court has rejected the said petition by observing that the solemn affirmation of the complainant and the statement of witnesses recorded in the case makes out a prima facie case against the appellant.

It is submitted by learned counsel for the appellant that a similar complaint was filed by respondent no.2/complainant earlier as well, in which full-fledged trial took place and the appellant as well as others were acquitted of the charges under Section 498A of the I.P.C. and Section(s) 3/4 of the Dowry Prohibition Act. Copy of the said judgment dated 19th November, 2018 (G.R.No.842/2008/ T.R.No.3412/2008) is annexed with this petition as Annexure P-2.

We find that this aspect has not been looked into either by the learned Magistrate or the High Court. In these circumstances, we allow this appeal and set aside Order dated 18th May, 2013 passed by S.D.J.M., Munger, as well as Order dated 25th January, 2017 passed by the High Court. The matter is remanded to the S.D.J.M., Munger, to take into consideration the aforesaid aspect as well as other relevant materials and pass fresh order on the complaint to decide whether the cognizance in these circumstances can be taken or not.

The appellant is exempted from personal appearance and shall be represented through his lawyer, till the order on the aspect of the cognizance is passed by the concerned Magistrate.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
JULY 20, 2018.

ITEM NO.53

COURT NO.5

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 5165/2017

(Arising out of impugned final judgment and order dated 25-01-2017 in CRM No. 31014/2013 passed by the High Court Of Judicature At Patna)

SHAILESH KUMAR

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

(I.A. No.43296/2017 - Exemption form filing C/C of the impugned judgment)

Date : 20-07-2018 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Chandan Mishra, Adv.
Mr. M. Vijaya Bhaskar, AOR

For Respondent(s) Mr. Abhinav Mukerji, AOR
Ms. Bihu Sharma, Adv.
Ms. Pratistha, Adv.

Ms. Jaikriti S. Jadeja, AOR
Mr. Rajat Kapoor, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

In terms of the signed order, the appeal is allowed.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER (SH)

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file)