

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11533 of 2013

Arising Out of PS.Case No. -328 Year- 2011 Thana -DARBHANGA SADAR District- -

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1. Rajesh Kumar @ Rajesh Mandal, S/O Sabri Mandal R/O Vill-Shubhankarpur, P.S.Kalwahi, Distt-Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar
2. Kavita Kumari, W/O Rajesh Kumar @Rajesh Mandal, D/O Ras Bihari Mandal R/O Vill-Dhoi, P.S.Sadar, Distt-Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Mayanand Jha (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

4 07-05-2015

Heard learned counsel for the petitioner.

2. This application has been filed under Section 482 Cr.P.C. for quashing the entire criminal proceeding arising out of Darbhanga Sadar P.S. Case No.328 of 2011, G.R. No.2903 of 2011 registered under Section 498A/379 of the I.P.C. and 3/4 of the Dowry Prohibition Act.

3. The learned counsel for the petitioner submitted that the above case was registered against the petitioner, who is the husband of opposite party no.2 and against the parents as well as other relatives of the petitioner. According to the learned counsel, there has already been mutual divorce under Section 13-B of the Hindu Marriage Act wherein both the parties agreed that



they will withdraw all the criminal cases instituted either by the petitioner or by the opposite party no.2. The application filed under Section 13-B of the Hindu Marriage Act which has been annexed as Annexure-6 at page 48 of the criminal miscellaneous application. The learned counsel submitted that in this agreement i.e. mutual consent application, the opposite party no.2 also agreed to withdraw this criminal complaint under Section 498A filed by opposite party no.2 against the petitioner and his relatives but in spite of the same after even grant of the divorce with consent of the parties the opposite party no.2 is not withdrawing the criminal complaint under Section 498A of the I.P.C.

4. It appears that notices were issued to the opposite party no.2 in admission matter. In spite of service of notice nobody appeared on behalf of the opposite party no.2.

5. From perusal of the mutual consent application (Annexure-6), it appears that the mutual divorce under Section 13-B of the Hindu Marriage Act was granted to the parties i.e. the petitioner and the opposite party no.2 and in the said mutual consent application the parties had agreed that the present complaint application shall be withdrawn by the opposite party no.2. The Hon'ble Supreme Court in the case of **Narinder Singh and others Vs. State of Punjab and another, (2014) 6 Supreme**

Court Cases 466 has held at paragraphs 29.2 and 29.4 as follows:-

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

6. In view of the above settled propositions of law laid down by the Supreme Court now in the present case both the parties have compromised and even on mutual consent they have obtained divorce and are living separately. Admittedly the case arises out of matrimonial relationship. In such view of the matter if now the proceeding is allowed to stand then it will not only harass the present petitioner but also it will amount to an abuse of process of the Court. In my opinion, therefore, on technical ground only the prosecution should not be allowed to continue against the petitioner.

7. In view of the above facts and circumstances and

the settled propositions of law, this criminal miscellaneous application is allowed and the entire proceeding arising out of Darbhanga Sadar P.S. Case No.328 of 2011 is hereby quashed.

(Mungeshwar Sahoo, J)

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