

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45120 of 2012

Arising Out of PS.Case No. -1053 Year- 2010 Thana -null District- NALANDA (BIHARSHARIFF)

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1. Sanjeet Kumar son of Shri Babulal Yadav
2. Babulal Yadav son of Late Raj Kumar Yadav
3. Uday Devi alias Unda Devi, wife of Shri Babulal Yadav
All resident of village Nesara, P.S. Karaiparasurai, District- Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. Sangeeta Devi, wife of Sanjeet Kumar, resident of village Nesara, P.S. Karaiparasurai, District- Nalanda, at present Father Krishna Singh, resident of village Bahapar, P.S. Karaiparasurai, District- Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhola Kumar, Adv.
For the Opposite Party/s : Mr. Anil Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-03-2015

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel appearing on behalf of opposite party no.2.

The petitioners seek quashing of the order dated 20.12.2011 passed by the learned Sub Divisional Judicial Magistrate, Hilsa (Nalanda) in Complaint Case No.1053(C) of 2010 by which he has summoned the petitioners to face trial for the offences punishable under sections 341, 323, 498-A and 380 read with 34 of the Indian Penal Code.

Learned counsel for the petitioners has submitted that petitioner no.1 is the husband of opposite party no.2 whereas



petitioner nos. 2 and 3 are her in-laws. He has contended that earlier opposite party no.2 had instituted Hilsa (Karai-Parsurai) P.S.Case No.175 of 2008 under sections 341, 323, 498-A, 380 read with 34 of the Indian Penal Code as well as 3 and 4 of the Dowry Prohibition Act. However, the said case ended into acquittal after the trial held by the learned Sub Divisional Judicial Magistrate, Hilsa (Nalanda). The judgment of the case was delivered on 19th May, 2010. Petitioner no.1 also filed a matrimonial case seeking a decree of divorce on 19th October, 2010 in the court of Principal Judge, Family Court, Nalanda at Biharsharif vide Matrimonial Case No. 204 of 2010. After institution of the aforesaid matrimonial case, opposite party no.2 instituted the present complaint on 13th December, 2010. He has submitted that the present complaint has been launched with ulterior motive in order to humiliate and harass the petitioners.

Per contra, learned counsel for the complainant has submitted that earlier the police case ended into acquittal on the basis of compromise arrived at between the parties. However, after acquittal, once again the petitioners started subjecting the complainant to cruelty for non-fulfillment of demand of dowry and as such the instant complaint case has been filed. He has also submitted that the complainant has supported her allegation on oath and in course of enquiry conducted under section 202 of the Code of

Criminal Procedure altogether five witnesses were examined, who had supported the case and accordingly the learned Magistrate, finding a prima facie case to be made, summoned the petitioners to face the prosecution.

Learned counsel for the State has also supported the contentions advanced on behalf of the complainant. He has submitted that the order impugned does not suffer from any illegality.

Having heard the parties and perused the record, I find that in the criminal trial held by the learned Sub Divisional Judicial Magistrate, Hilsa (Nalanda), apart from the complainant no other witness was examined. Even the complainant had resiled from the allegations made in the complaint. She had also filed a compromise petition in the court below. Considering all these aspects, the court below ought to have acquitted the accused persons (Petitioners) under section 232 of the Code of Criminal Procedure as there was no evidence that the accused committed the offence. But, the Magistrate concerned erroneously passed judgment of acquittal under section 235 of the Code of Criminal Procedure. Moreover, I find that the allegations made in the present complaint relate to the period subsequent to the judgment of acquittal. The learned Magistrate while passing the judgment of acquittal has also taken into consideration the petition of compromise filed by the parties in the case.

In the present complaint, the opposite party no.2 has alleged that after compromising the aforesaid police case when she was restored in her marital house, she was again subjected to cruelty by the petitioners. Hence, the offence alleged in the present case is quite different from the allegations made in the previous police case for which the petitioners were already tried and acquitted. So far as the present case is concerned, there was material before the Magistrate to summon the accused persons and hence, I find no illegality in the order impugned.

Accordingly, the application is dismissed.

However, the petitioners would be at liberty to raise all the points available to them at the stage of framing of charge.

(Ashwani Kumar Singh, J)

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