

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5223 of 2016

Arising Out of PS.Case No. -619 Year- 2010 Thana -GAYA COMPLAINT CASE District- GAYA

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1. Anil Kumar @ Anil Kumar Sharma, S/o Raj Kishore Sharma
 2. Raj Kishore Sharma @ Rajendra Thakur, S/o Agnu Thakur
 3. Manju Devi, W/o Raj Kishore Sharma All resident of Village-
Mustafapur, P.O.- Pawapuri, P.S.- Giriak, District- Nalanda.

.... Petitioners

Versus

1. The State of Bihar
2. Rupa Devi @ Rupa Kumari W/o Anil Kumar Sharma, D/o Jai Gopal
Thakur, Mohalla- Chhotaki Delha, Gusalkhana Road, P.S.- Delha,
District- Gaya.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ravindra Kumar Sinha, Adv.

For the Opposite Parties : Mr. Veena Kumari Jaiswal (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 01-04-2016

Heard learned counsels for the parties.

Petitioner no.1 being the husband of the complainant and petitioner nos. 2 and 3 being the parents of petitioner no.1 have preferred the present application for quashing the order dated 05.01.2016 passed by learned SDJM, Gaya in Complaint Case No. C-619 of 2010, Tr. No. 855 of 2015 whereby the petitioners' application for discharge under Section 245 Cr. P.C. has been rejected.

The factual matrix of the case is that O.P. No. 2 Rupa Devi alias Rupa Kumari's marriage was solemnized with



petitioner no. 1 Anil Kumar alias Anil Kumar Sharma according to Hindu religious rites and rituals on 11.7.2007 and subsequently they were blessed with a male child on 6.11.2008 at her parent's place since the relationship went sour due to further demand of rupees one lac. The issue was reconciled for a brief period but thereafter the complainant was deserted and was not being maintained by the husband.

On the basis of the S.A. of the complainant and the statement of other enquiry witnesses, processes were directed to be issued after taking cognizance under section 498A IPC and section 4 of Dowry Prohibition Act. The petitioner no. 1 filed Matrimonial Case No. 18 of 2010 for the restitution of conjugal rights wherein the complainant appeared and stated that she is ready to go to the matrimonial house on the next date fixed by the court but on the next date fixed on 23.8.2012 neither the complainant nor her counsel appeared before the court. In the complaint case, at the level of evidence before charge under section 244 Cr.P.C. the complainant stated that she is not ready to live with her husband. The complainant has also filed Maintenance Case No. 86 of 2012 claiming maintenance.

The petitioner filed a discharge application under



section 245 Cr.P.C. before the learned SDJM, Gaya, though the said discharge application is not on record, claiming that no offence is made out and petitioner no. 1 is still ready to keep her with due dignity and honour. The learned SDJM, Gaya rejected the discharge petition of the petitioners vide order dated 5.1.2016 on the ground that four witnesses including the complainant have been examined before charge under section 244 Cr.P.C. and all have supported the prosecution case, hence there is sufficient material on record for framing charge.

It is submitted by learned counsel for the petitioners that the criminal prosecution has been launched maliciously to harass the petitioners. No offence is made out against the petitioners. The petitioner no. 1 has filed matrimonial suit for restitution of conjugal rights and is still ready to keep the complainant as wife with full dignity and honour. The conduct of the complainant in the complaint case as well as in the matrimonial suit suggests that the complainant herself has refused to reside with the petitioner.

Learned counsel for the State submits that the impugned order does not need any interference as the witnesses examined under section 244 Cr.P.C. have supported the

prosecution case.

Considering the submissions of learned counsel for the petitioner and the State, this court is of the view that the accused can be discharge only if, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out and for reaching to this conclusion the real test is that evidence recorded under section 244 Cr.P.C., if goes un rebutted, would not warrant the conviction of the accused. Section 245 Cr.P.C. reads as follows:

“245. When accused shall be discharged.- (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

Hence, in the present case, from the evidence recorded under section 244 Cr.P.C., it cannot be said that no case is made



out. Hence, the impugned order does not warrant any interference. However, in view of the stand of the petitioners that they took all efforts to keep the complainant with due dignity and love and petitioner no. 1 is still ready to keep her as wife with full dignity and honour which suggests that the petitioners are ready to make an effort to reconcile the issue, hence the court should make an effort to reconcile the issue at any stage of proceeding as has been held by the Apex Court in the case of K. Srinivas Rao Versus D.A. Deepa (2013) 5 Supreme Court Cases 226. Paragraph 46 reads as follows:

“46. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow.

46.1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counselors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can

always extend the time-limit.

46.2. The criminal courts dealing with the complaint under Section 498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case.

46.3. All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.”

This Court is of the view that quite often because of misunderstanding the matrimonial dispute of trivial nature and but the small skirmishes suddenly erupt and assume a serious proportion leading to filing of cases and litigating the same for the satisfaction of whims and fancies of the parties. Hence, in the interest of justice, this court feels that the learned court below

should make an endeavor even at this stage to get the issue reconciled. Hope and trust that both the sides shall cooperate in the endeavor of the learned court below.

With the aforementioned observation/direction, the present application stands disposed of.

(Dinesh Kumar Singh, J.)

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