

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16510 of 2014

Arising Out of PS.Case No. -2237 Year- 2010 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

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1. Ravi Shankar Mishra, s/o Jai Narayan Mishra
2. Jai Narayan Mishra, s/o late Raj Kishore Mishra
Both resident of village Sonbarsa, P.S. Shahpur, P.O. Sonbarsa, District Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Babli Devi @ Babli Kumari, d/o Jitendra Kumar Mishra, resident of village
Mohanpur, P.S. Ara Muffasil, District Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. O.P. Upadhyay, Advocate.
For the State : Mr. Ashok Kumar A.P.P.
For the Opposite party No.2: Mr. Dineshwar Mishra, Advocate.
Mr. Surendra Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 29-06-2017

1. The petitioner has challenged the order dated 31.01.2014 by which the learned Sub Divisional Judicial Magistrate, Bhojpur, Ara, has after holding enquiry under Section 202 Cr. P.C., found prima facie case against the petitioners for the offence under Section 498-A of the Indian Penal Code.

2. The main ground for challenge taken by the petitioners is that during pendency of the complaint case, one petition for divorce under Section 13B of the Hindu Marriage Act was filed before the Principal Judge, Family Court, Bhojpur, Ara, signed by both the parties on 2.1.2013 wherein it has been mentioned in paragraph-9 that the opposite party No. 2 will withdraw the complaint



Case No. 2237(C) of 2010 filed by her against the petitioner.

3. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

4. The counsel for the petitioner has submitted that on the basis of divorce petition filed under Section 13B of the Hindu Marriage Act, by the parties, the decree for divorce was granted by order dated 22.10.2013 and the petition for divorce with mutual consent filed by the parties was made part of the decree. It is mentioned in the order dated 22.10.2013 that the wife has received the entire alimony. Learned counsel for the petitioner has further submitted that in spite of making specific statement in paragraph-9 of the compromise petition, the complainant (opposite party No. 2) has not withdrawn the case and cognizance has been taken in that case by the court below vide order dated 31.1.2014.

5. Counsel for the opposite party No. 2 has submitted that merely on the basis of statement made in paragraph-9 of the petition filed under Section 13B of the Hindu Marriage Act, the order of cognizance will not become bad in law.

6. The cognizance order has been passed by the court below after holding proper enquiry and examining the complainant on Solemn Affirmation and statement of witnesses.

7. Heard both parties and perused the impugned order



as well as the contents of paragraph-9 of the petition filed under Section 13B of the Hindu Marriage Act dated 2.8.2013 and also the decree of divorce dated 22.10.2013 passed by the principal Judge, Family Court, Ara, Bhojpur as well as the complaint petition filed by the complainant. It appears that the complaint was filed on 26.10.2010 making allegation of various physical and mental torture committed by the petitioners and another accused persons as named in the aforesaid case. The court below proceeded in that complaint under Section 202 Cr. P.C., and during enquiry, the complainant was examined on Solemn Affirmation and, thereafter, the court below recorded statement of four other witnesses and finally came to the finding that prima facie case is made out against both these petitioners for the offence under Section 498A of the Indian Penal Code.

8. This Court is of the view that enquiry under Section 202 Cr. P.C. in a complaint filed by the Complainant has nothing to do with the compromise entered into between the parties as mentioned in paragraph-9 of the petition filed under Section 13B of the Hindu Marriage Act. The learned Magistrate is only required to see the prima facie case at the time of holding enquiry on the basis of Solemn Affirmation of the Complainant and the statement of other witnesses recorded during enquiry.

9. The learned Magistrate is not required to look into



any other materials except the solemn affirmation of the complainant and statement of the witnesses recorded during enquiry. The court below could not take into consideration the defence of the accused at the time of enquiry.

10. In such circumstances, this Court is of the view that since the decree of divorce has been granted on 22.10.2013 on the basis of petition filed under Section 13B of the Hindu Marriage Act, the impugned order cannot be held to be illegal. The complaint petition was filed by the complainant in the year 2010 prior to the filing of the petition under Section 13B of the Hindu Marriage Act making allegation of committing torture by the petitioner with the complainant. This Court, therefore, does not find any illegality in the impugned order.

11. Accordingly, this Cr. Misc. application stands dismissed.

12. The petitioner is directed to raise all the points as raised in this petition at the time of framing of charge which shall be considered/disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
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