

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22390 of 2014

Arising out of PS.Case No. -442 Year- 2011 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

- =====
1. Md. Akbar Ali S/o Late Muslim
 2. Samsun @ Samsunisha @ Bibi Samsun nisha W/o Md. Akbar Ali Both
Resident of Village Chakbharo, Post Office-Paharpur, Police Station
Bakhtiarpur, District Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Ahmadi Khatoon D/o Md. Mansoor Alam, resident of Village Pahlam,
Police Station Salkhua, District Saharsa.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Syed Masleh-Uddin Ashraf, Advocate
For the State : Mr. S.N. Shukla (APP)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 22-11-2017

The present case has been going on since a long time and the case was also referred to the Mediation Centre of this Court, however, the Mediation Centre has also failed to amicably settle the matter between the parties.

2. Again an opportunity was given to the learned counsels for the petitioners and that of the opposite party no. 2 to settle the matter, however, on account of obstinate behaviour of the petitioners herein, no outcome could be reached, hence this Court has no option but to consider the matter on merits.

3. The short facts of the case are that the opposite party no. 2 had filed Complaint Case No. 442 (C) of 2011 dated 13.04.2011



against the petitioners herein *inter alia* alleging therein that her marriage with petitioner no. 1 was held on 18.10.2010 and the parents of opposite party no. 2 had given gifts, articles, cloths, furniture, T.V., washing machines, utensils, fridge and jewelries worth Rs. Five lakhs to the petitioner no. 1 and his relatives. Apart from gifts, several thousand rupees had been given to the petitioner no. 1 including cash. It is further alleged by the opposite party no. 2 that the matrimonial relation was good for about one month but thereafter the first wife of the petitioner no. 1 i.e. the petitioner no. 2 in the present case, came and immediately then the behaviour of the petitioner no. 1 changed and the petitioners started abusing and beating her as well as harassed her mentally and physically. At the time of marriage the petitioner no. 1 and his family members had impressed upon the family members and parents of opposite party no. 2 that divorce has taken place between the petitioner no. 1 and petitioner no. 2 in the past and they do not have anything to do with each other. However, after the petitioner no. 2 came to the house of petitioner no. 1, upon solemnization of marriage, it transpired that divorce had not taken place in between the petitioner no. 1 and the petitioner no. 2 and his family members had falsely stated that divorce had taken place. The opposite party no. 2, considering the prestige of her family members, continued to tolerate the cruelty being inflicted by the petitioners.



Subsequently, the petitioner no. 1 started demanding A.C. car and Rs. 5 lakhs by way of dowry and upon refusal even tried to kill her. It is alleged that the petitioners did not use to give her food. Ultimately on 07.04.2011 the petitioners snatched the jewelries being worn by the opposite party no. 2 and kicked her out of the house after abusing and assaulting her as well as threatened her that in case she did not bring A.C. car and Rs. 5 lakhs, she would be thrown on the railway track and killed. The opposite party no. 2 is said to have then gone to her parents house and told her parents and villagers about the torture being inflicted by the petitioners herein.

4. On the basis of the aforesaid complaint dated 13.04.2011, the statement of the complainant on solemn affirmation as well as on perusal of the evidence adduced by three witnesses on behalf of the complainant, examined during the course of enquiry, the learned Sub Divisional Judicial Magistrate, Saharsa found out that a prima facie case is made out under section 498A of the Indian Penal Code and section 4 of the Dowry Prohibition Act and sections 3/4 of the Dian Act, against the petitioners herein and by an order dated 22.09.2011 issued summons against the petitioners herein.

5. The aforesaid order dated 22.09.2011 is under challenge before this Court in the present petition.

6. The learned counsel for the petitioners has submitted that



divorce has already taken place in between the opposite party no. 2 and the petitioner no. 1 and the petitioner herein has also repaid the amount of *mehar* as would be apparent from Annexure-5 to the petition which is dated 02.06.2012, hence the aforesaid compliant case dated 13.04.2011 is mala fide and no longer survives for consideration.

7. Per contra, the learned counsel for the opposite party no. 2 has vehemently opposed the present petition and has submitted that a bare perusal of the complaint petition definitely makes out a prima facie case against the petitioners herein, as such the pending complaint case is fit not to be quashed.

8. I have heard the learned counsel for the parties and gone through the records and I find that the allegations made in the complaint petition, even if they are taken on their face value and accepted in their entirety, definitely constitute a prima facie case against the petitioners herein as well as disclose commission of cognizable offence. It is further clear from the record that if Annexure-5 is considered to be of any worth, then also there is no bar to continuance of a criminal case for the allegations so levelled in the present complaint case. It is a trite law that divorce having taken place between the husband and the wife cannot wipe out the consequences of a criminal prosecution, once the criminal prosecution



has been set in motion, inasmuch as admittedly it is not the case of the petitioners that the opposite party no. 2 has resiled from the allegations made by her in the complaint petition. Both the proceedings i.e. the criminal prosecution and the factum of divorce (though does not seem to be very authentic and has to be tested for its worth) are two different situations and either of them will not have any effect on each other. Thus it cannot be said that if divorce has taken place between the husband and the wife, criminal prosecution cannot continue.

9. Last but not the least, I may hasten to add that substantial time of this Court has been wasted by the petitioners by lingering the matter since long and on some occasions seeking adjournments as also assuring the Court regarding settlement but to no avail. This type of mal-practice on the part of the petitioners is required to be deprecated and warrants imposition of costs on them for wasting the time of the Court.

10. Having regard to the facts and circumstances of the case, I find that there are ample materials on record to prima facie make out a case so as to proceed against the petitioners as well as the allegations levelled in the complaint case definitely discloses commission of a cognizable offence, hence, I find that no case has been made out so as to warrant exercise of inherent powers by this Court under Section



482 of the Code of Criminal Procedure, especially in view of the law laid down by the Hon’ble Apex Court in a case reported in **1992 (Suppl.) (1) SCC 335 (State of Haryana vs. Bhajan Lal)**.

10. The petition is dismissed with a cost quantified at Rs. 25,000/- (twenty five thousand) to be paid to the Patna High Court Legal Services Committee, Patna.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	15.11.2017
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