

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38496 of 2014

Arising Out of PS.Case No. -2426 Year- 2009 Thana -SARAN COMPLAINT CASE District-SARAN

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Manoj Kumar Prasad @ Manoj Kumar s/o Late Hari Lal Prasad r/o Village - Hasanpura Naya Tola, p.s. Marhowrah, District - Saran.

.... Petitioner

Versus

1. The State of Bihar.
2. Sunita Devi w/o Manoj Kumar d/o Mishri Lal Prasad r/o Village - Hasanpura Naya Tola, p.s. Marhowrah, District - Saran at present r/o Village - Bajaraha p.s Derni District Saran.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Aditya Prakash Sahay
Mr. Anant Kumar Bhaskar

For the Opposite Parties : Dr. Kumar Binode Baseis
Mr. Ranjan Kumar

For the State : Mr. Mustaque Alam (App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

6 06-10-2017 Heard learned Counsel for the petitioner and the learned for the State as well as the learned Counsel appearing on behalf of O.P. No. 2.

The petitioner seeks quashing of the entire proceeding of Complaint Case No. 2426 of 2009 pending in the court of SDJM Saran art Chapra inclusive of the cognizance order dated 24.5.2010 whereby cognizance has been taken of the offence under Sections 498A, 406, 323 of the IPC as well as Sections 3 and 4 of the Dowry Prohibition Act.

The petitioner submits that the complainant of the present complaint case, who happens to be wife of the



petitioner, earlier to this complaint case had lodged another complaint case bearing Complaint Case No. 1273 of 2009 alleging therein that torture in connection with dowry was being committed by the accused persons since 30.5.2002. The complainant was ousted from the matrimonial home, as per the allegation, on 7.12.2008. The complaint was sent under Section 156(3) Cr.P.C. by the CJM to the police for institution of FIR, accordingly Derni PS Case No. 83 of 20011 was instituted.

Learned Counsel for the petitioner submits that the second complaint was filed on 13.7.2009, while the first complaint was already in existence, suppressing this fact the subsequent second complaint case with same allegations filed. However, the police investigated the matter in the first case and submitted final form on 31.12.2011 finding the same false and the same was accepted by the Court. Learned Counsel further submits that a protest petition too was filed by the complainant and that was also dismissed for non prosecution. Learned Counsel has placed reliance on the two decisions of the Apex Court in support of his contention that subsequent second complaint case relating to the same offence and against the same set of accused persons is not maintainable. Those



cases are the case of T.T.Antory Vs. State of Kerala reported in (2001) 6 SCC 161 and the another one is Anju Choudhary vs. The State of U.P. reported in (2013) 6 SCC 384. Therefore, the learned Counsel summarises his argument by concluding that in law second complaint case is not maintainable with respect to same offence so the entire criminal proceeding in second complaint case is liable to be quashed.

Contrary to this, learned Counsel appearing on behalf of the complainant submits that the earlier complaint ended into compromise but again she was subjected to cruelty.

Having considered the rival submissions and on perusal of the record, this becomes apparent that the present complaint is a second complaint filed by the complainant. The first complaint relating to the same offence was filed on 28.4.2009 though it was registered by the Police in the year 2011 after receiving the complaint from the Court and thereafter the police commenced the investigation and finding the case not true submitted final form on 31.12.2011 which was accepted by the Court. So it is evident that at the time of filing the second complaint on 13.7.2009 the first complaint case was in existence. So the second complaint with respect to the same alleged offence relating to commitment of cruelty on



account of non fulfillment of dowry is not maintainable. The allegation is that the complainant was being tortured right since the date of solemnization of married i.e. on 30.5.2002 and ousted from the matrimonial home on 7.12.2008 and same is the allegation in the present complaint. In the first case the police found the case false so submitted final form.

The Hon'ble Supreme Court in the Case of Anju Choudhary (supra) has elaborated the object of registration of the FIR and also held that there cannot be two FIRs registered for the same offence. The second FIR in respect of the same offence forming part of the same transaction as contained in the first FIR is not permissible. In the case of T. T. Antony (supra) the Apex Court also observed that there can be no second FIR and no fresh investigation on receipt of further subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offence.

So applying the same principle in the context of the present case, the second complaint relating to the same allegation is not maintainable rather it amounts to abuse of the process of the court. So the entire criminal proceeding inclusive of the order of cognizance dated 24.5.2010 in



Complaint Case No. 2426 of 2009 pending in the Court of
SDJM Saran at Chapra is hereby quashed and set aside.

The application stands allowed.

(Arun Kumar, J.)

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