

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41251 of 2013

Arising Out of PS.Case No. -141 Year- 2000 Thana -JAKKANPUR District- PATNA

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1. Mukesh Kumar, son of late Parmanand Singh, resident of Kurji Balupar, P.S. Digha, Distt. - Patna Presently Residing at 4th Floor, OCB Local Main Telephone Exchange, Budh Mark, Patna - 1
 2. Ramendra Prasad, son of late Ramdeo Prasad, resident of Mithapur B Area, P.S. Jakkanpur, Distt. - Patna
 3. Sunita Devi, wife of Ramendra Prasad, resident of Mithapur, B Area, P.S. Jakkanpur, Distt. - Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Nilu Kumari @ Nilu Sinha, daughter of Janardan Prasad Singh, r/o Village - Sherpur, P.S. Mokama, Distt. Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Anitta Kumar Singh, Advocate.
Mrs. Meeta Mahini, Advocate.
For Opposite party No. 2 : Mr. Bimal Kumar, Opposite Party No. 2
For the State : Mr. Veerendra Narayan, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-04-2017

1. The Petitioners seek quashing the order dated 22.3.2007 passed by the learned Chief Judicial Magistrate, Patna, in Jakkanpur P.S. Case No. 141 of 2000 by which he has taken cognizance under Section 498(A) of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act.

2. As per written report the informant was married with petitioner No. 1, Mukesh Kumar, on 29.4.1992 according to Hindu rites and customs. She went to her matrimonial home.



Petitioner No. 1 (husband) and other accused persons started making demand of motorcycle, ornaments and cash Rs.20,000/- which her parents was not able to fulfill. The husband of informant i.e. petitioner No. 1 is posted in BSNL on the post of clerk. He has illicit relationship with one Raj Kumari Ajad. He lives with that lady at Sheikhpura, Patna, but some times he comes to the informant and gives very little amount to the informant for her expenditure. The husband came to the informant on 4.10.2010 and 17.10.2010 and gave threat to kill the informant and her parents in inebriated condition.

3. Heard both sides.

4. It has been submitted on behalf of the petitioners that petitioner No. 1 i.e. the husband has filed a Divorce Case against the wife under Section 13 of the Hindu Marriage Act on 6.7.2000. The instant case under Section 498-A of the Indian Penal Code has been filed by the wife on 20.10.2000 against her husband and other family members after filing of the aforesaid Divorce Suit. It has further been submitted that Divorce Case was allowed by the Additional Principal Judge, Family Court, Patna, by order dated 29.6.2012 on the basis of admission under Order XXII Rule 6 C.P.C.

5. The counsel for the petitioners has relied on a decision of Hon'ble Supreme Court reported in **2009 (1) BBCJ page 398 (Dr. Arvind Barsaul etc. Vrs. State of Madhya Pradesh & Anr.)** and has



prayed that Criminal proceeding against all the petitioners, be quashed. He also relied on a decision of this Hon'ble Court **reported in 2007 (4) PLJR page 271 (Ashok Kumar Chaurasia & Ors. Vs. State of Bihar & Anr)** whereby the proceeding against family members of the husband has been quashed by this Court on the basis of complaint case filed after filing of divorce.

6. The counsel for the opposite party No. 2 and learned A.P.P. have appeared.

7. Counsel for the opposite party No. 2 has submitted that in Divorce Case a judgment was passed by the court below under Order XXII Rule 6 CPC on admission of the wife whereas correct procedure should have been to pass a decree of divorce with mutual consent under Section 13B of the Hindu Marriage Act since a petition was filed under Section 13 of the Hindu Marriage Act by the husband. It has further been submitted that admission of opposite party No. 2 was obtained by petitioner under coercion as mentioned in detail in the complaint petition itself. It has further been submitted that there is no order of payment of one time maintenance to the wife in the decree of divorce passed by the court below. It has further been submitted that the petitioner is not making payment of the maintenance amount in terms of order passed by the court below in Maintenance Case No. 169M of 2012 by order dated 29.8.2015.



8. From the allegation in the written report it appears that there is specific allegation made against the husband i.e. petitioner No. 1 of committing physical and mental torture with the informant. It is also alleged that he is having extra marital relationship with another girl and on account of objection raised by the informant, he committed physical and mental torture with her. The police after investigation submitted charge sheet against all the petitioners for the offence under Sections 498(A) of the Indian Penal Code and 3/4 of Dowry Prohibition Act and on the basis of materials available in the case diary, the learned Magistrate took cognizance against all the accused persons by order dated 22.3.2007 under Section 498(A) of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act.

9. It is admitted case that marriage of the petitioner No. 1 was performed with the informant in the year 1992 and the case under Section 498-A of the Indian Penal Code was filed in the year 2000. The decree of divorce has been granted to the petitioner by the court below on 29.6.2012. As such, there was relationship of husband and wife existing between the informant and the petitioner till grant of decree of divorce in the year 2012. The entire story of torture as stated in the written report is for the period 2000.

10. Therefore, this Court is of the view that merely because divorce case filed by the petitioner No. 1 has been allowed in



the year 2012, he will not be exonerated from criminal acts of committing physical and mental torture with the wife prior to dissolution of the marriage. The judgment on which the counsel for the petitioner has relied upon i.e. **2009 (1) BBCJ page 398 (Dr. Arvind Barsaul Vs. State of Madhya Pradesh)** , clearly speaks that in that case there was divorce with mutual consent between husband and wife under Section 13B of Hindu Marriage Act. The wife has also agreed for quashing of proceeding after grant of divorce.

11. In the instant case the fact is totally different. The divorce has been granted by the learned Additional Principal Judge, Family Court, Patna, under Order XXII Rule 6 CPC. Although, the petition for divorce was filed by the petitioner No. 1 against his wife under Section 13 of the Hindu Marriage Act. There is a specific provision under Section 13B of the Hindu Marriage Act for divorce with mutual consent. But the aforesaid Provisions was not adopted by the court below as will appear from the order dated 29.6.2012 passed in Matrimonial Case No. 145 of 2000. It is mentioned in written report that petitioner used to force the opposite party No. 2 (wife) to write in his favour.

12. Therefore, this Court is of the view that petitioner No. 1 being the husband of the informant cannot be exonerated for the offence which he has committed with his wife as alleged in the



written report prior to the date on which divorce has been granted to him by the court below.

13. So far allegation made against petitioner Nos. 2 and 3 who are Nanad and Nandosi of the informant is concerned, they have no direct advantage or disadvantage with the fulfillment or non-fulfillment of dowry demand as alleged in the written report. Therefore, continuance of criminal proceedings against Petitioner Nos. 2 and 3 will merely harassment to them and will be abuse of process of law.

14. Accordingly, the order of cognizance with regard to petitioner Nos. 2 and 3 passed by the Chief Judicial Magistrate, Patna, in connection with Jakkanpur P.S. Case No. 141 of 2001 including the entire proceedings against them, is hereby quashed.

15. So far allegation against petitioner No. 1 who is husband of the informant is concerned, he has direct responsibility to maintain his wife and there is specific allegation of overt act against him as alleged in the complaint petition. Therefore, this Court is of the view that continuance of criminal proceeding against petitioner No. 1 (husband of the informant) is fully justified even though decree of divorce has been passed in his favour in the year 2012.

16. Accordingly, this Court does not find any illegality in the order of cognizance against the husband i.e. petitioner No. 1.



passed by the learned Chief Judicial Magistrate, Patna, in connection with Jakkanpur P.S. Case No. 141 of 2000.

17. The court below is directed to proceed against petitioner No. 1 in criminal proceeding in accordance with law

18. This Criminal Miscellaneous application is accordingly allowed in part.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	NA
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