

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39045 of 2010

Arising Out of Complaint Case No. -2381 Year- 2006 Thana - District- MUZAFFARPUR

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1. Kapildeo Tiwari S/O Late Sabhanand Tiwari Resident of Village Bhathawa Mode, P.O. & P.S. Kuchaikot, District Gopalganj.

2. Anita Tiwari W/O Gorakh Tiwari

3. Gorakh Tiwari S/o Sri Kapildeo Tiwari

Resident of Village Bhathawa Mode, P.O. & P.S. Kuchaikot, District Gopalganj, at present residing at L-55/B, First Floor, Malviya Nagar, New Delhi.

.... Petitioners

Versus

1. State of Bihar.

2. Smt. Jyoti Tiwari W/O Sri Rajesh Tiwari Resident of Village Bhathawa Mode, P.O. & P.S. Kuchaikot, District Gopalganj, At Present C/O Sri Nagendar Mishra, Mohalla Majhauili Road (Jainagar), P.S. Kazi Mohammadpur, District-Muzaffarpur.

.... Opposite Parties

With

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Criminal Miscellaneous No. 39109 of 2010

Arising Out of Complaint Case No. -2381 Year- 2006 Thana - District- MUZAFFARPUR

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Rajesh Tiwari, Son of Sri Kapildeo Tiwari, resident of village-Bhathawa Mode, P.O. & P.S.-Kuchaikot, District-Gopalganj at present residing at House No.304, Divyajyoti Apartments, No. 1, 7th Cross, Srinivagallu, Bangalore-560047

.... Petitioner

Versus

1. The State of Bihar

2. Smt. Jyoti Tiwari, wife of Sri Rajesh Tiwari, resident of village-Bhathawa Mode, P.O. + P.S.-Kuchaikot, District-Gopalganj at present C/o Sri Narendar Mishra, Mohalla-Majhauili Road (Jaiprabha Nagar), P.S.-Kazi Mohammadpur, District-Muzaffarpur.

.... Opposite Parties



Appearance :

(In Cr.Misc. No.39045 of 2010)

For the Petitioner/s : Mrs. Sushmita Mishra, Advocate

For the Opposite Party no.2 : Mr. Binay Kant Mani Tripathi, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

(In Cr.Misc. No.39109 of 2010)

For the Petitioner/s : Mrs. Sushmita Mishra, Advocate

For the Opposite Party no.2 : Mr. Binay Kant Mani Tripathi, Advocate

For the State : Mr. Uday Chand Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2017

In these two applications filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the common challenge is to the summoning order dated 14.12.2006 passed in Complaint Case No.2381 (C) of 2006 by which the learned Sub Divisional Judicial Magistrate, East Muzaffarpur after finding a prima facie case to be made out under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, summoned the petitioners to face trial.

2. In Cr. Misc. No.39109 of 2010, the petitioner is the husband of the complainant whereas in Cr. Misc. No. 39045 of 2010, the petitioners are the father-in-law, sister-in-law (Jethani) and brother-in-law (Jeth) of the complainant.

3. It is submitted by Mrs. Sushmita Mishra, learned



counsel for the petitioners that during pendency of the instant petitions, the parties have amicably settled their dispute outside the court and a joint compromise petition on behalf of the petitioner Rajesh Tiwari and the complainant (opposite party no.2) Smt. Jyoti Tiwari has been filed in Matrimonial (Divorce) Case No.321 of 2009 in which it has been admitted that she will not proceed with her case filed against the petitioner, which is pending in the court of Sub Divisional Judicial Magistrate (East), Muzaffarpur vide Tr. No.641 of 2016 and Section 4 of the Dowry Prohibition Act arising out of Complaint Case No.2381 of 2006 and the opposite party shall co-operate in earlier disposal of the said case on the basis of compromise. She has submitted that the aforesaid compromise petition has been accepted by the learned Principal Judge, Family Court, Muzaffapur and the matrimonial tie in between the petitioner Rajesh Tiwari and the complainant Jyoti Tiwari has been dissolved by a decree of divorce on the basis of joint compromise petition dated 03.09.2016.

4. Mr. Vinay Kant Mani Tripathi, learned counsel appearing for the opposite party no.2 does not dispute the contentions advanced on behalf of the petitioners. He has conceded that all the dispute between the parties have been resolved amicably and now the complainant is no more interested in pursuing the complaint in



question.

5. I have heard learned counsel for the parties and perused the record.

6. The joint compromise petition on behalf of the petitioner Rajesh Tiwari and the opposite party no.2 Smt. Jyoti Tiwari filed in Matrimonial (Divorce) Case No.321 of 2009 and the judgment passed in the said matrimonial case by the learned Principal Judge, Family Court have also been brought on record by way of filing a supplementary affidavit. The terms of compromise as narrated in the compromise petition filed in Matrimonial (Divorce) Case No.321 of 2009 read as under:-

“(i) That the applicant shall pay Rs.10,00,000/- to the O.P. against her past, present and future maintenance as well as alimony as full and final settlement this Rs.10,00,000/- shall be an additional amount to Rs. 10,00,000/- which has already been paid to the O.P. by the applicant in pursuance of order dated 23.03.2009 passed by the Hon’ble Supreme Court of India in Cr. Appeal No.545 of 2008.

(ii) That the applicant and the O.P. shall not claim anything against each other except the aforesaid amount ever.

(iii) That the applicant and the O.P. shall get their marriage dissolved on the basis of compromise.

(iv) That the O.P. shall not proceed with her case



filed against the applicant and others which is pending in the court of S.D.J.M. (East), Muzaffarpur vide Tr. No.641/16 U/S 498(A) I.P.C. and 4 D.P. Act arising out of C.No.2381/2006 a joint compromise petition shall also be filed in the above described case and the O.P. shall co-operate in earlier disposal of the said case on the basis of compromise”.

7. The findings and order passed in the judgment dated 14.09.2016 in Matrimonial (Divorce) Case No.321 of 2009 by the learned Principal Judge, Family Court read as under:-

“FINDINGS

During proceeding of this case, both parties filed compromise petition on 03.09.2016 duly signed by both the parties. As per terms settled between the parties, the applicant Rajesh Tiwari has already paid Rs.10 lacs in pursuance of order dated 23.03.2009 passed by the Hon’ble Supreme Court of India in Cr. Appeal No.545/2008 and Rs.10 lacs here for her maintenance and Rs.10 lacs to her daughter for her better future. He has also filed Bank draft of Rs.10 lacs in favour of respondent and Rs.10 lacs in favour of daughter. They have also agreed that if decree of divorce is passed in the light of compromise petition, both parties have got no objection on it.

In support of its contention, the applicant Rajesh Tiwari and respondent Jyoti Tiwari have



filed their deposition on affidavit stating the same facts on 05.09.2016 accepting the terms and conditions of the compromise petition.

Thus, on consideration of entire facts and circumstances and the evidences I find that there is no chance of resumption of their conjugal life and there appears no collusion for getting decree of divorce. As both parties have settled their marital dispute, so, all the issues are answered in terms of compromise dated 03.09.2016.

Accordingly, it is, therefore,

ORDERED

that matrimonial tie in between the applicant Rajesh Tiwari and Jyoti Tiwari is hereby dissolved by a decree of divorce with their **mutual agreement** dated 03.09.2016 effective from the date of the decree. Let the Demand Drafts be handed over to the respondent without any delay. Let a copy be also served to both parties without any cost. O/C is directed to prepare decree accordingly.”

8. From the arguments advanced on behalf of the parties and the pleadings made in the supplementary affidavit, it would be evident that the entire controversy had arisen due to domestic and matrimonial discord itself and since the matter has amicably been settled and the complainant is not willing to pursue the matter and the parties have decided to part ways, in the opinion



of this Court, no useful purpose would be served by allowing the complaint to proceed.

9. Consequently, and keeping in mind the ratio laid down by the Supreme Court in its decisions in **B.S. Joshi & Ors. Vs. State of Haryana & Anr. [(2003) 4 SCC 675]**, **Nikhil Merchant Vs. C.B.I. [(2008) 9 SCC 677]**, **Manoj Sharma Vs. State [(2008) 16 SCC 1]**, **Gian Singh vs. State of Punjab [(2010) 15 SCC 118]** and **Jitendra Raghubanshi and others vs. Babita Raghubanshi and Another [(2013) 4 SCC 58]**, the Complaint Case No.2381 (C) of 2006 and all the proceedings emanating therefrom are hereby quashed.

10. The applications stand allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	11.09.2017

