

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53290 of 2013

Arising Out of PS.Case No. -488 Year- 2006 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Sheo Kumar Sharma, son of Late Baidyanath Sharma, resident of Mohalla-Professor's Colony, Kachcha Road, P.S.-Sheikhpura, District-Sheikhpura
2. Smt. Dharmshila Devi, wife of Shri Sheo Kumar Sharma, resident of Mohalla-Professor's Colony, Kachcha Road, P.S.-Sheikhpura, District-Sheikhpura

.... Petitioners

Versus

1. The State of Bihar
2. Arti Kumari, wife of Sudhanshu Kumar D/o Late Chnadramauli, at present resident of Village-Marachi, P.S.-Marachi, District-Patna

.... Opposite Parties

with

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Criminal Miscellaneous No. 32215 of 2014

Arising Out of PS.Case No. -488 Year- 2006 Thana -PATNA COMPLAINT CASE District-
PATNA

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Sudhansu Kumar, S/o Shri Sheo Kumar Sharma, R/o Mohalla - Professor's Colony, Kahca Road, P.S. - Sheikhpura, District - Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar.
2. Arti Kumari, W/o Lalan Singh, D/o - Late Chandramauli Kuer R/o - Village + P.S. - Korma, Block - Ghat Kusuma, District - Sheikhpura.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.53290 of 2013)

For the Petitioner/s : Mr. Rama Kant Sharma, Sr.Advocate
with Mr. Awadhesh Kumar, Advocate

For the State : Mr. Umesh Lal Verma, APP

For the Complainant : Mr. Mritunjay Kumar, Advocate

(In Cr.Misc. No.32215 of 2014)

For the Petitioner/s : Mr. Rame Kant Sharma, Sr.Advocate
with Mr. Awadhesh Kumar, Advocate

For the State : Mr. Aslam Ansari, APP

For the Opposite Party/s : Mr. Mritunjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 02-02-2017



Cr. Misc.No. 53290 of 2013 has been filed by Sheo Kumar Sharma and Dharmshila Devi (father-in-law and mother-in-law) against the orders dated 30.9.2013 and 13.2.2014 passed in Complaint Case No. 488 of 2006 by learned Sub-Divisional Judicial Magistrate, Barh, whereby and whereunder the discharge petition has been rejected and charges under Section 498A IPC and 3/4 of the Dowry Prohibition Act have been framed against the petitioners respectively. Cr.Misc.No. 32215 of 2014 has been filed by Sudhansu Kumar(husband) against the order dated 13.2.2014 passed in Complaint Case No. 488C of 2006 by learned Sub-Divisional Judicial Magistrate, Barh, whereby and whereunder charges have been framed against the petitioner and others under Section 498A IPC and 3/4 of the Dowry Prohibition Act.

As both the applications arise out of same Complaint Case No. 488C of 2006 they have been heard together and are being disposed of by this common judgment.

The prosecution case, in short, is that one Arti Kumari, wife of Shudhanshu Kumar and daughter of Late Chandramauli Kumar, has filed complaint case No. 488 of 2006 in the court of Sub-Divisional Judicial Magistrate, Barh, alleging, inter alia, therein that she was married with petitioner of Cr.Misc.No.32215 of 2014 on 18.5.2003 according to Hindu rituals and thereafter she went to her



sasural where she was spent some time peacefully but thereafter the petitioners and others have demanded Rs.50,000/- as further dowry and due to non-fulfilment of the same they tortured her and finally they ousted her from matrimonial house on 26.10.2006 and thereafter she made her complaint.

On the basis of the Complaint Case No. 488 of 2006 was registered and the court after enquiry, finding a prima facie case under Section 498A IPC and 3/4 of the Dowry Prohibition Act, ordered for issuance of processes against the petitioners of both the cases.

The aforesaid order issuing processes are under challenge before this Court under Section 482 of the Code of Criminal Procedure.

It has been submitted on behalf of the petitioners that earlier they have moved this Court for quashing the order dated 26.3.2007 by which processes were issued against the petitioners in Cr.Misc.No. 26054 of 2007. However, the aforesaid application was permitted to be withdrawn with liberty to raise all these points before the court at the time of framing of charge and thereafter the petitioner in both the cases, have filed petition for discharge before the court below but the court below without going into the merits of the case, has dismissed the petition for discharge by order dated 30.9.2013.

The main contention of learned counsel for the petitioners



is that already there was a divorce petition filed on 12.4.2006 between the petitioner of Cr.Misc.32215 of 2014 and the complainant in a court at Patiala House, New Delhi under Section 13B of the Hindu Marriage Act, 1955 and award of divorce was passed in the Lok Adalat held at Patiala House court and in pursuant to the award of Lok Adalat dated 16.7.2006, a decree of divorce was passed on mutual consent between the parties. In the petition itself it appears that both the parties are living separately since 12.12.2003. However, after considering the aforesaid fact the complaint petition filed by opposite party No.2 before the court on 27.11.2006 as well as at the time of filing of complaint petition under Section 498A IPC, there was no relationship between the petitioner in the second application and opposite party No.2 as wife and husband, as such, the whole complaint case is false and malicious and continuance of proceeding against the petitioners is an abuse of the process of the court. However, without appreciating the aforesaid fact learned Magistrate has dismissed the discharge petition of the petitioners and framed charges against the petitioners, which is also under challenge in both the applications.

Learned counsel for the petitioners in support of his contention has relied upon decisions of the Supreme Court in the case of **Ruchi Agarwal vs. Amit Kumar Agrawal and others** : (2005) 3



SCC 299, in the case of **Preeti Gupta and another vs. State of Jharkhand and another** : (2010) 7 SCC 667 and in the case of **Geeta Mehrotra and another vs. State of Uttar Pradesh and another** : (2012) 10 SCC 741. Learned counsel has further relied upon on some more decision of the Supreme Court in the case of **Anjani Kumar vs. State of Bihar & another** : (2008) 2 SCC (Cri) 582 and in the case of **Harshendra Kumar D. vs. Rebatilata Koley Etc.** : 2011(3) PLJR 100 (SC).

Heard learned APP as well as learned counsel for opposite party no.2.

It has been submitted on behalf of the opposite party No.2 that she has no knowledge about the decree of divorce passed on the basis of mutual consent and, as a matter of fact, she was tortured and harassed at Delhi and her signature was obtained on some plain papers. It has further been submitted that as the complainant and her husband were living at Gurgaon, Patiala house court, New Delhi has no jurisdiction to pass order under Section 13B of the Hindu Marriage Act and hence the proceedings cannot be quashed or the petitioners cannot be discharged on the ground that there is already a divorce between the parties prior to filing of complaint under Section 498A IPC. However, learned counsel for the petitioners could not controvert this fact that in spite of knowledge she has not taken any step for



declaring the decree of divorce null and void, as the same was obtained by committing forgery.

Having heard both sides and after perusal of the record and documents filed by the petitioners, it appears that no doubt this is not the stage to look into the documents filed by the petitioners but it has been held in various decisions of the Supreme Court and of this Court that at the time of considering application under Section 482 Cr.P.C. the court can look into the documents, which are unimpeachable in character and veracity of which cannot be challenged here. In the present case so far as the documents are concerned, i.e., the petitions filed by both the parties and further a decree of divorce passed by Lok Adalat of Patiala House court showing the award of dissolution of marriage on mutual agreement, those documents are public documents and, as such, they are unimpeachable in character as per the decision of the Supreme Court in Harshendra Kumar's case (supra) they can be looked into and from perusal of the documents it appears that prior to lodging of present complaint petition by the complainant there was a decree of divorce between the parties on the basis of mutual consent and joint petition filed by the parties, containing photographs of the parties and, as such, it cannot be said by opposite party No.2 that she had no knowledge about the same. Even if it is accepted for the sake of argument that she



had no knowledge about the same, later on when she came to know about the same, she had not taken any steps for declaring the decree of divorce between the parties as null and void, obtaining on the basis of forgery and till the decree is there, the relationship between the petitioner of second case and the complainant as husband and wife is not there and, as such, filing of complaint petition under Section 498A IPC by the complainant is itself bad in law and continuance of any proceeding on the basis of the complaint petition is clearly an abuse of the process of the court.

In view of the discussions made above, to my opinion, the whole proceeding initiated against the petitioners itself is bad and clear case of gross abuse of the process of the court and, hence, the orders framing charge against the accused persons under Section 498A IPC and 3/4 of the Dowry Prohibition Act are quashed and the whole proceeding pending against the petitioners is hereby quashed.

Accordingly, both the applications are allowed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.02.2017
Transmission Date	10.02.2017

