

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12483 of 2015

Arising Out of PS. Case No.-41 Year-2013 Thana- MAHILA PS District- Gaya

=====

Anil Kumar Son of Awadh Bihari Singh @ Awadh Bihari Ram, Resident of Village - Belaganj Agrawal High School, Belaganj, P.S. - Belaganj, District - Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Punita Devi Wife of Anil Kumar, Resident of Village - Belaganj Agrawal High School, Belaganj, P.S. Belaganj, District Gaya, at present residing at Mohalla Bairagi, P.S. Delha, District - Gaya.

... .. Opposite Party/s

=====

WITH

CRIMINAL MISCELLANEOUS No. 13848 of 2015

Arising Out of PS. Case No.-41 Year-2013 Thana- MAHILA PS District- Gaya

=====

Pawan Kumar @ Pankaj Kumar @ Pankaj Son of Late Yugal Kishore Prasad resident of village - Ariki, P.S. Belaganj, District - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Punita Devi wife of Anil Kumar resident of village - Belaganj Agrawal High School, Belaganj, P.S. Belaganj, District - Gaya, at present residing at Mohalla Bairagi, P.S. Delha, District - Gaya

... .. Opposite Party/s

=====

Appearance :

(In CRIMINAL MISCELLANEOUS No. 12483 of 2015)

For the Petitioner/s : Mr.Durgesh Nandan, Advocate

For the Opposite Party/s : Mr. S.Dayal, APP

(In CRIMINAL MISCELLANEOUS No. 13848 of 2015)

For the Petitioner/s : Mr.Durgesh Nandan, Advocate

For the Opposite Party/s : Mr.S.Dayal, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 02-09-2019



Heard learned counsel for the petitioners and the learned Additional Public Prosecutor for the State. No one appears on behalf of Opposite Party No.2.

2. The petitioners are accused in connection with (Gaya) Mahila P.S. Case No.41 of 2013, corresponding to Tr. No.2938 of 2015.

3. By the impugned order dated 19.01.2015, the learned Sub-Divisional Judicial Magistrate, Gaya, has taken cognizance against the petitioners on police report submitted under Section 173 Cr.P.C. for offences under Section 498A/34, 323/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

4. Opposite Party No.2 has filed counter affidavit in Cr. Misc. No.12483 of 2015 brought by the husband Anil Kumar. However, she has not filed any counter affidavit in Cr. Misc. No.13848 of 2015 filed by Pawan Kumar @ Pankaj Kumar @ Pankaj, the brother-in-law of the husband of Opposite Party No.2.

5. According to FIR, the marriage of Opposite Party No.2 took place with petitioner Anil Kumar in April, 2002. In spite of sufficient gift given by father of the informant as detailed in the FIR, accused Anil Kumar was demanding a



motorcycle and after interference by the relations and family members, the informant was allowed to go to her matrimonial home. In the matrimonial home again demand of motorcycle by the named family members (not petitioner Pankaj Kumar) and the allegation of mental and physical torture, as well is attributed. Only allegation against petitioner Pawan Kumar @ Pankaj Kumar is that he had also accompanied other accused in taking back the informant to her parents house on an auto rickshaw.

6. In the counter affidavit, Opposite Party No.2 asserted the allegation of demand of motorcycle and torture for non-fulfillment of the same specifically against the husband and other family members and she has enclosed a letter addressed by the husband to the parents of the informant wherein the husband has stated that if the motorcycle would not be provided it would result in dire consequences. Two letters dated 06.05.2003 and 21.05.2003 are enclosed at Annexure-B series. In the counter affidavit, she has not alleged anything against petitioner Pawan Kumar. The petitioner Anil Kumar has filed supplementary affidavit stating therein that petitioner is paying Rs.750/- to the wife, Opposite Party No.2, in pursuance of order dated 07.05.2015 passed by this Court. However, the long due



amount was paid on the recent query of the Court.

7. On the basis of the material available on the record, prima facie no offence is disclosed against petitioner Pawan Kumar @ Pankaj Kumar. Hence, criminal prosecution of petitioner Pawan Kumar @ Pankaj is an abuse of the process of the Court, which cannot be allowed to stand. Hence, the impugned order to the extent it affects Pawan Kumar @ Pankaj Kumar, is hereby stands quashed and his application stands allowed.

8. However, there is sufficient material against petitioner Anil Kumar, as discussed above, to proceed against him with the criminal proceeding. Hence, his application for quashing the cognizance order is hereby stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.09.2019
Transmission Date	06.09.2019

