

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27693 of 2017

Arising Out of PS. Case No.-1861 Year-2011 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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Mantoo Kumar, Son of Nathuni Sah, resident of Village- Babhnauli
Dhokraha, P.S. Ramnagar, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bindu Devi, Wife of Mantoo Kumar, Daughter of Gorakh Sah, resident of
Village- Siswa Bahuarwa, P.S.- Shikarpur, District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Umesh Chandra Verma-Advocate
For the O.P.	:	None
For the State	:	Smt. Anita Kumari-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 25-04-2019 In spite of appearance of Opposite Party No.2, none
represents.

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner is the husband of the O.P. No.2 and as has
been alleged at the end of the O.P. No.2, that while she was
staying at her sasural, the husband along with her family
members asked for Rs. Two lacs as well as a motorcycle and in
order to procure the same, she has been subjected to cruelty and
for that, there happens to be detailed description. After filing of
the complaint petition, the learned lower Court proceeded with
an inquiry under Section 202 of the Cr.P.C. and vide order dated



27.09.2012, petitioner along with others has been summoned to face trial for an offence punishable under Section 498A of the I.P.C. and Section 3/4 of the D. P. Act relating to Complaint Case No.1861-C of 2011, the subject matter of instant petition.

It has been submitted at the end of the learned counsel for the petitioner that petitioner had filed petition for divorce before the competent court at Ludhiana (Annexure-3) wherein in spite of notice, the wife failed to appear, whereupon vide order dated 14.01.2012, decree of divorce was passed ex parte. It has also been submitted that opposite party no.2 had filed Maintenance Case before the Family Court, West Champaran at Bettiah bearing Case No.246(M) of 2011, which ended by way of compromise under the theme of one time settlement (Annexure-4) and on the basis thereof, the aforesaid Maintenance Case was dropped. After going through the aforesaid compromise petition, it is evident that O.P. No.2 had acknowledged and accepted the decree of divorce and so, properly appreciated and bound herself with the ex parte finding recorded by the Family Court, Ludhiana. It has further been submitted that instant complaint case happens to be during the same tenure, which now the O.P. No.2/ complainant did not intend to take proper care as, in the background of compromise,



she had already received a lump sum in lieu of maintenance and further, after acknowledging the ex parte divorce decree, she now lost interest with the instant case and that happens to be reason behind non-appearance of the learned counsel irrespective of vakalatnama.

The learned Additional Public Prosecutor submitted that all the relevant Annexures are subject to consideration by the learned lower Court itself where the actual affair could be known in presence of the O.P. No.2.

The offence under Section 498A of the I.P.C. has got some sort of peculiarity, which has been properly identified by the Apex Court times without number in the background of legislative intention and so, whenever permanent settlement has been visualized, the Hon'ble Apex Court had propagated the law to quash the proceeding. The first of judgment on that very score, happens to be in *B. S. Joshi and others vs. State of Haryana and another reported in (2003) 4 SCC 675*, which has been reiterated in *Azhar Hussain vs. the State of Bihar and another reported in 2009(3) P.L.J.R. 186*. Numerous judgments have been passed on this score and the settled principle of law is whenever there happens to be compromise, irrespective of presence of prima facie case, the proceeding has to be quashed.

In the aforesaid facts and circumstances of the case,



the order impugned is set aside. Petition is allowed, but subject
to interest of the petitioner only.

(Aditya Kumar Trivedi, J)

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