

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.246 of 2017

Arising Out of PS. Case No.-28370 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

-
1. Sri Surya Narayan Yadav S/o Late Ramani Yadav
 2. Sunil Kumar S/o Sri Surya Narayan Yadav Both Resident of Village-Shishwa Barhi, P.S.-Phulparas, District-Madhubani

... .. Petitioners

Versus

1. State Of Bihar
2. Kiran Bharti W/o Sunil kumar, D/o Sri Jai Prakash Resident of Village-Sheo Nagar Khemanichak near Food Hospital Bye Pass Road, P.S.-Ram Krishna Nagar, District-Patna

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Raj Kumar, Adv.
Mr. Ratanakar Jha, Adv.
For the Opposite Party/s : Mr. Aditya Nath Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-05-2019

Heard learned counsel for the petitioner and learned counsel for the opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioners for quashing the order dated 15.01.2016 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 28370 (c) of 2014 whereby, finding a prima facie case to be made out under Sections 498-A, 494 and 496 of the Indian Penal Code for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, he has summoned the petitioners to face trial.



3. The petitioner no.2 is the husband and petitioner no.1 is father-in-law of the complainant.

4. It is submitted by the learned counsel for the petitioners that in the complaint only a vague allegation has been made against the petitioners. The inquiry conducted under Section 202 of the Cr.P.C would clearly reveal that no prima facie case is made out at least against petitioner no.1. Even prior to the filing of the present complaint, the complainant had filed another complaint vide Complaint Case No. 2130 of 2013 in the court of Chief Judicial Magistrate, Patna in which after due inquiry only the petitioner no.2 was summoned to face trial. The summoning order was challenged by the complainant in revision. The revisional court vide order dated 03.10.2015 dismissed the revision application holding that no case is made out against petitioner no.1.

5. Referring to the statement of witnesses recorded under Section 202 of the Cr.P.C, learned counsel for the petitioners submitted that the complainant has admitted in the reply to the court question that on the self-same allegation a complaint was earlier filed in which cognizance was not taken against the petitioner no.1. He pleaded that the prosecution of the petitioners in the instant case is an abuse of the process of the court.



6. Per contra, learned counsel appearing for the complainant opposite party no.2 submitted that in the earlier complaint though the petitioner no.2 had approached this Court for quashing of the prosecution, the prayer was rejected vide order dated 15.11.2016 passed in Cr.Misc. No. 10525 of 2016. He further contended that in the earlier complaint since there was no allegation under Sections 494 and 496 of the Indian Penal Code, the second complaint would be maintainable.

7. I have heard learned counsel for the parties and carefully perused the materials on record.

8. The complainant had earlier filed a complaint case vide Complaint Case No. 2130 of 2013 in the court of Chief Judicial Magistrate, Patna wherein she had alleged that her marriage was solemnized in the month of March, 2012 according to Hindu rites and customs. At the time of marriage, her father had spent a lot of money, but her in-laws insisted for demand of Rs.5 lakhs for the purchase of a flat. She had further alleged that the petitioner no.2 developed intimacy with one 'J', who was employed in the same company where he was employed. On 16.06.2013, when she was going with her husband on an auto-rickshaw at Rajendra Nagar Terminal, she was abandoned by her husband after taking her ornaments and cash. Thereafter, she went



to the police station to lodge case, but no case was registered.

Thus, the complaint case was filed in the court.

9. In the earlier complaint, after its institution, it was made over to the Judicial Magistrate 1st Class under Section 192 of the Cr.P.C for inquiry, trial and disposal. In course of inquiry conducted under Section 202 of the Cr.P.C, statement of witnesses were recorded. After perusing the complaint petition, statement of the complainant on solemn affirmation and evidence of inquiry witnesses, learned Magistrate summoned petitioner no.2 finding a prima facie case under Sections 223, 379, 504 and 498-A of the IPC to be made out against him. It would also be pertinent to mention here that in the earlier complaint apart from petitioner no.2, petitioner no.1 Surya Narayan Yadav, Smt. Urmila Devi, Anil Kumar, Ruby Kumari, Abha Devi, Bibha Devi, Priyanka Yadav, a co-villager, her father Ram Pravesh Yadav and her mother were also impleaded as accused. However, they were not summoned to face trial.

10. Being aggrieved by the non-summoning of the other accused persons, the complainant opposite party no.2 preferred a revision application vide Cr.Revision No. 4069 of 2014 against the order dated 06.01.2014 passed by the learned Judicial Magistrate



in Complaint Case No. 2130 of 2013. The revisional court dismissed the said criminal revision application on 03.10.2015.

11. Similarly, being aggrieved by the aforesaid order dated 06.01.2014, the petitioner no.2, who was summoned to face trial, also filed an application under Section 482 of the Cr.P.C before this Court vide Cr.Misc. No. 10525 of 2016, which was dismissed vide order dated 15.11.2016.

12. Subsequently, the complainant filed the present complaint vide Complaint Case No. 28370 of 2014 in the court of Chief Judicial Magistrate, Patna. In the second complaint, the complainant has alleged that her marriage was solemnized with petitioner no. 2 Sunil Kumar on 12.03.2012. At the time of marriage her parents had given an amount of Rs. 5 lakhs cash, golden jewellery amounting to Rs. 3 lakhs and silver jewellery amounting to Rs. 50,000/-. They also gave several other gifts at the time of marriage. They spent a total amount of Rs. 15 lakhs in her marriage. After marriage, she went to her *sasural* situated at Shishwa Barhi Phul Parash where the accused persons started to torture her saying that her parents have not fulfilled their demand and any how she tolerated the entire atrocities committed by the accused persons. After passage of two weeks of marriage, her husband took her to Pune where he was working. Subsequently,



she came back to Patna where she appeared in the fifth semester of B.C.A. examination. Thereafter, her husband again took her to Pune on 15.05.2012. When she was living with her husband at Pune, he relinquished his job and joined in another company at Kolkata and took her to Kolkata on 29.05.2012 where she was living with him very happily and peacefully. She has alleged that at Kolkata her husband developed illicit relation with a co-employee 'J'. Thereafter, he started torturing her. He also made demand of Rs.5 lakhs from her parents for purchasing a flat in Kolkata. When she said that her father is unable to fulfill the demand, he took her to *mai ke* in September 2012. Thereafter, he started to press his demand of Rs. 5 lakhs from her father. A panchayati was convened whereafter under the pressure of the panches, he came to her house. On 15.06.2013, while she was going to her *sasural* with him and reached near Rajendra Nagar Terminal by an auto rickshaw, at the instance of her husband, two persons jumped out from a jeep and took away her suitcase containing costly clothes and ornaments and when she tried to catch hold of them, she was assaulted by her husband. Later on, he also boarded the jeep and fled away with her suitcase. She has further alleged that when she was residing at her *sasural*, all the accused persons always subjected her to torture. They used to pass



threat that if her parents would not fulfill their demand, her husband would marry another lady. Subsequently, the threat turned to be true when he performed second marriage with one 'P' daughter of R. P. Yadav. When she came to know about the second marriage of her husband, she went to her *sasural* on 27.07.2014 and found that the said 'P' was present in her *sasural*.

13. It would further appear from the statement of the complainant made on oath that in reply to the court question she admitted that on the self-same allegation earlier a complaint was filed in which cognizance was taken only against petitioner no. 2 and she has filed the instant case only because the court did not take cognizance against anyone else except her husband.

14. Keeping in mind, the allegations made in the two complaints, when I appreciate the submissions advanced on behalf of the parties, it would be evident that as far as petitioner no. 1 is concerned, save and except vague and omnibus allegation made in the complaint, the complainant has not whispered a word against him in her statement made on oath. On the contrary, she has admitted that she has lodged complaint on the similar allegations earlier before the court and when the court chose not to summon any one else except her husband, she has filed the instant case.



15. Keeping in mind the facts noted above, in my opinion, the prosecution of petitioner no. 1 in the instant complaint is clearly an abuse of the process of the court.

16. As far as petitioner no. 2 is concerned, having examined allegations made in both the complaints, I find that the allegation made in the second complaint is exactly same as in the first complaint. Hence, the prosecution of petitioner no.2 also for the offence under Section 498-A of the IPC would be an abuse of the process of the court. Hence, the order of cognizance, as far as Section 498-A of the IPC is concerned, it is equally bad as against the petitioner no.1. However, in the earlier complaint, there was no allegation of marrying again during the subsistence of earlier marriage as against petitioner no.2. There was also no allegation that the petitioner no.2 with fraudulent intention went through the ceremony of being married knowing that he is not thereby lawfully married. Hence, the cognizance as far as Sections 494 and 496 of the IPC is concerned, cannot be held to be bad. In that regard the summoning order passed by the learned Magistrate against him cannot be held to be bad.

17. In view of the discussions made above, the order dated 15.01.2016 summoning the petitioner no. 1 Surya Narayan Yadav is quashed. The summoning of petitioner no. 2 for facing



trial under Section 498-A of the Indian Penal Code is also quashed as he is already being prosecuted for the said offence in the earlier complaint. As far as, the prosecution of petitioner no. 2 for the offences under Sections 494 and 496 of the Indian Penal Code is concerned, the same shall continue in accordance with law.

18. With the aforesaid observations, the application is allowed in part to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

Pradeep/

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	16.05.2019
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