

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.5 of 2018

Arising Out of PS. Case No.-1026 Year-2015 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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Priya Kumari @ Priya Kumari Devi W/o Ashwani Kant Mishra and D/o
Amindra Pathak Resident of Village - Benipatti, P.S. - Benipatti, District -
Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Ashwani Kant Mishra S/o Late Manikant Mishra
3. Kalpana Mishra W/o Late Manikant Mishra
4. Priyadarshini Mishra W/o Amika Dalal, No. 2 to 4 are residents of village -
Gajahra, P.S. - Ladania, District - Madhubani and at present residing at Flat
No. 303/304, Krimson Tower, Lokhanwala Complex, Kandavali East, P.S.
Samta nagar, Town & District Mumbai - 400101.
5. Satish Chandra Jha S/o Late Sheo Kumar Jha
6. Suman Kumar Jha S/o Late Sheo Kumar Jha
7. Rekha Jha W/o Satish Chandra Jha, No. 5 to 7 are residents of village - Ranti,
P.S. - Rajnagar, District - Madhubani, At present resident of Mohalla -
Bangaladh, Darbhanga, P.S. University, District - Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Subhash Kumar Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 10-01-2019

Heard learned counsel for the petitioner.

This criminal revision petition has been directed against
the order dated 13.09.2017 passed by C.J.M, Madhubani, by
which the learned court has allowed the discharge petition
filed on behalf of accused-opposite parties and has discharged
them.

Petitioner had filed complaint case lodging C.R. No.



1019 of 2015 alleging therein that the marriage between complainant and Opposite Party no. 1 was solemnized in April-2012 according to hindu rites and customs and substantial amount was spent in marriage ceremony and gifts and presents were also given to accused no. 1 who is an engineer. He came to her matrimonial home and spent happy married life for one year but thereafter accused-opposite party no. 2 her Mother-in-Law and accused-opposite party no. 3 her Sister-in-Law, started taunting her for not bringing Car in dowry. Accused-Opposite Party No. 1 took her to Mumbai to his place of posting but there also they tortured her for non fulfillment of demand of Car in dowry and she kept tolerating. In her complaint she has also alleged that accused-opposite party no. 7 who is the maternal sister of accused-opposite party no. 1 is a divorcee and was having illicit relation with her husband and on protest they all abused and assaulted her and even tried to kill her. It has been further alleged that on 05.07.2015 at about 10:00 am she was assaulted and ousted from the house by accused-opposite party no. 3 and she returned to her matrimonial home and thereafter her father and neighbours Laxman Tiwary went to her matrimonial home and on instigation of accused-opposite party nos. 4, 5



and 6, the matter could not be settled and they were abused in her matrimonial house and with such allegation the complaint petition was filed in the court of CJM, Madhubani on 14.07.2015 and the same was transferred to the court of Judicial Magistrate under Section 192(1) of Cr.P.C for enquiry and disposal. The petitioner-complainant was examined on S.A and in support of her complaint petition two enquiry witnesses were also examined and witnesses Pratima Devi and Laxman Tiwary, were examined by the court and on the basis of enquiry and materials available on record the court found *prima facie* case to be made against accused-opposite party no. 1 Ashwini Kant Mishra, accused-opposite party no. 2 Kalpana Mishra, accused-opposite party no. 3 Priyadarshini Mishr, accused-opposite party no. 4 Satish Chandra Jha, accused-opposite party no. 5 Suman Kumar Jha, accused-opposite party no. 6 Rekha Jha, and accused-opposite party no. 7 Lipika Jha and took cognizance of the offence under Sections 379, 323, 341, 498A and 504 of the Indian Penal Code and issued summons for their appearance to face the trial.

From the records, it transpires that accused-opposite party no. 2 Kalpana Mishra, accused-opposite party no. 4



Satish Chandra Jha, accused-opposite party no. 5 Suman Kumar Jha, accused-opposite party no. 6 Rekha Jha and accused-opposite party no.7 Lipika Jha, were granted anticipatory bail by High Court and on their surrender before the court below they were released on bail and High Court had refrained from taking any coercive action against accused-opposite party no. 1 Ashwani Kant Mishra.

Petitioner had filed an application before the High Court for transfer of this case from Madhubani to Patna but the same was dismissed by this Court vide order dated 23.03.2017 in Criminal Miscellaneous No. 13839 of 2017, as contained in Annexure-3. S.L.P filed by the petitioner was also dismissed. However, the Apex Court had observed that petitioner can claim expenses and by order dated 06.05.2016 passed by the court below a proposal was given by accused no. 1 for payment of Rs. 10000/- as maintenance amount and the same was accepted by the complainant-petitioner.

From perusal of the record, it appears that High Court had granted anticipatory bail to accused-opposite party no. 1 and pursuant to said order he surrendered before the Court below on 02.07.2016 and was released on furnishing bail bond.



By order dated 17.09.2016 complainant was directed to produce her evidence for which date was fixed by the court on 28.10.2016 but no evidence was produced by the complainant and the matter was adjourned for 23.12.2016 on which date the complainant was absent and case was adjourned for 31.03.2017 for evidence but since there was strike case was adjourned for 25.05.2017 for evidence and case was again adjourned on 25.05.2017 for evidence and thereafter on 06.07.2017 but no evidence was produced on behalf of the complainant.

A petition was filed on behalf of accused under Section 245 of Cr.P.C for discharging them and the trial court gave last opportunity by order dated 07.09.2017 to produce the evidence on 08.09.2017. However, the complainant remained absent on 08.09.2017 and on 08.09.2017 the court heard the counsel for the complainant as well as counsel for the defence on discharge petition and same was adjourned for 13.09.2017 and after hearing the parties the discharge petition filed by accused-opposite parties was allowed and they were discharged from the liabilities of their bail bonds, against which the petitioner has filed the present petition.

Petitioner has enclosed a complaint filed by her to the



Chairman, Bihar State Bar Council, Patna, alleging misconduct committed by her lawyer stating that he did not inform about the status of the case, as such she was not aware about the date and also that any discharge petition was filed on behalf of accused. The trial court in its impugned order has allowed the discharge petition filed by accused on the ground that even after several opportunities being granted to the complainant to produce the prosecution witnesses no evidence was produced on behalf of the complainant and on some occasions even there was no representation on her behalf and thereafter the discharge petition was also not contested by the complainant as a result of which the discharge petition was allowed by the impugned order.

Petitioner has levelled allegation against her counsel for not keeping her informed about progress of case but she has not assigned any reason as to why she could not produce a single witness in support of her allegations made in complaint case for more than one year and case was adjourned on every date fixed by court as no witness could be produced on behalf of complainant. The complainant herself was a prime witness but has not explained as to why she could not appear before the court as a witness for last more than one year.



After going through the complaint petition and the order sheets as enclosed in this petition, this Court does not find any error or illegality in the order dated 13.09.2017 passed by C.J.M. Madhubani, by allowing the discharge petition of accused-opposite parties passed in complaint case being C.R. No. 1019 of 2015.

Accordingly, the revision petition stands dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

