

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24774 of 2020

In
CRIMINAL MISCELLANEOUS No.16839 of 2020

Arising Out of PS. Case No.-611 Year-2019 Thana- KADAMKUAN District- Patna

ANIRUDH ANAND GUPTA @ ANIRUDH GUPTA, Son of Anand Gupta,
Resident of Village- 203, Legacy Chs, Off, Dada Bhai Road, Near Tehsildar
Office Andheri (West), P.S.- Andheri (West) Mumbai, Maharashtra.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shikha Agrawal, daughter of Sushil Kumar Agrawal, R/o Rajendra Nagar,
Road No. 2, P.S. Kadam Kuan, Patna-800016.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Adv.
	:	Mr.Brisketu Sharan Pandey, Adv.
For the State	:	Mr.Uday Chand Pd., APP
For the informant	:	Mr.Sanjeev Ranjan, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

5 15-01-2021 Heard the parties.

1. The petitioner has filed the present modification petition for the modification of the order dated 20.08.2020 passed in Cr. Misc. No. 16839 of 2020 by this court to the extent that the earlier conditional settlement arrived at entered between the parties regarding payment of 15 lac to be paid to opposite party on the condition of withdrawal of all case pending within the jurisdiction of Bihar, including the one in which the petitioner was seeking bail be modified and be read as “ the parties have arrived at a mutually agreeable settlement of all their dispute upon payment of 15 lacs by the petitioner to the opposite party”.



2. Learned counsel for the petitioner in support of the modification application has submitted that the intention of the petitioner was to settle all the disputes between the parties on payment of Rs.15 lacs and it was not to leave the part of the dispute pending for adjudication regarding maintenance and alimony to be decided by Bandra Family Court as part of the dispute would still remain alive and therefore this Hon'ble Court has misconstrued the submission of the counsel for the petitioner regarding the degree/extent of the consent as a result of which error has kept in the order. According to the counsel for the petitioner, the terms of settlement arrived between the parties are at variance than the terms which were recorded in the order.

3. Learned counsel for the petitioner submits that he has no idea that a different condition would be imposed regarding liberty given to opposite party to seek alimony in the divorce case filed by the petitioner at Bandra Family Court, Mumbai and therefore, to the extent that the order directing for closure or withdrawal of cases in Patna was never offered. Since the order was not dictated in open court, the said discrepancy could not be pointed out. Counsel for the petitioner further submits that the said modification application is being filed so that the order may



be modified to the extent that the settlement amount is read as alimony amount.

4. Lastly the counsel submits that this court has been passing usual orders in similarly matter and in support thereof he has brought on record order dated 11.09.2019 passed in Cr. Misc. No.33295 of 2019 and therefore, this case also requires similar treatment.

5. The learned counsel for the opposite party after the service of notice has entered appearance.

6. Learned counsel for the opposite party submits that the parties have arrived at a settlement regarding closure/withdrawal of all cases filed by opposite party no. 2 pending within the jurisdiction of Bihar and it was made clear that the entitlement of alimony would be subject matter of final decision by the competent family court where the divorce case filed by the husband was pending to which the petitioner has readily agreed and based on such consensus arrived at between the parties and intimated to court after matter was adjourned for three days on the offer of the petitioner to resolve the criminal case arising out of marital dispute by settlement, the final order dated was passed based on admission of fact and therefore, the admission is binding on the petitioner and he cannot be



permitted to resile from his admission.

7. Learned counsel for the opposite party further submits that the husband has filed divorce case at Bandra Civil Court seeking dissolution of marriage and since the petitioner is dominus litus, he never offered to withdraw the case and for which he did not even required leave of the court. The petitioner in his rejoinder has never averred of moving a joint petition for mutual divorce, or stated in court nor in course of negotiation, the petitioner stated regarding moving of joint petition for mutual divorce, which was never ever a part of settlement rather the settlement clearly spelt regarding adjudication of divorce proceeding and decision regarding issue of maintenance/entitlement of final amount of alimony.

8. The counsel for the opposite party no. 2 further submits that the parties have never agreed for moving a joint petition for divorce and the petitioner has never submitted before the court regarding the compromise entered in divorce case filed by him when the order dated 20.08.2020 was passed that the opposite party will jointly move the Bandra Family Court for mutual divorce, which fact is also crystal clear from the tenor of the order. The submission of the counsel for the petitioner that a different condition has been imposed is incorrect as the order



truly and correctly reflects the agreement arrived and reached between the parties. The order was dictated in open court and it was well within the knowledge of the counsel regarding the degree/extent of consent given by him and he could not be permitted to make unfounded and unsubstantiated allegation directing against the court. Learned counsel for opposite party further submits that even a single significant detail may alter the entire aspect in deciding a case and it is inconceivable to contend that the court must matching the colour of one case with the colour of another when the change of facts. Since the parties have never agreed for filing joint petition for mutual divorce, the plea of passing similar order in similar fact situated is not only erroneous but contemptuous.

9. This court after hearing the parties at length and pressing the material available on record and conversant and alive with the fact situation which transpired during the proceeding of court hearing resulting in the passing of order dated 20.08.2020 in Cr. Misc. No. 16839 of 2020 records in unhesitating terms that there is no error in recording the degree/extent of consent given by the parties which resulted in conditional settlement being recorded in order dated 20.08.2020 based on consensus arrived at between the parties. The petitioner after testing partial



relief has become emboldened to question the sanctity of settlement with the view to avoid the settlement which he has voluntarily agreed and if the court would permit such petition it could give license to cantankerous litigant to misuse the process of court. Mr. Mauli, assisted by Mr. Brisketu Sharan Pandey arguing counsel appearing in the modification petition was not appeared at the time of hearing of bail petition but has vociferously contended that this court has misconstrued the submission regarding the degree/extent of consent made by the petitioner as the petitioner would not have made payment of 15 Lacs for conditional settlement and would keep alive the partial adjudication of divorce proceeding, is fit to be summarily rejected as it was the recording of consensus/admission arrived at between the parties which was being recorded by the court and if the parties did not reach such settlement or rather wanted the entitlement of maintenance and divorce to be adjudicated by the competent family court, it is not for the court to sit over the judgment of the parties entering the settlement unless the consideration for reaching agreement is opposed to public policy. Since the agreement entered by the parties arising out of matrimonial dispute to withdraw criminal cases and divorce suit filed by opposite party no. 2 at Patna cannot be said to be



supported by unlawful consideration and each party understood that the one is making the compromise in exchanges or part exchange for the promise of the other not to prosecute or continue prosecution, this could would not venture in the realm of speculation as to whether the parties ought or might not have agreed to such course of conduct which would not have kept alive the divorce case. This court firmly and unmistakably hold that the order dated 20.08.2020 was passed in open court and order of conditional settlement was passed on admission made by the counsel for the petitioner and opposite party no. 2 in court which consensus was arrived at after adjournment of case on 3 consecutive day for the parties to reflect and reached an understanding regarding the terms of settlement and counsel for the petitioner earlier appearing and on record was alive to terms of the conditional settlement and therefore, it is preposterous on his party to contend that the degree/extent of consent was misconstrued.

10. The submission regarding passing of usual order in similar fact situation in Section 498A of the I.P.C. is concerned, it is apt to quote paragraph nos. 11 and 12 of the judgment reported in 2004 (8) SCC 579.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between



conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“ Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which would impede it.”

11. Since there was no settlement regarding moving of joint petition for divorce by mutual consent between the parties, the question of imposing such condition by this court while recording the terms of settlement does not arise and there as



rightly contended by the opposite party no. 2 that colour of one case cannot be imported with the colour of another case when there is difference in fact. Therefore, the averment in the modification petition and the submission advanced regarding the usual order passed in such matter has no leg to stand. The submission is not only scurrilous but polluting the administration of justice with a view to demean the majesty of this court.

12. The court is of the considered view of passing stricture against the counsel for making derogating and scandalous statement in the modification petition and in course of argument which has brought disrepute to the majesty of the court but stop short of passing such stricture being aware that the young counsel who is advocate on record sometimes gets too personal with the brief and passing of adverse remark would be deleterious to his future career.

13. In the premises there is no merit in the modification application which is dismissed.

(Anjani Kumar Sharan, J)

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