

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19883 of 2016

Arising Out of PS. Case No.-4012 Year-2013 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Tilak Rajak S/o Late Rit Lal Rajak
 2. Balkesari Devi, W/o Tilak Rajak
 3. Kailash Rajak s/o Tilak Rajak.
 4. Ramesh Rajak, s/o Tilak Rajak
 5. Babita Devi, D/o Tilak Rajak All Resident of village Baruna Raslpur, P.S Sarairanjan, District Samastipur.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Rinku Devi W/o Rajesh Rajak, Resident of Village Varun Rasalpur, P.S Sarai Ranjan, District Samsatipur, At Present D/o Rajendra Rajak, Resident of Village Manishor, P.S Jandaha, District Vaishali at Hajipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bijay Bhushan Prasad, Advocate
For the Opposite Party/s : Mr. Ganesh Pd. Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 13-09-2023 Heard the parties.

2. This application has been preferred for quashing of the order dated 11.07.2014 passed in Complaint Case No. 4012/13, T.R. no. 3868/14 passed by S.D.J.M., Vaishali at Hajipur whereby cognizance has been taken under section 498 (A) of the IPC.

3. In this case, notice was issued on 28.08.2019 and as per the office report, the same was validly served upon the opposite party no. 2 on 06.11.2019.

4. Mr. Bijay Bhushan Prasad, learned Counsel for the petitioners submits that the petitioners are the father-in-law, mother-in-law, brothers-in-law and the sister-in-law, having no



role to play in the acrimony between the husband and wife and only to implicate them, an exaggerated complain made.

5. The further submission is that the complaint was filed on 28.11.2013 and prior to that the divorce petition was filed on 21.10.2013 and one of the ground was that of adultery.

6. The petitioner has brought on record the judgment of the Court of learned Principal Judge, Family Court, Samastipur in Divorce Case no. 294 of 2013 disposed of on 11.10.2017 in which paragraphs 17 and 18, it has been recorded as follows:

17. After going through the averments made in the petition of the plaintiff as well the written statement filed on behalf of the defendant No.2 as well witnesses examined on behalf of the plaintiff, it is admitted fact that the plaintiff and defendant No.1 are legally wedded husband and wife. It is also admitted fact that out of this wedlock defendant No.1 gave birth of a male child. After going through the evidences, it is evident that the plaintiff used to live at Kolkata in connection with his livelihood and he also used to send some money at his house to meet the expenses. It is further evident that in absence of plaintiff his wife defendant No.1 has developed some



otherwise relationship with defendant No.2 namely Sunny Rajak. It is further evident that plaintiff tried to make physical relationship or co-habitation with his wife she used to avoid from doing so which also creates doubt that without any specific reason why she used to avoid this usual relationship. The plaintiff has specifically stated that when he came from Kolkata without giving prior information, he found his wife in compromise position with defendant No.2. This fact, has also been corroborated by other witnesses who have deposed that in absence of plaintiff the defendant No.1 developed very close relationship with defendant No.2. It has further been deposed that defendant No.1 fled away with defendant No.2 along with her minor child, taking away her belongings. If, the aforesaid fact would not have been true then it was expected that defendant No.2 who is not the family member of the plaintiff, as appeared and also filed his written statement but defendant No.1 being the wife of the plaintiff did not appear and also did not file any written statement or has not rebutted any of the allegation which have been levelled by plaintiff against her in spite of giving ample opportunities for her appearance. This also makes the allegation



whatsoever has been levelled by the plaintiff against the defendant No.1 forcefully. After going through the entire facts, evidences and other circumstances, I find that the plaintiff has been deserted by his wife defendant no.1 and she has deprived the plaintiff from his matrimonial pleasure and is living somewhere else and in spite of warning or making objection she not only amended herself rather, threatened for implication of the plaintiff and his family members in false cases. These facts have certainly caused the plaintiff mental tortured and mental agony. As per the evidences and the averments made in this case, I further find that defendant No.1, who is legally wedded wife of plaintiff has fled away with defendant No.2 and she is living in adultery with him. It is also evident from the evidences that she gave birth of a child from defendant No.2. Hence, under these circumstances, petition for dissolution of marriage filed on behalf of the applicant/plaintiff is hereby stands allowed.

18. Hence, the marriage between applicant/plaintiff Rajesh Rajak son of Sri Tilak Rajak, and O.P/defendant Rinku Devi wife of Rajesh Rajak, D/o Sri Rajendra Rajak, performed on 6.5.2005, is, hereby dissolved by decree of divorce, as per



provision made under Section 13 (1) (i) and 13 (1) (i-b) of H.M Act 1955. Accordingly. I hereby, pass a decree for dissolution of the marriage of the applicant/plaintiff and O.P/defendant No.1. Now, they are no longer wife and husband in the eyes of law. Let, Office is directed to prepare decree of divorce in accordance with law within stipulated time.

7. He submits that the said Rajesh Rajak has already been granted divorce from the lady.

8. He further submits that after the grant of divorce on 11.10.2017, the lady moved for maintenance, was allowed, challenged in Cr. Revision No. 833 of 2018 which was allowed on 30.08.2019 by Patna High Court and this Court feels it proper to incorporate paragraphs 6 and 7.

6. Thus, when the statute/law itself bars grant of maintenance to a wife living in adultery and the opposite party being found to be living in adultery with Sunny Rajak, i.e., in adultery, the maintenance case was required to be dismissed.

7. Accordingly, for reasons aforesaid, the application is allowed. The order dated 09.01.2018 passed by the Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 84 of



2016, is set aside.

9. As stated above, the opposite party no. 2 was noticed, received the said notice and as per the office report, the same has recorded to be validly served but there is no appearance.

10. Taking into account the aforesaid facts, the son of petitioner no. 1, Rajesh Rajak has successfully fought the divorce suit and from the petition, allegation is against him by the lady, these petitioners are related to said Rajesh Rajak, being father-in-law, mother-in-law, brothers-in-law and sister-in-law, no specific role attributed, in the aforesaid background, specially when the complaint has been filed after the filing of the divorce suit, this Court is inclined to extend them relief.

11. In the circumstance, the Complaint Case No. 4012/13, T.R. No. 3868/14 pending before the learned S.D.J.M., Vaishali at Hajipur so far as it relates to the petitioners herein namely, Tilak Rajak, Balkesari Devi, Kailash Rajak, Ramesh Rajak and Babita Devi stand quashed.

12. Accordingly, the petition stands disposed of.

(Rajiv Roy, J)

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