

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48066 of 2015

Arising Out of PS. Case No.-95 Year-2009 Thana- KASIMBAZAR District- Munger

1. Mithilesh Kumar S/o Sri Baleshwar Prasad Yadav
2. Baleshwar Prasad Yadav S/o Late Dwarika Prasad Yadav
3. Abhay Kumar @ Arbind Kumar S/o Sri Baleshwar Prasad Yadav
4. Akhilesh Kumar S/o Sri Baleshwar Prasad Yadav
5. Swadesh Kumar S/o Sri Baleshwar Prasad Yadav
6. Mamta Devi W/o Abhay Kumar @ Arbind Kumar
7. Archana Devi W/o Akhilesh Kumar
8. Kumar Prem Ballabh Singh R/o Suhawan Singh
9. Neelam Devi W/o Prem Ballabh Singh
10. Bibhuti Kumar S/o Prem Ballabh Singh All resident of Beladih, P.S.-
Urliganj, District- Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Awantika Kumari D/o Arun Kumar Yadav resident of Village Kamla Kund,
PS- Ismilepur, District- Bhagalpur at town High School, Principal resident
PS- Kasim Bazar, District- Munger. At present residing at A-306-307, 3rd
Floor, Nehru Vihar, near Timarpur, New Delhi-54.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shashi Shekhar Kumar Prasad, Advocate

For the Opposite Party/s : Mr.Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

5 17-03-2023

Heard the parties.

The petitioners have moved this Court for quashing of
the order dated 12.08.2014 passed by learned Sessions Judge,
Munger in Criminal Revision No.127 of 2014.

As per the prosecution story, the lady Avantika
Kumari alleged that she was married in 2004 with Mithilesh



Kumar but was also always tortured for dowry and fed up with the attitude and left with no remedy, the FIR.

Learned counsel for the petitioners submit that subsequently with the good wishes of the family members and friends, both the husband and wife came to a negotiating table and on 02-03-2015 jointly submitted petition before the learned Principal Judge, Family Court (Central), Tiz Hazari Court, New Delhi in HMA Petition No.271 of 2015 which resulted into decree of divorce on the ground of mutual consent.

Both the joint petition as also the order of the learned Principal Judge, Family Court (Central), Tiz Hazari Court, New Delhi which has been incorporated as Annexure-2 and 3 to the petition is/are incorporated herein in below for brevity.

Annexure-2

“HMA 271/15

02.03, 2015

Joint Statement of Smt. Avantika Kumari, D/o Sh. Arun Kumar Yadav, Rio- A-306-307, 3 Floor, Nehru Vihar, Near Timarpur, New Delhi-54 of aged about 37 years:

..... Petitioner no. 1

On SA

And

Sh Mithilesh Kumar, S/o Sh. B.P.



*Yadav, R/o 46, Gayatri Tapovan, Anand Rao
MLA Layout, Kothunurdinne, J.P. Nagar, 8
Phase, Bangalore-78, Another Address 2619,
36 A Cross, Jayanagar, Bangalore of aged
about 42 years.*

.....Petitioner no. 2

On SA

*We got married on 24.06.2004 at
Munger, Bihar, according to Hindu nites and
ceremonies. 1. petitioner no. 1 have placed
on record photocopy of my Driving License
and Rent agreement as proof of my identity/
residential address Ex. P-1 & Ex. P-2
(OS&R). 1, petitioner no 2 have placed on
record photocopy of my Driving License,
Rent agreement as proof of my identity/
residential address Ex. P-3 and Ex. P.4
(OS&R) respectively.*

*After marriage, we both resided
together as husband and wife resided
together at Bangalore, Karnataka. The
marriage was consummated and no child
was born out of this wedlock. We have been
living separately since 16.05.2009 and have
not been able to live together since then. We
have not cohabited with each other ever
since 16.05.2009 the day of our separation
and even after passing of order dated
14.07.2014 in the first motion petition
bearing HMA NO 1823/14. There is no*



possibility of our living together again as husband and wife, on account of temperamental differences. Efforts for reconciliation and resolution of differences between us made by us, family members and well wishers, even after first motion petition, have failed.

We have amicably resolved, all our disputes including disputes with respect to istridhan, dowry articles, permanent alimony and maintenance (past, present & future) etc. etc.

1. petitioner no.1 is not claiming any amount from petitioner no.2 (petitioner no.1 has been explained about the consequences of not claiming any amount from petitioner no.2 in vernacular/Hindi by court as well as her counsel but she remained firm on her stand).

Both of us undertake not to file any case/ complaint against each other/respective family members at any point of time in future with regard to this marriage and shall withdraw all the previous complaints / cases against each other and all their respective family members, if not already withdrawn.

We both undertake to abide by the terms and conditions as mentioned in the present petition Ex.PX contents of which we



have understood in Hindi/vernacular With this, no claims/disputes of any kind whatsoever are left between both of us against each other.

The above settlement has not been obtained by any threat, force, fraud or pressure, undue influence, coercion etc.

Present petition has been signed and verified by both of us and same is supported by our affidavits. Contents of the petition are correct. We pray that our petition may be allowed.”

Annexure-3

*In The Court of Learned Principal Judge,
Family Court (Central), TIS Hazari, Delhi
In re:- H.M.a. Petition No. of 2015*

Memo of Parties

SMT. AWANTIKA KUMARI

*D/o Shri Arun Kumar Yadav,
R/o A-306-307, 3rd Floor,
Nehru Nagar, Near Timarpur,
New Delhi 110054*

...Petitioner No.1

Versus

SH. MITHILESH KUMAR

*S/o Shri B.P. Yadav
R/o 46, Gayatri Tapovan,
Anand Rao MLA Layour,
Kothunurdinee, J.P. Nagar,
8th Phasa, Bangalore-78*



*Another Address: 2619, 36th A Cross,
Jayanagar, Bangalore-69*

...Petitioner No.2

DELHI

DATED 28.02.2015

THROUGH

Advocate for Petitioner No.1

THROUGH

Advocate for Petitioner No.2

*Fresh case received U/s 13-B(2) of HMA. It
be checked and registered by the Ahlmad, if
found correct in all respects.*

HMA 271/15

Avantika Kumari And Mithilesh Kumar

02.03.2015

*Present: Sh. Pulkit Aggarwal, Ld. Counsel
for petitioner no. 1 alongwith petitioner no.
1 in person.*

*Sh. S.K. Tyagi, Ld. Counsel for petitioner no.
2 alongwith petitioner no. 2 in person.*

*Both the parties have stated that they
could not resolve their temperamental
differences during the intervening period
and have decided to part ways Reunion
efforts made again but of no avail. Joint
statement of both the petitioners recorded.
Parties have been heard. In view of the joint
statement of the parties and submissions
made before me petition U/s 13- B (2) is
allowed. Vide separate judgment marriage of*



the parties is dissolved by a decree of divorce on the ground of mutual consent.

Decree be drawn accordingly. Copy of decree be given to both the petitioners free of cost. File be consigned to record room.

*Principal Judge Family Court,
Central District, THC,
Delhi/02.03.2015*

Learned counsel for the petitioners submit that a bare perusal of Annexure-2 would show that it was also agreed by the parties that they will be withdrawing the previous complaints/cases against each other and all their respective family members, if not already withdrawn.

As the same was not done by the opposite party no.2, Avantika Kumari, the present petition was preferred by the petitioners in which on 25.04.2016, a bench of this Court (Hon'ble Mr. Justice Ashwani Kumar Singh, as his lordship then was) while issuing notices upon the opposite party no.2, interim protection was given to the petitioners herein.

As per the office report dated 11.04.2017, the opposite party no.2 herself received the registered A/D notice on 18-02-2017.

However, there has been no attendance so far as the opposite party no.2 is concerned when the matter has been taken



up.

In view of the facts that has been narrated above, including the further fact that by mutual consent, a divorce has been effected pursuant to the joint petition preferred by the parties including opposite party no.2 on 02-03-2015, the continuance of the present proceeding which was stayed in 2016 itself would be an abuse of process of law.

Accordingly, the order dated 12.08.2014 passed by learned Sessions Judge, Munger in Criminal Revision No.127 of 2014 relating to Kasim Bazar P.S. Case No.95 of 2009 stands quashed.

The petition preferred under Section 482 of the Cr.P.C. is allowed.

(Rajiv Roy, J)

Prakash Narayan /-

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