

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.513 of 2012

-
-
1. BRAHMDEO PATHAK S/O Late Ramrup Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
 2. Basanti Devi W/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
 3. Rajeev Kumar Pathak S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
 4. Sudhanshu Kumar Pathak S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.
 5. Kumar Vivekanand S/O Sri Brahamdeo Pathak Resident Of Village- Imamganj, P.O. And P.S.- Imamganj, District- Gaya.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Pratima Kumari D/O Sri Shamanand Mishra Resident Of Village- Gareria, Post- Raniganj, P.S.- Imamganj, District- Gaya.
3. The Senior Superintendent of Police, Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s : None
For the Opposite Party/s : Mr.Ajay Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

11 13-02-2023 None appears for the petitioners. Mr. Jharkhandi
Upadhyay, learned APP appears for the State.

This petition has been filed for quashing the order dated 19.02.2011 passed by the learned S.D .J.M., Sherghati, Gaya taking cognizance in Complaint Case No. 278 of 2010 for the offences under Sections 498-A of the Indian Penal Code.

On 13.01.2012, the following order was passed:-

“Heard Mr. Manoj Kumar, learned counsel appearing on behalf of the petitioners and learned counsel appearing on behalf of the State.



The petitioners are aggrieved by the order dated 19.02.2011 passed by the learned Sub-Divisional Judicial Magistrate, Sherghati, District-Gaya in Complaint Case No. 278 of 2010, Tr. No. 2583 of 2011, whereby the learned Magistrate has been pleased to take cognizance of the offence punishable under Section 498A of the Indian Penal Code against the petitioner who are the husband and the other members of the family.

Learned counsel for the petitioners, with reference to an application filed on 6.5.2008 under Section 9 of the Hindu Marriage Act, submits that initially an attempt was made by the petitioner for restoration of matrimonial harmony by filing the aforesaid application but the complainant-opposite party no. 2 did not respond to the same and thus the petitioner no. 3 having no other option filed an appropriate application before the Principal Judge, Family Court, Gaya, giving rise to Matrimonial Title Suit No. 99 of 2010 under Section 13 of the Hindu Marriage Act, 1955 seeking divorce from the complainant-opposite party no. 2. He submits that the aforesaid application having been filed on 1.5.2010 i.e. two years after filing of the petition under Section 9 of the Hindu Marriage Act, the present complaint has been filed by the complainant-opposite party no. 2 one month thereafter on 1.6.2010. He further submits that the allegation set out in the complaint petition are omnibus and general in nature and is a manifestation of the divorce case filed on behalf of the petitioner no. 3.

Issue notice to the opposite party no. 2 for which requisites under ordinary process as well as registered cover be filed within one week, failing which this application shall stand dismissed without further reference to the Bench.

Put up after service of notice.

In the meantime, further proceedings in Complaint Case No. 278 of 2010, Tr. No. 2583 of 2011 pending in the court of Sub-Divisional Judicial Magistrate, Sherghati, District-Gaya shall remain stayed.”

Thereafter, the matter was referred for Mediation to Patna High Court Mediation Centre and the mediation failed.

On 08.05.2019, this Court had directed the Superintendent of Police, Gaya to get the version of the opposite party No. 2 as she was not appearing. The opposite party No. 2 appeared on 18.06.2019 and the following order was passed:-

“Learned counsel for the petitioners and learned APP for the State along with opposite party no. 2 are present.



2. Initially, the opposite party no. 2, who is the wife of petitioner no. 3 submitted that she was ready to go and live in the matrimonial home with the petitioners. However, she also informed the Court that probably she would not be able to live in the matrimonial home as the petitioner no.3 has again married and has also a child from the wedlock. The Court finds such stand to be justified. A woman cannot be expected to go and live in a house where she is treated as a second woman or a concubine, moreso when the opposite party no. 2 is admittedly the first wife of the petitioner no. 3 and he has also not obtained any decree either for dissolution of marriage or divorce from the competent Court.

3. At this juncture, when the Court called upon learned counsel for the petitioners to inform as to whether petitioner no. 3 had remarried, learned counsel submitted that he is not confirmed of the position. The Court is surprised at such stand. A counsel representing a party cannot take a stand that he is unaware of the facts which are in the personal knowledge of his client, especially when the Court calls upon him to inform the Court with regard to the correct factual position.

4. The Court in view of the fact that the opposite party no. 2 had stated that she is helpless in the matter and also that earlier the counsel she had engaged never got in touch with her and neither returned her file though before the Court, the Court requested the Member Secretary, Bihar Legal Services Authority to be present in Court so as to guide and help her in providing a counsel to conduct the case on her behalf.

5. At this juncture, learned counsel for the petitioners submitted that they are ready for all options including one time settlement. The opposite party no. 2 submitted that she may be given one opportunity to try and come up with a specific proposal and as of now, she may not require any legal aid.

6. On the next date, both on behalf of the petitioners as well as by the opposite party no. 2, details would be spelt out with regard to the terms and conditions on which they want the matter to settled once and for all. As the parties have agreed at least to negotiate, the Court deems it appropriate that the matter be sent for Mediation at the first instance.

7. Accordingly, the matter is referred to the Coordinator, Mediation Centre, Gaya, who shall ensure that



an experienced Mediator is allotted the brief. The parties shall appear before the Mediator on 8th July, 2019 before the Coordinator, Mediation Centre, Gaya in the Civil Court at 11.30 A.M. Both the petitioner no. 3 as well as the opposite party no. 2 shall be present before the Coordinator on 8th July, 2019, as indicated above. The Coordinator after allotting the brief to a Mediator shall also ensure that the exercise is completed within one month and a report submitted to this Court latest by 16th August, 2019.

8. The matter be listed on 22nd August, 2019, retaining its position.

9. In the meantime, there shall be stay of further proceeding relating to Complaint Case No. 278 of 2010 (Tr.No.2583 of 2011), pending before the Court below at Sherghati.”

Thereafter, the matter was referred to the Gaya District Court Mediation Centre, a report came that the mediation failed.

From the aforesaid facts, it is clear that the petitioner No. 3 (Rajeev Kumar Pathak), during the pendency of complaint case and the case before this Court has re-married and is having a child.

In these circumstances, this application for quashing on behalf of petitioner No. 3 (Rajeev Kumar Pathak) is quashed.

So far as petitioners No. 1, 2, 4 and 5 are concerned, they are father-in-law, mother-in-law and the brothers-in-law of the opposite party No. 2 and there is general and omnibus allegation against them.

Considering the law laid down by the Supreme Court in the case of ***Preeti Gupta and another Vs State of Jharkhand and another*** reported in (2010) 7 SCC 667, the present



application for quashing on behalf of petitioners No. 1, 2, 4 and 5 is allowed.

Accordingly, the impugned order dated 19.02.2011 passed in Complaint Case No. 278/2011/Tr No. 2583/2011 by the S.D.J.M., Sherghati, Gaya, with regard to petitioner No. 1 (Brahamdeo Pathak), petitioner No. 2 (Basanti Devi), petitioner No. 4 (Sudhanshu Kumar Pathak) and petitioner No. 5 (Kumar Vivekanand) is hereby quashed.

In view of the above, the quashing application is partly allowed.

(Sandeep Kumar, J)

Saif/-Harsh/-

U			
---	--	--	--

