

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27034 of 2015

Arising Out of PS. Case No.-294 Year-2012 Thana- DEHRI TOWN District- Rohtas

1. Sheo Pujan Rai @ Shiv Pujan Raj @ Shiv Pujan Singh, Son of Late Yugal Kishore Roy
2. Nirbhay Raj @ Nirbhay Raj Son of Sri Shiv Pujan Roy
3. Puja Kumari Daughter of Shiv Pujan Roy Petitioners No. 1 to 3 are residents of Village - New Dilliyan, Ward No. 20, Police Station - Dehri Nagar, District - Rohtas at Sasaram Bihar.
4. Mamta Singh @ Gudiya @ Manta Devi Wife of Sri Pravin Kumar Singh
5. Pravin Kumar Singh @ Pravin Kumar Son of Sri Ajay Kumar Singh Petitioners Nos. 4 and 5 are residents of Village - Odar, Police Station - Kudra, District - Kaimur at Bhabhua Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Neelam Kumari @ Neelam Devi @ Punni Punam Wife of Abhay Raj @ Pintu Resident of Village - New Dilliyan, Dihri, P.O. and P.S. - Dehri, District - Rohtas at Sasaram Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Mritunjay Kumar, Advocate
For the Opposite Party/s :	Mr.Jitendra Kumar Singh, APP
For the O.P. No.2 :	Mr. Sanjay Kumar, Advocate
	Mr. Pramendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 15-03-2023 Heard learned counsel for the petitioners, the State as also the learned counsel for the informant.

The petitioners have moved this Court for quashing of the order taking cognizance dated 25.08.2014 passed by learned Sub-Divisional Judicial Magistrate, Dehri-On-Sone in Dehri Nagar P.S. Case No.294 of 2012 under Section 498(A), 34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act.



As per the prosecution story, the lady Nilam Devi @ Punni (Punam) alleged that she was married to Abhay Raj but was always tortured for dowry and on 27-02-2012 she was ousted from the house after assaulting her.

The further allegation is that day-to-day expenditure was not given to her by the husband and/or the family members although the bride family had provided Rupees ten lacs in cash as also gold ornaments/car. Accordingly, the FIR.

Learned counsel for the petitioners straightaway took this Court to Annexure-2 to the petition which is an order of the learned Principal Judge, Family Court, Patna in Matrimonial Case No.700 of 2009 filed by the informant's husband Abhay Raj.

It is important to incorporate the relevant portion of the order dated 06.08.2011:

“7. PW1 is the father of the petitioner. He has supported the factum of marriage between the petitioner and the opposite party on 25.4.2008 as per Hindu rites and customs but after marriage the behaviour of the opposite party with the petitioner and other members of his family



was never remained good and she was behaving in abnormally with them. He has further deposed that his son was posted at Bhagalpur in Tata AIG. The opposite party also accompanied him to Bhagaipur but she remained with the petitioner only for four-five days and thereafter she filed away to her marke and thereafter she did not go to Bhagalpur as she does not want to live with the petitioner. The claim of his son is genuine. PW2 is the petitioner himself. He has fully supported his case as pleaded in the main petition for divorce on the factum of his marriage with the opposite party as also about the cruel attitude of the opposite party. He has further deposed about the several instances of cruel behaviour of the opposite party as pleaded in the main petition and has deposed that on the very first night she has behaved very abnormally with him due to which he had to sleep alone outside room and the marriage was not



consummated till date, and he has suffered much mental as also physical torture. He has further deposed that the opposite party left her matrimonial home and deserted the petitioner after quarrelling with him on 14.2.09 and thereafter she did not return to him despite best efforts taken by him .PW3 Is the brother-in-law of the petitioner and from perusal of his evidence it appears that he has fully supported the case and evidence of the petitioner on the factum of solemnization of marriage between the two and further about the cruel and abnormal behaviour of the opposite party with the petitioner and the other members of his family. He has further deposed that the opposite party left her matrimonial home after quarrelling with the petitioner and thereafter she did not return to the petitioner despite best efforts taken by the petitioner .The opposite party does not want to live with the petitioner.



8. *None of the above witnesses were cross examined by the opposite party as they have been examined on ex parte basis, as such, their evidence remains intact. From the case of the petitioner It appears that the petitioner has brought this application for divorce basically on the ground of cruelty and I find that all the Pws have stated consistently that due to cruel and abnormal behaviour of the opposite party the petitioner has suffered mental as also physical torture at the hand of the opposite party. All the PWS have also corroborated the case of the petitioner that out of her own choice the opposite party left the company of the petitioner after quarrelling with him on 14.2.09 and thereafter she did not joint the company of the petitioner despite the efforts taken by the petitioner and against this there is nothing on record to disbelieve the statement of the PWs and such act of the opposite party has certainly caused mental*



as also physical torture to the petitioner beyond preponderance of probability.

9. From the entire discussions modo above, I find and hold that the petitioner has succeeded in establishing his claim for divorce against the opposite party on the ground of cruelty and he is entitled for dissolution of marriage by decree of divorce on the ground of cruelty.

13. It is, therefore,

Ordered

that the matrimonial case be and the same is hereby decreed ex parte. The marriage tie between the petitioner Abhay Raj and the opposite party Neelam Kumari solemnized on 25.4.08 is hereby dissolved by a decree of divorce.

Let decree of divorce be prepared accordingly.”

Learned counsel for the petitioners submit that when a decree of divorce happened on 06-08-2011, the relationship between the couple came to an end, the FIR dated 21.06.2012



has no meaning but to harass the petitioners/family members.

Learned counsel for the petitioners further provided a copy of the order dated 20.02.2023 by a coordinate bench of this Court in Cr. Misc. No.28617 of 2015 filed by the husband Abhay Raj @ Abahy Raj @ Pintu Singh.

A perusal of the same shows that taking into account the order of the learned Principal Judge, Family Court, Patna the coordinate bench allowed the petition of the husband and quashed the cognizance order. The relevant portion of the order is incorporated herein below:

“The short argument advanced by learned counsel for the petitioner is that he had got a divorce on 6th of August, 2011 in Matrimonial Case No. 700 of 2009.

The order passed by the Principal Judge, Family Court, Patna and the present F.I.R. has been filed as a counter blast to the divorce order on 21.06.2012 making false allegations. It is an admitted position that the petitioner is not staying with the opposite party No. 2 since 2009 and the allegations levelled against the petitioners are mala fide



only to wreck vengeance upon the petitioner and his family members. Moreover, in the F.I.R., the informant says that she was ousted from the house on 27.02.2012 whereas the divorce decree has been passed in the year 2011.

In these circumstances, the prosecution of the petitioner is nothing, but an abuse of the process of the Court.

In view of the above, the present application is allowed.

Accordingly, the quashing order taking cognizance dated 25.08.2014 passed by the learned Sub-divisional Judicial Magistrate, Dehri-on-Sone in G.R. No. 237 of 2012/T.R. 1606 of 2014 arising out of Dehri Nagar Police Station Case No. 294 of 2012 dated 21.06.2012 registered under Sections 498(A), 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act is hereby quashed.”

Learned counsel for the informant although try to



oppose the petition, he acknowledge the developments that occurred resulting into decree of divorce in August, 2011 whereafter the present FIR in 2012 and lastly the quashing of the cognizance order of the husband, as stated above.

Taking into account the aforesaid fact that when the decree of divorce took place on 26.08.2011, there has been no challenge to the said order, as stated by the learned counsel for the petitioner and not opposed by the learned counsel for the informant, the lodging of the FIR in 2012 is nothing but an abuse of the process of law.

Further, when the husband of the informant has already been granted relief, as stated above, it is important to extend the said relief to his family members too which includes the father-in-law, the brothers of the husband as also the 'Nanad' of the lady.

In the aforesaid circumstance, order taking cognizance dated 25.08.2014 passed by the learned Sub-divisional Judicial Magistrate, Dehri-on-Sone in G.R. No. 237 of 2012/T.R. 1606 of 2014 arising out of Dehri Nagar Police Station Case No. 294 of 2012 dated 21.06.2012 registered under Sections 498(A), 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act is hereby quashed.



The Cr. Misc. No.27034 of 2015 is allowed.

(Rajiv Roy, J)

Prakash Narayan /-

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