

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1221 of 2017

Arising Out of PS. Case No.-579 Year-2016 Thana- Muzaffarpur Town District- Muzaffarpur

Rakesh Kumar @ Pappu Son of Sri Dilip Rai @ Dilip Kumar Rai Resident of
Village- Rampur Dayal, P.S. Piar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Purnima Kumari Daughter of Kaushal Kishore Singh at Present resident of
Tarajivar, P.S. Hathauri, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate
		Ms. Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr. Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 21-02-2024 From the office report dated 03.01.2024 it appears

that notice of the instant proceeding was duly served to opposite
party no.2-Purnima Kumari. In spite of serving notice, the
opposite party no.2 failed and neglected to appear before this
Court to contest the instant revision.

2. The instant revision is directed against an order
dated 08.09.2017 passed by the learned Judicial Magistrate,
Muzaffarpur in Town P.S. Case No.579 of 2016 corresponding
to G.R. No.3528 of 2016 by which the learned Chief Judicial
Magistrate took cognizance of offence under Section 498A, 406,
420, 313 of the Indian Penal Code.

3. Petitioner is the husband of the opposite party no.2/



informant of Town P.S. Case No.579 of 2016, he has been made an accused in the aforesaid case.

4. Indisputably marriage of the petitioner was solemnized with the opposite party no.2 according to Hindu rites and ceremonies sometime in the year 2011. After marriage, unfortunately relations between the parties was not cordial subsequently, in the year 2013 the petitioner filed a suit for divorce being Matrimonial (Divorce) Case No.254 of 2013 against the opposite party no.2. The said application for divorce was converted to an application for mutual divorce under Section 13(B) of the Hindu Marriage Act. Both the parties filed their affidavits before the Trial Court and on the basis of their sworn affidavits under Order-XVIII Rule 14 of the C.P.C., the Court passed a decree for mutual divorce on 06.01.2015. At the time of passing the decree for mutual divorce, the first party/ petitioner agreed to pay a sum of Rs.2,50,000/- as permanent alimony to the opposite party no.2. The said amount was paid by way of bank transfers. Subsequently, on 26.08.2016 the petitioner lodged a written complaint to the local police station alleging inter-alia that she was subjected to cruelty by the petitioner, her consent for divorce was obtained by practicing fraud and she could not understand the purport of filing affidavit



in the Civil Court. Moreover, the petitioner allegedly took away the amount of permanent alimony which was paid to the opposite party no.2 at the time of mutual divorce.

5. In the complaint before the police the opposite party no.2 admits that she is suffering from mental disorder and taking advantage of such mental disorder, her husband took some signatures on some papers and filed a suit for mutual divorce and obtained a decree by practicing fraud.

6. The opposite party no.2 did not file any suit against the petitioner for cancellation of the decree for mutual divorce on the ground that the said decree was obtained by practicing fraud upon her. If a decree for mutual divorce is obtained by practicing fraud by one party, obtaining such decree does not amount to cruelty within the meaning of Section 498A of I.P.C. Moreover, the learned Magistrate failed to appreciate that the alleged incident took place in the year 2015 and complaint before the police was lodged on 19.07.2016 i.e. after a lapse of one and half years.

7. On perusal of the documents filed by the petitioner, I do not find even prima-facie ingredients of offence under Section 498A of the I.P.C., therefore, I have no other alternative but to hold that cognizance taken by the learned Magistrate vide



order dated 08.09.2017 under Section 498A, 406, 420, 313 of the Indian Penal Code is bad in law and liable to be quashed.

8. Accordingly, the instant revision is allowed. The impugned order dated 08.09.2017 is quashed and set aside.

(Bibek Chaudhuri, J)

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