

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1266 of 2019

Arising Out of PS. Case No.-175 Year-2016 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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VIKASH KUMAR Son of Late Vijendra Sharma Resident of Village - Kure,
P.S.- Ghoshi and Distt.- Jehanabad, Presently residing at Mohalla
Nizamuddinpur, Post office Jehanabad, P.S.- Jehanabad and Distt.- Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dimple Kumari D/o Shri Arun Kumar Resident of Village - Posanda, P.S.-
Hilsa and Distt.- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Avinash Chandra
For the Respondent/s : Mr.Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 22-01-2024 1. Complaint Case No. 175 (C) of 2016 was filed by

the complainant/Opposite Party No. 2 in the Court of the

learned Sub-Divisional Judicial Magistrate, Hilsa, at Nalanda,

on the basis of which, the learned Magistrate took cognizance of

the offence against the accused under Section 498A of the IPC

and Section 4 of the Dowry Prohibition Act.

2. The accused has been claimed to be the husband of

the complainant.

3. Since the case was instituted on complaint and

triable under warrant procedure, the complainant was asked to

produce her witnesses. On behalf of the complainant/Opposite

Party No. 2, beside herself, one Arun Kumar, father of the



complainant; one Mina Devi, mother of the complainant; one Mona Kumari, sister of the complainant; and Niraj Kumar, sister's husband of the complainant, were examined.

4. The accused filed an application under Section 245 of the Cr.P.C. on 21st of August, 2018, praying for discharging him on the ground that all the witnesses are near relatives of the complainant. The complainant has failed to examine any independent witness to prove her marriage. No marriage was solemnized between the complainant and the petitioner/accused.

5. On the contrary, the marriage of the complainant was solemnized on 28th of April, 2019 with one Manoranjan Sharma. The Mukhiya of Gram Panchayat, Nauba, Jehanbad, has issued a certificate, declaring the complainant's marriage with the said Manoranjan Sharma. Therefore, the complainant is not the legally married wife of the accused/petitioner.

6. The learned Sub-Divisional Judicial Magistrate, Hilsa, rejected the application under Section 245 of the Cr.P.C. At the time of hearing of the petitioner under Section 245 of the Cr.P.C., the complainant filed a rejoinder affidavit stating, *inter alia*, that in the wedlock between the complainant and the petitioner, a girl child was born and the complainant offered DNA profile test of the said girl child to prove that the accused



is the biological father of the girl child of the complainant and her marriage was solemnized with the accused.

7. It is contended by the learned Advocate for the petitioner before this Court that all the witnesses on behalf of the complainant are her near relatives. The complainant failed to examine any independent witness to prove her marriage with the accused. No person was examined. Not a single person outside her family came forward to prove marriage. On the contrary, it appears from the document filed on behalf of the accused that the marriage of the complainant was solemnized with one Manoranjan Sharma in the year 2015.

8. Having heard learned Advocate for the petitioner, this Court likes to record that the Complaint Case no. 175(C) of 2015 is at the stage of evidence before charge in order to prove the marriage of a particular person. The family member and nearby relatives of the complainant were examined. The parents and other near relatives are the best witnesses to say as to whether marriage of a person was solemnized with another or not.

9. In the instant case, it is found from the evidence and petition on record that the complainant has claimed that her marriage to the petitioner was solemnized on 30th of April,



2015 with one Vikash Kumar. In the wedlock between the petitioner and the Opposite Party, the petitioner gave birth to a girl child. The complainant submitted herself for DNA profile test of her child.

10. Considering all such matters, the learned Trial Judge rejected the petitioner's application under Section 245 of the Cr.P.C. Section 245 of the Cr.P.C. runs thus:-

245. When accused shall be discharged.—

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

11. A plain reading of the provision states that in accordance with Sub-Section (1) of Section 245, an accused may be discharged if the learned Magistrate, on examination of evidence before charge and for reasons to be recorded, finds that no case against the accused has been made out that, if unrebutted, would warrant his conviction. Sub-Section (2) of Section 245 is not relevant at this stage because the said provision speaks about discharge at any later point of time by



the learned Magistrate for any reason recorded in his order.

12. In the instant case, I have already mentioned that the evidence of the witnesses cannot be discarded only because they are the near relatives of the accused. If the evidence of the witnesses is not rebutted by way of cross-examination, it will warrant the conviction of the accused.

13. Secondly, the learned Advocate for the petitioner has placed much reliance on a certificate issued by a Mukhiya of local Garm Panchayat stating, *inter alia*, that the marriage of the complainant was solemnized with one Manoranjan Sharma in the year 2019.

14. It is needless to say that if that document is relied upon by the accused at this stage, it will only prove the second marriage of the complainant, which is null and void during the subsistence of the first marriage with the petitioner.

15. It is submitted by the learned Advocate for the petitioner that the complainant is not taking steps in the Trial Court since 2019 and remains absent.

16. Secondly, the complainant was not examined before charge under Section 244 of Cr.P.C..

17. Be that as it may, the evidence on record does not



inspire this Court to apply Section 245 of the Cr.P.C.

18. Accordingly, the instant revision is dismissed.

19. However, considering that Complaint Case No. 175 (C) of 2016 has been pending for the last 8 years, the learned Sub-Divisional Judicial Magistrate is directed to dispose of the Complaint Case at the earliest, preferably within 3 months from the date of communication of this order.

(Bibek Chaudhuri, J)

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