

(2009) 02 PAT CK 0155

In the Patna High Court

Case No : Criminal Miscellaneous No. 18102 of 2007

Binod Yadav

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 323, 34, 364A, 379

Citation : (2009) 2 PLJR 837

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ram Suresh Roy, Sanjay Kumar Jha and Anant Kr. Bhashkar, for the Appellant; Mayanand Jha for the State and None for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The petitioner, one of the arrayed accused of Complaint Case No. CR. 1523 of 2002, through this application, has prayed for the quashing of the entire criminal proceeding arising therefrom. The complainant, one Punam Devi, the erstwhile wife of the petitioner, impleaded herein as O.P. No. 2, filed the aforesaid complaint case on 28.11.2002 inter alia stating that her marriage with the petitioner was solemnized in the month of Baisakh 1996 whereat her father notwithstanding his meager financial resources spent Rs. 50,000/- in the reception of the barat party and at the time of bidai presented her husband with gifts worth Rs. 50,000/- and gave her various items of clothes and jewellery worth Rs. 1,00,000/-. The initial week following her entry into the marital home was spent cordially and in bliss but thereafter the accused persons told her to bring a further amount of Rs. 50,000/- in cash from her father which she did not oblige as her father had taken loan to cover the expenses of marriage and they were still outstanding. Notwithstanding the reasons assigned, the accused kept pestering the complainant to carry out their command and on her refusal she was abused and assaulted and on occasions her food and water would also be

stopped. The complainant is said to have conveyed her tales of woe and torture to her father who alongwith witnesses came over to reason with the accused but they stood by their demand for money. It is said that when the complainant's husband left for Mumbai she was not permitted to talk to him over the telephone in the house and the demand for money was reiterated. It is alleged that when on the occasion of Kartik Purnima the complainant wanted to go to her parental home and went to collect the articles presented to her by her father, the accused persons snatched the same and accused No. 5 catching hold of her hair ousted her from the matrimonial home and warned her not to return unless she brought Rs. 50,000/- with her. At her parental home she again narrated her woes and efforts by her father and witnesses to reason with the accused proved useless. It is said that on 16.11.2002 when her father requested for the Mumbai address of the husband of the complainant, the accused are alleged to have demanded that 10 kathas of land be given in the name of the husband whereafter the complainant would be permitted to live in her matrimonial home and also meet her husband. The complainant contemplated committing suicide but prestige of the family stood in the way.

2. It is submitted on behalf of the petitioner that the complainant has not levelled any allegation against the petitioner and as a matter of fact in her statement on S.A. she had stated that the husband had been meeting all her requirements from Mumbai. Three other witnesses on her behalf were also examined at the enquiry whereafter cognizance under Sections 498A, 323, 379 I.P.C, was taken. Subsequently, on 10.6.2004 a compromise petition (Annexure-3) was filed stating that the complainant was not willing to proceed with the case against any of the accused. In the light of the compromise, the complainant and her father deposed on oath on 12.8.2004 before the court that they were not eager to proceed with the case and that the compromise had been entered into voluntarily. It is further submitted that notwithstanding the compromise with all the accused, by order dated 24.8.2004 the trial of petitioner herein was bifurcated from the remaining others as he had not appeared and all the five other accused were acquitted by judgment of even date. The petitioner was eventually declared an absconder and a permanent warrant having been issued against him the record was deposited in the record room.

3. It has further been submitted on behalf of the petitioner that when he arrived back home he came to know that his father had filed a complaint case being CR. No. 1535 of 2002 against the complainant, her parents and another under Sections 147, 323, 504, 364A/34 I.P.C. which had resulted in Babubarhi P.S. Case No. 47 of 2003. Subsequently, on the misunderstanding being cleared that case too was compromised. It is also submitted that on 17.1.2005 Punam Devi solemnized her marriage with the Ganesh Yadav in support whereof the certificate dated 22.2.2006 granted by the Mukhiya has been appended as Annexure 7. It was also submitted that on 25.1.2005 Punam Devi filed another petition before the court reiterating her desire not to peruse the litigation. On the premise of the complainant not willing to persue the matter and having

contacted a second marriage, it was submitted that the entire criminal proceeding against the petitioner be quashed.

4. Admittedly the petitioner has been declared an absconder and the record has been deposited in the record room. The record cannot be called from the record room unless the petitioner appears to surrender in court in pursuance of the permanent warrant issued against him. It is also a fact that the compromise cannot be recorded in absentia of the accused against whom a permanent warrant has been issued.

5. In the circumstances I am unable to agree with the submissions advanced by the learned counsel for the petitioner and quash the criminal proceedings against the petitioner. He is directed to surrender in the court below and seek his remedy. In the result there is no merit in this application which is dismissed.