
(1999) 10 PAT CK 0069

In the Patna High Court

Case No : Criminal Miscellaneous No. 7306 of 1999 (R)

Binoy Kumar Mukherjee and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 386, 406, 498A

Citation : (2000) 1 PLJR 558

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this application the petitioner has prayed for quashing the entire criminal proceeding which has been instituted against the petitioner for an offence under Sections 498A, 307, 386, 323 and 406 IPC in connection with Katras (Anger Pathra) P.S. Case No. 284/96 corresponding to G.R. Case No. 3095/96 now pending in the court of Judicial Magistrate, Dhanbad. The prosecution case as alleged in the written report lodged by the opposite party no. 2 is that 14/15 years ago the marriage between the opposite party no. 2 and the petitioner was solemnised and the in laws of the opposite party no. 2, since after marriage, used to torture her mentally and physically for the sake of dowry. It is alleged that the opposite party no. 2 remained with her husband continuously for 7 years at her matrimonial home inspite of mental torture and thereafter the husband of the opposite party no. 2 was transferred at area No. XII, Junkudar Colliery where the husband and other in laws, who used to visit, subjected her with cruelty for the sake of dowry and for which several times there was Panchayati and in the Panchayati it was decided that they will not commit such thing in future but inspite of the same her husband and other inlaws used to maltreat her for the sake of dowry. It is further alleged that in the year 1983 a son was born and thereafter the husband of the opposite party no. 2 was transferred to Salanpur Colliery where she was threatened by her husband for

divorce. It is further alleged that at Salanpur she was beaten by her husband and inlaws who used to visit there and seeing no alternative she started living with her parents' house at Durgapur and during the same the son of the opposite party no. 2 became adult and she had burden of cost of the education of her son. It is further alleged that during the said period the petitioner filed a divorce suit in the court and thereafter the said case was withdrawn and her husband used to send Rs. 1000/- per month through money order for the maintenance of the opposite party no. 2 including the cost of education for the son and as per directions of the court after two years she went to her matrimonial home where her inlaws assaulted the opposite party no. 2 and derived out from the house. It is further alleged that the opposite party no. 2 again started living with her parents where the petitioner husband used to send Rs. 1000/- per month and some time Rs. 500/- per month. However, subsequently the petitioner started sending Rs. 1800/- per month. Petitioner's further case is that after filing of the criminal case by the opposite party no. 2, he filed a matrimonial suit for dissolution of the marriage being Title (M) Suit No. 349/95. The petitioner thereafter moved for anticipatory bail which was allowed till completion of the investigation. It is stated that in the matrimonial suit a compromise was entered into by and between the husband and the opposite party no. 2, in terms whereof the petitioner-husband had to pay a substantial amount to the opposite party no. 2. The petitioner alleged that in terms of the said compromise the petitioner paid the entire amount and the parties settled their dispute once for all.

2. Mr. Banerjee, learned counsel appearing for the petitioner, firstly submitted that the allegation made in the complaint lodged by the opposite party no. 2 does not make out a prima facie case and, therefore, the entire criminal proceeding is liable to be quashed. Learned counsel drawn my attention to Annexure 2, which is a copy of the petition filed by the opposite party no. 2 in the court below stating, inter alia, that she has received full and final payment from the husband as per terms of compromise and, therefore, she has no grievance against the husband and other accused persons. On the said petition she further gave undertaking to assist in compromise the case before the court. Mr. Banerjee also drawn my attention to Annexure 4, which is a copy of compromise petition filed by the petitioner-husband and the opposite party no. 2. From perusal of the said petition, it appears that the opposite party no. 2 received a sum of Rs. 3.00 lakhs by bank draft in full and final settlement and she had prayed to the court below that she does not want to proceed any further with the litigation.

3. Mr. R. Mukhopadhyay, learned counsel for the opposite party no. 2-wife, submitted that his client, opposite party no. 2, in terms of compromise, has received the entire payment from the petitioner-husband and she has filed a petition stating inter alia, that she does not want to proceed with the preliminary case.

4. From the facts stated hereinabove, it is evident that a criminal case was

instituted by the opposite party no. 2 only after the petitioner-husband filed the matrimonial suit in the court below for dissolution of the marriage. In the FIR she has admitted that out of the wed lock a son was born and even during the period when there was some dispute and differences the petitioner-husband used to send Rs. 1000/- per month to the opposite party no. 2. She has further admitted in the FIR that the petitioner husband after some time started sending Rs. 1800/- per month for the maintenance and for education of the son. In my opinion, if the allegation made in the FIR is correct then there could not have been any occasion for the husband always to send money to his wife during the period when she resides with her parents.

5. Having regard to the facts and circumstances of the case and having regard to the compromise entered into between the parties, whereby the opposite party no. 2 has been paid the substantial amount by the petitioner-husband even after filing of the matrimonial suit for dissolution of the marriage, the allegation made by the opposite party no. 2 in the FIR does not make out a strong prima facie case for continuance of the prosecution against the petitioner. I am, therefore, of the opinion that in the facts and circumstances of the case and the subsequent development narrated hereinabove, continuance of criminal proceeding will amount to abuse of the process of the court. For the reason aforesaid, this application is allowed and the entire criminal proceeding in connection with Katras (Anger Pathra) R.S. Case No. 284/96 corresponding to G.R. Case No. 3095/96 pending in the court of Judicial Magistrate, Dhanbad is set aside.