

(2015) 12 PAT CK 0030

In the Patna High Court

Case No : Criminal Miscellaneous No. 13532 of 2015

Kapildeva Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Hindu Marriage Act, 1955 — Section 13(b)

Citation : (2015) 12 PAT CK 0030

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Pawan Kumar Chaurasia, Advocate, for the Appellant; Narendra Kumar Singh, APP, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J.—Heard Mr. Pawan Kumar Chaurasiya, learned counsel for the petitioners, Mr. Narendra Kumar Singh, learned Additional Public Prosecutor for the State and Mr. Awadhesh Kumar Singh, learned counsel for the Opposite Party No. 2.

2. The present application under section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") has been filed for quashing the order dated 22.08.2014 passed by the learned Sub-divisional Judicial Magistrate Hajipur, Vaishali in Complaint Case No. C-1 2091/14 whereby finding a prima facie case to be made out against the petitioners, they have been summoned to face trial.

3. The prosecution case is based on a complaint filed by the Opposite Party No. 2 alleging therein that she was married to petitioner No. 1 on 22.04.2002. Though sufficient gifts including ornaments were given to the husband and in-laws at the time of marriage, but they demanded Rs. 1 lakh in cash and a car and due to the non-fulfilment of the said demand, she was being subjected to cruelty by the accused persons. After 15 days of the marriage, she came to her Maika and after a lot of request, she was again taken to her matrimonial home. However, this

time her ornaments were snatched away by the petitioner No. 1 and were given by him to his Bhabhi Sudha Devi (petitioner-3). The complainant has further alleged that the petitioner No. 1 was having intimate relationship with petitioner No. 3 and when she made complaint in this regard, she was badly beaten by the petitioner No. 1 and was kicked out of her marital home along with her infant child. The complainant disclosed her sufferings to her parents and, thereafter, efforts were made to resolve the issue through negotiation. It has been further alleged that all efforts to resolve the issue went in vain and the accused persons threatened the father of the complainant that if the demand would not be fulfilled, the complainant would not be accommodated in her marital home.

4. The complainant was examined on solemn affirmation and, on her behalf, some witnesses were also examined during inquiry under section 202 Cr. P.C. After holding the inquiry, the learned Magistrate summoned the petitioners vide impugned order dated 22.08.2014.

5. While hearing the parties, keeping in mind the nature of dispute, this Court vide order dated 21.05.2015, referred the matter to the Mediation Centre of the Court. Accordingly, the learned Mediator proceeded with mediation proceeding. The learned Mediator has submitted his report dated 23.09.2015, in which he has contended that the dispute between the parties has been resolved and the parties have mutually agreed to settle their differences. The terms and conditions for settlement of the dispute have also been taken note of which has duly been signed by the petitioner No. 1 and the complainant and their respective advocates. They read as under:--

"An agreement made on 22.09.2015 at the Patna High Court Mediation Centre, between.

Kapildeva Prasad, S/o. Bajrang Prasad, resident of Nandi Bari, Golpahari Jamsedpur (Tata), Jharkhand.

------(First party)

And

Anamika, D/o Jitendra Prasad Chaudhary, resident of Village-Jethui, P.S.-Industrial area Hajipur, District-Vaishali

------(Second party)

That the parties have mutually agreed on following terms and conditions for settlement of their disputes:--

1. That the petitioner has agreed to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) towards one time settlement amount as full and final settlement of all her claims for maintenance in the past, present and future. Against the said settlement amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) the petitioner has already paid Rs. 5,00,000/- (Rupees Five Lakhs) through two Demand Drafts which has already been received by the opposite party No. 2.

2. That in addition to payment of Rs. 10,00,000/- (Rupees Ten Lakhs only) the petitioner also agrees to relinquish his right, title and interest over the land measuring 1200 square feet situated at Mohalla-Kumhrar, P.S.-Sultanganj, Present P.S.-Agamkuan, District Patna, which stands jointly in the name of the petitioner and the opposite party No. 2/wife namely Anamika. The description of the land which is being relinquished by the petitioner namely Kapildeva Prasad in favour of opposite party No. 2 namely Anamika is given below.

The above said land has been purchased vide Registered deed No. 2228 of 2005 dated 09.06.2005, register No. 1, Zild No. 92, Page No. 317-336, registered at Sub Registry office, Patna City.

3. That the petitioner also agreed that the opposite party No. 2 namely Anamika may mutate the land in her sole name by filing mutation case before appropriate authority and the petitioner shall have no objection over mutation of name of the opposite party No. 2 namely Anamika.

4. That the relinquishment of right, title and interest by the petitioner in favour of opposite party No. 2 over the land stated above will become effective from the date of grant of decree of divorce by the learned Principal Judge, Family Court, Vaishali at Hajipur.

5. That the opposite party No. 2 shall not have any claims in future against the petitioner/husband before any court of law. The said amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) and the relinquishment of right, title and interest over the land, (described above), by the petitioner in favour of opposite party No. 2, includes all her claims in past, present and future in respect of alimony/or marriage gifts and/or ornaments or articles of any nature and or personal belonging's and/or expenses incurred during marriage and/or other occasions by her and or her parents and/or her relatives and/or her well wishers or otherwise and/or any demand whatsoever.

6. That neither party shall have any claim of whatsoever nature on each other regarding marriage gifts and personal belongings including ornaments and either party shall not file any case before any court of law regarding respective claims.

7. That the parties have no claim against each other in any manner and shall not have any future claims against each other.

8. That the petitioner shall not make any claim in any point of time regarding the land as detailed above, and which has already been relinquished by the petitioner in favour of the opposite party No. 2 namely Anamika.

9. That both parties shall withdraw their respective cases, which have been instituted by them in the court below. The details of the cases to be withdrawn is given below:--

(a) Maintenance case No. 144 of 2014 filed by the opposite party No. 2 against the petitioner which is pending in the court of Principal Judge, Family Court,

Vaishali at Hajipur.

(b) Matrimonial suit No. 262/14, 162/15 filed by the petitioner namely Kapildeva Prasad against the opposite party No. 2, which is pending in the court of Principal Judge, Family Court, Vaishali at Hajipur.

(c) Complaint Case No. C 1 2091/14 filed by the opposite party No. 2 against the petitioner and his family members, which is pending in the court of S.D.J.M., Vaishali at Hajipur.

That there is no other case pending between the parties save and except the above referred three cases.

10. That the parties shall file a joint petition for grant of decree of divorce under section 13(b) of the Hindu Marriage Act, before the Principal Judge, Family Court, Vaishali at Hajipur on 8th of October, 2015.

11. The petitioner also agrees that rest amount of Rs. 5,00,000/- (Rupees Five Lakhs) shall be paid to the opposite party No. 2 after filing of joint petition for grant of decree of divorce and before passing of the decree for divorce by the learned Principal Judge. Family Court, Vaishali at Hajipur. That the aforesaid contents of the agreement have been read over and explained in Hindi, which have fully been understood and accepted by the parties.

Hence, in the above terms and conditions a settlement has been arrived at between the parties and both have signed in presence of their respective learned counsel, who have also put their signature on this agreement paper.

Hence, in for mentioned terms the present dispute finally resolved and mediation succeeds.

6. Learned counsel for the petitioners has contended that in terms of the memorandum of agreement in mediation proceeding, the petitioner No. 1 has already paid Rs. 5,00,000/- to the complainant through demand draft and the parties have also filed a joint compromise petition before this Court. He has contended that petitioner No. 1 is the husband of the complainant, petitioner No. 2 is elder brother of the petitioner No. 1 and petitioner No. 3 is the wife of petitioner No. 2.

7. Mr. Awadhesh Kumar Singh, learned counsel for the complainant has accepted the factum of compromise between the parties. He has contended that in view of the compromise arrived at between the parties, the complainant does not want to proceed with the Complaint Case No. C-2 2091/14.

8. In view of the submissions made at the Bar, in my opinion, no useful purpose will be served by allowing the complaint to continue.

9. In the matters of B.S. Joshi and Others Vs. State of Haryana and Another, , Gian Singh Vs. State of Punjab and Another, and Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and Another, , the Hon"ble Supreme Court has

clearly held that even if the offences are non-compoundable and if they relate to matrimonial dispute and the court is satisfied that the parties have settled the same and without any pressure, the Court would not hesitate in exercising the powers of quashing of FIR, complaint or the subsequent criminal proceedings.

10. Keeping into mind the facts of the present case and law laid down by the Supreme Court in the aforesaid cases, this Court is of the view that allowing the proceeding of the complaint case to continue further may lead to insurmountable harassment, agony and pain to the parties.

11. In that view of the matter, the entire proceedings of Complaint Case No. C1 2091/2014 including the impugned order dated 22.08.2014 passed by the learned Sub-divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No. C 1 2091/2014 is hereby quashed.

12. Accordingly, the application is allowed.