
(2010) 03 PAT CK 0137
In the Patna High Court

Kaushalya Devi and Others

APPELLANT

Vs

The State of Bihar, Khusboo Kedia and Praween Kumar
Surekha

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2011) 6 RCR(Criminal) 2444

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard learned Counsel for the parties.

2. Cr. Misc. No. 39855 of 2009 has been filed for quashing the order taking cognizance, dated 28.10.2009 passed by the Subdivisional Judicial Magistrate. Dalsingsarai in Complaint Case No. 481/2004 whereas Cr. Misc. No. 49505/2008 has been filed for quashing the order, dated 8.9.2008 passed by the Additional Sessions Judge, FTC II, Saniastipur in Cr. Revision No. 187/2005/24/2007,

3. Initially cognizance was taken only against the husband Anjani Kumar Kedia and Ajay Kumar, the father-in-law. The complainant went in revision and the revisional court directed the Subdivisional Judicial Magistrate to reconsider the case and pass a fresh order. Accordingly, the Subdivisional Judicial magistrate has taken cognizance against all the family members, eight in numbers, who are petitioners in Cr. Misc. No. 39855/2009 by order, dated 28.10.2009 for offences under Sections 323, 498A, 406 and 504 of the Penal Code and Sections 3/4 of the Dowry Prohibition Act. The petitioners of these two applications have challenged the orders of cognizance as well as the order passed in the criminal revision.

4. The facts are that the complainant was married with Anjani Kumar and she alleges that after the marriage they put a demand of Rs. 5 lakhs and that she was treated badly on nonfulfillment of the demand. Finally it is said that the husband on the pretext that her mother was unwell, took the complainant to Dalsingsarai and abandoned her at the railway station on 20.12.2004. The

complaint was filed on 30.12.2004.

5. The marriage took place on 7.2.2004. Obviously for reasons which have not been disclosed by either party, it appears that the two could not live together and the husband thereafter filed a matrimonial case seeking divorce on the basis of torture on 13.10.2004. After the divorce case was filed and notice was issued, the complaint petition was instituted. The complainant on receipt of the notice appeared in this case and filed a petition in which she has stated "notwithstanding the fact that respondent do not admit the allegation of the petition, the respondent submits that the reliefs sought for by the petitioner be granted in his favour and the prayer of the petitioner be allowed."

6. I may mention here that in the plaint of Matrimonial Case No. 69/2004 it has been mentioned that the complainant, namely, Khushboo left her matrimonial home on 20.5.2004 and took with her all her belongings without informing the husband or the family members. It appears that the date on which Khushboo left her matrimonial home clashes in both the case, and this aspect may be certified by the fact that the divorce petition was filed on 13.10.2004 indicated that at that time Khushboo was not living with her husband. The date on which Khushboo alleges that she was left at her home is 20.12.2004 which apparently appears to be falsified by the aforesaid fact and, therefore the allegation that she was deserted or that her property was retained and she was forced to leave her matrimonial home appears to be falsified by the facts stated aforesaid.

7. This Court may also refer to the order, dated 12.3.2006 passed by the Principal Judge, Family Court, Motihari. The order indicates that petitioner Anjani Kumar Kedia was not in court because he was admitted in Hinduja Hospital, Mumbai and was undergoing treatment as he was one of the victims of the bomb blast that took place in Varanasi. The court thereafter considering the prayer made on behalf of the petitioner and the respondent allowed the prayer of the petitioner on the basis of mutual consent of the parties for passing a decree of nullity of marriage in favour of the petitioner-husband.

8. By a supplementary affidavit it has been stated that opposite party Khushboo is now married to Govind Singhania, son of Murlidhar Singhania, resident of Tachas, Kalimati, Kathmandu. This statement has not been denied by opposite party Khushboo and her father.

9. After notice while the matter was being heard, the parties agreed that this Court may pass an order quashing the proceedings subject to the condition that the apology should be made on behalf of the petitioners to the opposite parties. Accordingly, this Court passed the following order on 22.1.2010:

Counsel for the opposite party. Nos. 2 and 3 is ready to forget and forgive on the condition that the husband, the father and the mother should file a written apology in this Court and also send a written apology properly worded to the father and mother of the girl.

10. A written apology was filed which did not satisfy the court and thereafter on 4.3.2010 another written apology was filed by Ajay Kumar Kedia, Kaushalya Devi and Anjani Kumar Kedia which is contained in Annexure 9. The said apology was also sent by speed post to the opposite parties. A copy of the affidavit filed in this Court was also handed over to counsel for the opposite parties.

11. Mr. Krishna Prasad Singh, Senior Advocate represents the opposite parties in the case. After receiving the affidavit on 10.3.2010 the matter came up for final disposal.

12. Mr. Singh stated that his client has withdrawn from the undertaking given in the court proceeding. This aspect of the matter that the three petitioners should apologize was discussed in the Court room. Khushboo's parents agreed to a proposal in the court room after the counsel duly consulted the parties in court and the order was passed in their presence. Thereafter, on 14.2.2010 and 24.2.2010, the next date on which the matter was heard, opposite party No. 3 did not inform the court that he does not wish to accept the apology. When the apology was finally rendered, the opposite party had informed. Mr. Krishna Prasad Singh, Senior Advocate that the court should consider the entire case on merits as his client has informed him that in fact he had not agreed that the petitioners should apologize and forget and forgive in the matter. Mr. Singh left the matter in the hands of the court. His junior counsel was present.

13. One thing that strikes this Court is that the order of the Principal Judge, Family Court granting a consent decree of divorce does not indicate that Khushboo and her father made a demand that the money and the property that the lady had received at the time of marriage should be returned to her, and neither did they make a demand of some settlement in lieu of the fact that a decree of divorce was being granted by the family court. I may clarify further by emphasizing that the application filed on behalf of the opposite party in the court below, specifically states that she denies the allegation made in the divorce petition, but no prayer was made for return of articles or for any settlement or maintenance.

14. These two facts leads this Court to the conclusion that Khushboo had in fact for whatever reasons not been able to adjust with her husband and the family members and had, therefore, left the matrimonial home taking with her the entire belongings. The factum of demand of dowry and torture due to non-payment of demand becomes unbelievable and doubtful.

15. In the facts stated aforesaid, this Court finds that once the aggrieved party i.e. Khushboo has consented for a decree of divorce not making any demand on the husband in lieu of her consent divorce indicates that the criminal proceeding was nothing but an attempt to harass the petitioners. The attitude of opposite party No. 3, the father of Khushboo also indicates that the idea was to take revenge and the continuance of the proceeding is for malicious gains. Therefore, this Court concludes in a case where there is a consent decree of divorce or the

parties have arrived and acted upon a compromise, it would amount to misuse and abuse of the process of the court to allow the continuance of a criminal proceeding.

16. I may refer to the case of Ruchi Agarwal Vs. Amit Kumar Agrawal and Others, it would appear that the Supreme court has also taken a similar view. The facts were that a consent decree of divorce was passed by the Family Court. The question came up for grant of maintenance u/s 125 of the Cr.P.C. Considering the terms in which the consent decree was passed, the court found that the continuance of 125 Cr.P.C. proceeding amounted to harassment and has quashed the proceeding. Similar view was taken by the Supreme court in the case of Mohd. Shamim and Others Vs. Smt. Nahid Begum and Another, . In this case the facts are similar to the present case. A matrimonial suit was filed in the consent decree of divorce was passed. An F.I.R. had also been lodged by the wife-complainant under Sections 406, 498A/34 of the Penal Code. The Supreme court after discussing every thing has quashed the criminal proceeding as they would amount to abuse of process of law.

17. In view of the facts aforesaid, I quash the order, dated 8.9.2008 passed in Cr. Revision No. 187/2005/24/2007 by the Addl. Sessions judge, FTC II, Samastipur and the order, dated 28.10.2009 passed in Complaint Case No. 481/2004 by the Subdivisional Judicial Magistrate, Dalsingsarai.

These applications are, thus allowed.