

(2019) 02 PAT CK 0036

In the Patna High Court

Case No : Criminal Miscellaneous No. 36903 Of 2013

Md. Akhtar Ansari @ Md. Akhtar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2019) 02 PAT CK 0036

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Shailesh Kumar Singh, Surendra Kumar, Ashok Kumar Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. Supplementary counter affidavit has been filed on behalf of the petitioner.

3. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

"That this application has been filed for Quashing of the order dated-14.2.2013 taking cognizance against the petitioner under Section - 323, 498(A) of the Indian Penal Code and 3/4 of D.P. Act passed by S.D.J.M., Aurangabad in complaint case no. 901/12/ Tr. No.- 2077/13."

4. The allegation against the petitioner and his family members is with regard to demand of dowry and further of abuse, assault and ousting from the house.

5. Learned counsel for the petitioner submitted that he is ever ready to keep the opposite party no. 2, who is his wife, with fully dignity, honour and security with him in the district of Palamu in the State of Jharkhand. It was submitted that it is the opposite party no. 2, who is refusing to come there, as she does not want to leave her parental home. It was further submitted that the opposite party no. 2

has filed Maintenance Case at Aurangabad in which interim maintenance has been awarded of Rs. 3,000/- per month which he is regularly paying. Learned counsel submitted that prior to the present case and there being two children born out of the wedlock, there has been no complaint against the petitioner with regard to any maltreatment or demand of dowry. It was submitted that even pursuant to the effort of the Court, she is not ready to come and live with the petitioner and, thus, the petitioner, in fact, is the aggrieved party. Learned counsel submitted that pursuant to the terms of settlement between the parties when they appeared before the Court earlier, he had filed a petition seeking withdrawal of Complaint Case No. 19 of 2013 which he had filed at Palamu against the opposite party no. 2 and her father. It was submitted that besides the said case, there is no other case filed by the petitioner or his family members against the opposite party no. 2 or her family members. It was further submitted that the petitioner has a small shop of mobile repairing and from the earnings he has to support his aged parents and also himself and further, is paying Rs. 3,000/- to the opposite party no. 2 by way of monthly interim maintenance.

6. Learned A.P.P. submitted that the opposite party no. 2 has not been able to show any valid reason not to return to her matrimonial home, despite the effort of the Court.

7. Learned counsel for the opposite party no. 2 fairly submitted that he has been persistently trying to seek instructions from the opposite party no. 2 and her father and though, on the last occasion when they had appeared, it was indicated that the parties may live together in the matrimonial home, but since then, they have not responded to any query of the learned counsel. It was submitted that even yesterday, upon a talk with learned counsel, who is representing the opposite party no. 2 in the Court below, it was informed that the opposite party no. 2 does not want to go and live in the matrimonial home.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the present case does not deserve to proceed. There being allegations made in the complaint case but the same being more or less in general terms and before the Court itself when there was assurance that the opposite party no. 2 would go and live in the matrimonial home by way of a trial and thereafter the opposite party no. 2 totally not co-operating in the present matter and also not responding to her counsel in the present case and on the contrary sending messages that she is not interested to go and live with the husband, the Court finds that the complaint filed by her deserves to be interfered with. Further, the petitioner having filed petition for withdrawal of the only case filed by him at Palamu and further paying Rs. 3,000/- per month for her and her two children by way of interim maintenance, in terms of the order of the concerned Court, the said maintenance case filed by the opposite party no. 2 is sufficient to safeguard the interest of the opposite party no. 2 and her children. Earlier, the Court had indicated that sufficient safeguards could be ensured for the safety and well being of the opposite party no. 2 and

her two children in the matrimonial home and still the opposite party no. 2 not co-operating by even sending any instructions to learned counsel representing her, clearly indicates that she is not interested either in returning to the matrimonial home and restoring the relationship or contesting the present matter.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 901 of 2012 (Tr. No. 2077 of 2013) pending before the Court below at Aurangabad, including the order dated 14.02.2013, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

10. However, the present order shall be subject to withdrawal of Complaint Case No. 19 of 2013 filed by the petitioner against the father of the opposite party no. 2 and others.

11. This Court would only observe that in the interest of justice, the Court below at Palamu is required to pass appropriate order on the petition filed for withdrawal by the petitioner on 22.01.2019 in the said case.