
(1999) 12 PAT CK 0069

In the Patna High Court

Case No : Criminal Revision No. 183 of 1997

Smt. Rani Sinha @ Munni

APPELLANT

Vs

Shri Ram Ratan Prasad Verma

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401
Penal Code, 1860 (IPC) — Section 364

Citation : (2000) 2 BLJR 1064

Hon'ble Judges : Indu Prabha Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Indu Prabha Singh, J.—This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short "the Code"). It is directed against the order dated 9.1.1997 passed in Case No. 26(M) of 1993/Tr. No. 214/97 by Shri Brajendra Kumar Tiwary, Judicial Magistrate, 1st Class, Biharsharif by which the learned Magistrate had rejected the petition u/s 125 of the Code filed by the petitioner for her maintenance as also for the maintenance of her minor daughter.

2. It appears that the present petitioner filed a petition u/s 125 of the Code for her maintenance as also for the maintenance of her minor daughter. She had contended that she was married to the opposite party on 25.2.1988 in accordance with Hindu rituals and after some time the second marriage (Duragaman) Was also performed. She started living with her husband (opposite party) and on 6.6.1990 a daughter was born to them. At the time of her marriage, ornaments worth Rs. 15,000/- as also various articles worth Rs. 50,000/- were given to the petitioner as dowry. This, however, did not satisfy the opposite party who was insisting to bring one motorcycle which the petitioner's father was not able to comply. Accordingly on 18.7.1993, the opposite party assaulted the petitioner and drove her out of the house as a result of which she came to the house of her mother. The opposite party is a teacher in a

Government School on a salary of Rs. 3,300/- per month. Apart from it, he is also earning Rs. 1,000/- from his cultivation. As such the petitioner claimed a sum of Rs. 500/- towards her maintenance as also the maintenance of her minor daughter.

3. In the show-cause, the opposite party went to the extent of falsely indulging in the character assassination of the petitioner. The petitioner examined several witnesses but they were not cross-examined due to the absence of the opposite party and the petitioner closed her evidence on 9.5.1996. Argument on her behalf was also heard by the Court, The opposite party had absented himself for long and he filed Criminal Revision No. 195/95 before the learned Sessions Judge, Nalanda who allowed the same and permitted the opposite party to cross-examine the witnesses of the petitioner. Accordingly, those P.Ws. were cross-examined. The opposite party also examined four witnesses from 20.11.1996 to 27.11.1996, but the petitioner could not get them cross-examined as she could not give instructions to her lawyer due to the circumstances noted below. The petitioner has alleged that in the meantime, on 6.11.1996 the opposite party got the minor daughter of the petitioner kidnapped by a notorious criminal Bipin Kumar with the object of selling her kidney. The petitioner lodged at Bihar (Sohsarai) P.S. case No. 394/96 dated 7.11.1996 u/s 364 of the Indian Penal Code. Due to the aforesaid circumstances and also on account of fear, the petitioner was not able to contact her lawyer and to instruct him for the cross-examination of the witnesses examined on behalf of the opposite party. Hence, they were discharged without being cross-examined. The opposite party particularly managed this kidnapping only to put pressure on the petitioner.

4. However, on 5.12.1996 the petitioner filed a petition before the Court for recalling the witnesses of the opposite party for their cross-examination. This petition was rejected by the learned Magistrate by his order dated 7.12.1996 on a wrong ground against which the petitioner filed Criminal Revision No. 308/96 before the Sessions Judge, Nalanda which was also dismissed by order dated 20.12.1996. Thereafter, the petitioner filed Criminal Misc. No. 323/97 before this Court which was heard by Hon"ble Mr. Justice R.N. Prasad and on 10.1.1997 the Hon"ble Judge passed the order for issuance of notice to the opposite party to show-cause why the application be not admitted and if possible disposed of at the stage of admission itself. In the meantime, the Hon"ble Judge ordered the Court, below not to pass any final order in the manner.

5. The petitioner has further contended that 7.1.1997 was the date fixed and the petitioner handed over the papers concerned to her lawyer Shri Ritesh Kumar, Advocate for filing of Criminal Misc. case before this Hon"ble Court. The Advocate concerned also issued a certificate to the effect that criminal misc. case will shortly be filed before the Hon"ble Court. When the case was taken up for hearing on 7.1.1997, the learned Magistrate stated in the Court that he will adjourn the case to some, other dates after two weeks but no specific date was fixed. The petitioner being a lady could not get the next date fixed in the case

but the learned Magistrate was informed on 11.1.1997 that this Court had already granted stay in the matter. In spite of this, the petitioner was not furnished with the next date fixed in the case. On the next day (12.1.1997) the petitioner heard a rumour that she had lost the case. On inquiry, she could not learn from her lawyer that the Magistrate has already passed the order dismissing her case. This act of the learned Judicial Magistrate to say the least is most contemptuous of the stay order passed by this Hon"ble Court.

6. Thereafter, the petitioner filed a supplementary affidavit in Criminal Misc. No. 323/97 challenging the order dated 9.1.1997 passed by the learned Magistrate and by way of abundant, caution she also filed the present revision application. However, the learned Magistrate rejected the application of the petitioner and though he did not hear the argument, still acting in great haste he is purported to have passed the order on 9.1.1997 itself, in total disregard of the stay order passed by this Court.

7. The petitioner has contended that the impugned order is bad in law and wrong on facts. It is illegal, improper and against the facts and circumstances of the case. It is also vitiated as it was passed much after 10.1.1997 while the stay order passed by this Hon"ble Court in Cr. Misc. No. 323/97 was still in force. The impugned order was passed ante-dated. On the petition filed by the Advocate disclosing that the petitioner was intending to move the Hon"ble Court against the order of the learned Magistrate as also against the order of the learned Sessions Judge, at least 15 days time should have been granted to the petitioner. As such, it has been contended that the impugned order be set aside.

8. I have heard the parties in detail. From the certified copy of the impugned order, it appears that it has been passed on 9.1.1997. By this order the claim of the petitioner for her maintenance was rejected and the case was dismissed. Various ground have been taken in the impugned order. However, the learned Counsel appearing on behalf of the petitioner has drawn my attention to the order dated 10.1.1997 passed in Cr. Misc. No. 323/97. The record of this case was also placed before the Bench and my attention has been drawn to. this order passed by this Court in which while passing the order for the issue of show-cause notice to the opposite party the Court below was directed not to pass any final order in the matter. As per the record, it appears that final order in the matter was passed on 9.1.1997, i.e., one day prior to the passing of the stay order by this Court. On behalf of the petitioner, it has been submitted that this order is ante-dated and has been passed after 10.1.1997 the date on which this Court had passed the stay order. In support of this contention, the learned Counsel for the petitioner has drawn my attention to a petition dated 7.1.1997 filed on behalf of the petitioner in Case No. 26(M)/97 (the present case) in which it has clearly been stated that against the order passed by the learned Magistrate on 7.12.1996 as also against the order passed by the learned Sessions Judge. Nalanda dated 20.12.1996 the petitioner intends to file Misc. case before Patna High Court and as yet no number has been allotted to the said case. Accordingly,

she is filing the certificate of her Advocate of Patna High Court with a prayer that further proceeding in the case be stayed. It may be mentioned here that this petition was filed on 7.1.1997 before the final order by the learned Court below was passed on 9.1.1997. Along with this petition a certificate from Shri Ritesh Kumar Advocate dated 7.1.1997 has been filed according to which for quashing the order dated 20.12.1996 passed by the learned Sessions Judge, Nalanda in Criminal Revision No. 308/96 as well as for quashing the order dated 1.12.1996 passed by Shri B.K. Tiwary, Judicial Magistrate, 1st Class, Bihar Sharif in Case No. 26(M)/1993, criminal misc. case was going to be filed before this Hon'ble Court in a couple of days. The learned Counsel has further stated in this certificate that before this Hon'ble Court a prayer for stay of further proceeding in case No. 26(M)/93 was going to be filed. From this certificate, it would appear that the learned Counsel disclosed that he was going to file a criminal misc. case against, the order dated 20.12.1996 and 7.12.1996 passed by the learned Sessions Judge and learned Judicial Magistrate respectively before this Court in which he was also going to pray for stay of the further proceeding before the Court below. In spite of this it is really surprising how could the learned Judicial Magistrate proceed to pass the final order in the matter purported to have been passed on 9.1.1997, specially when as noticed above in Criminal Case No. 323/97 this Court had already directed the Court below not to pass any final order in the matter as will appear from the order dated 10.1.1997 passed by this Court.

9. From the aforesaid facts, it would appear that the learned Judicial Magistrate was informed by the petitioner through a petition dated 7.1.1997 annexing a certificate from the Advocate that criminal misc. case was going to be filed before this Court against the order passed by the learned Sessions Judge with a prayer for staying the further proceeding. The learned Magistrate thought it fit to pass the impugned order in spite of this intimation given to him. This conduct of the learned Judicial Magistrate appears to be highly improper. Once the party intends to move a higher Court against an order passed by the learned Judicial Magistrate it was his bounden duty to hold for some time so that the stay order, if passed, may be communicated to him. Having come to learn that this Court was going to be moved by a criminal misc. petition, the learned Judicial Magistrate had shown unusual interest in the matter and proceeded to pass the order on 9.1.1997 even presuming that this order is not ante-dated. The judicial propriety required that in such a situation like this, the inferior Court should have held back its hands and should have waited for a reasonable time for the order to be passed by the superior Court. This has not been done which is really surprising.

10. I have gone through the order-sheet dated 7.1.1997 passed in Case No. 26(M)/93/Tr. No. 214/97 by the learned Judicial Magistrate. From this order-sheet, it appears that a petition before him was filed on behalf of the petitioner that she is going to file a criminal misc. case before this Hon'ble Court against the order dated 20.12.1996 passed by the learned Sessions Judge in which the case number has not yet been allotted. However, she enclosed the certificate of

her Advocate disclosing that such a criminal misc. case was going to be filed before this Hon"ble Court. The learned Judicial Magistrate has taken notice of this certificate. However, he has observed that from this certificate, it is not clear whether it has been granted by an Advocate practising in Patna High Court or not. This observation by the learned Judicial Magistrate shows his complete ignorance in the matter. An advocate is an Advocate of the High Court irrespective of the fact whether he is practising in a District Court or in the High Court. There is nothing in law to prevent an Advocate, mainly practising in a District Court to appear before Patna High Court. There is no such water tight compartment of segregation of an Advocate of the District Court from the Advocate of the High Court. The Advocates Act also does not say so. As such it is really surprising that the learned Judicial Magistrate has observed that from the certificate granted by the Advocate, it is not clear whether he is practising in the High Court or not. Apart from this, if the petition dated 7.1.1997 filed by the petitioner before the learned Magistrate is perused, it is clear that in it she has stated that she is going to file criminal misc. case before Patna High Court, against the order dated 20.12.1996 passed by the learned Sessions Judge and in support of this contention, she is filing the certificate granted by the Advocate of Patna High Court. This is how this certificate was annexed to this petition. In spite of all this, it is really surprising how could the learned Judicial Magistrate state in his order that it is not clear whether the learned Advocate granting the certificate was practising in the Patna High Court or not. As pointed out above, it is immaterial whether the learned Advocate was practising in Patna High Court or in some other Court. The learned Judicial Magistrate has not even taken pains to go through the petition dated 7.1.1997 filed before him in which it has been clearly stated that the certificate of the Advocate of the High Court was being annexed to show that the criminal misc. case was going to be filed. In this order, the learned Judicial Magistrate has observed that he has been directed by this Court, or by the learned Sessions Judge to speedily dispose of this case. This will, however, not mean that the case was to be disposed of against judicial propriety or against the provision of law. Quick disposal of the case will only mean that the time may not be unnecessarily wasted, and not that, the law or legal procedure will be thrown to the winds only to secure the early disposal of the case. This can never be the intention of any Court, because the Courts exist for doing justice and this is well known that justice hurried is justice buried.

11. In this connection, I have also perused the order dated 20.12.1996 passed in Criminal Revision No. 308/96 by the learned Sessions Judge as also the order dated 7.12.1996 passed in this case by the learned Judicial Magistrate. The learned Judicial Magistrate in his order has stated that on 19.11.1995 no Pairvi was done before him on behalf of the petitioner nor the Court was informed that any criminal revision was filed. Subsequently on 20.11.1996, 21.11.1996, 26.11.1996 and 27.11.1996 opposite party examined four witnesses but on behalf of the petitioner, no Pairvi was done on these dates nor any Hajiri was filed. When the Advocate of the petitioner was called by the Court, he did not

turn up to cross-examine the P.Ws. on the ground that he has not received any instruction from the petitioner for their cross-examination. It has been further stated in this order that the petition filed on behalf of the petitioner did not bear her signature which will show that the petitioner has not contacted her lawyer. I am, however, surprised to read the order dated 20.12.1996 passed by the learned Sessions Judge according to which he could find out from the lower Court record that on 20.11.1996 the lawyer for the petitioner turned up on calls and left the Court after perusing the case record. It is not clear from where could the learned Sessions Judge get it. At least the order of the learned Magistrate does not show that, the learned Counsel for the petitioner on being called, had come to the Court and after perusal of the record departed. Moreover, it is the consistent case of the petitioner that due to the kidnapping of her daughter at the hands of the criminals, she was not in a mental state to instruct her lawyer for cross-examination of these witnesses. From the order of the learned Magistrate also, it will appear that when contacted the learned Counsel for the petitioner submitted that he has not received any instruction from his client and, therefore, he cannot cross-examine witnesses of the opposite party. In this connection, it may be mentioned that in the present petition the petitioner has clearly stated that on 6.11.1996 at the instance of the opposite party her daughter was kidnapped by a notorious criminal Bipin Kumar for which Bihar (Sohsrai) P.S. Case No. 396/96 dated 7.11.1996 u/s 364 of the Indian Penal Code was registered. It was on this account that she was frantically searching her daughter and was not in a fit mental condition to instruct her lawyer for the cross-examination of the witnesses produced on behalf of the opposite party. The copy of this F.I.R. being Bihar (Sohsrai) P.S. Case No. 394/96 is also on record having been filed in Cr. Misc. No. 323/96. Under the aforesaid circumstances, it cannot be said that this plea of the petitioner is an after-thought or false. In such a mental state, when her minor daughter is kidnapped by the criminal the mother of the daughter cannot be expected to be in a position to instruct her Counsel for the cross-examination, of the witnesses produce on behalf of the opposite party.

12. From the detailed discussion made above, it becomes perfectly clear to me that this criminal revision application is fit to be allowed and the impugned order is liable to be quashed.

13. In the result, the impugned order dated 9.1.1997 passed by the learned Judicial Magistrate is quashed and set aside. The learned Magistrate is directed to allow the petitioner to cross-examine the O.P.Ws. examined on behalf of the opposite party and for this purpose, he is directed to secure their presence. The case is, accordingly, remanded back to the Court of the learned Judicial Magistrate for enabling the petitioner to cross-examine the witnesses already examined on behalf of the opposite party. After their cross-examination the learned Magistrate will write out a fresh judgment in accordance with law on the materials available on record. This revision petition is allowed accordingly in terms of the order passed above.