

Patna High Court

Vishnu Kant Pandit vs State Of Bihar And Anr on 12 March, 2019

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.49013 of 2014

Arising Out of Case No.-74C Year-2012 Thana- BEGUSARAI COMPLAINT CASE District-
Begusarai

=====

Vishnu Kant Pandit Son of Shivjee Pandit, Resident of village Mau Bazar, P.S. Vidyapati Nagar,
District - Samastipur.

... .. Petitioner/s Versus

1. The State Of Bihar

2. Sanju Devi W/o Vishnu Kant Pandit, D/o Baleshwar Pandit Resident of village Mau Bazar, P.S. Vidyapati Nagar, District - Samastipur. Present address resident of village Rani, P.S. Bachhwara, District - Begusarai, Naihar's Address - Jalalpur, P.S. - Dalsingsarai, District - Samastipur.

. O p p o s i t e P a r t y / s
===== Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate For the State : Mr. Jharkhandi Upadhyay,
A P P F o r t h e C o m p l a i n a n t : M r . Z e y a u l H o d a , A d v o c a t e
===== CORAM:
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH ORAL JUDGMENT Date :
12-03-2019 Heard learned counsel for the petitioner; learned A.P.P. for the State and learned
counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Code') for the following relief:

"That this is an application for quashing the Order dated 12.7.12 in Complaint Case
No. 74C/12 by the learned Sub-Divisional Judicial Magistrate, Begusarai, whereby
and where under Cognizance has been taken for the offence under Section 498(A),
323, 379/34 of the I.P.C. against the petitioner."

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3. The opposite party no. 2, who was the wife of the petitioner, had filed the complaint case alleging
demand of dowry, torture and also assault.

4. The petitioner had married the opposite party no. 2 on 24.07.2010 before the Special Marriage
Officer, Registration Department, Samastipur. The complaint states that she was married to Sanjay
Pandit who died seven years ago and from whom she had three children and that it was the

petitioner who had proposed for marriage which was accepted by the family members of the opposite party no. 2 and thereafter the same was solemnized before the Special Marriage Officer. The opposite party no. 2 has alleged that thereafter demand of Rs. 1,00,000/- cash and one motorcycle was made due to which she was tortured mentally and physically and finally on 08.01.2012 it is alleged that the accused, including the petitioner, had come to her place at Begusarai and had assaulted her. The complaint case was filed on 10.01.2012.

5. Learned counsel for the petitioner submitted that the opposite party no. 2 is the wife of the maternal uncle of the petitioner and, thus, there could not have been any marriage as the relationship comes within the prohibited zone under the Hindu Marriage Act. It was submitted that the opposite party no. 2 has made false allegations only to put pressure on the petitioner and Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 his family members to keep her. Learned counsel submitted that the petitioner had already filed Divorce Case No. 152 of 2011 on 08.09.2011 before the Court at Begusarai and the present case is only by way of a counter-blast to the said case. It was submitted that the ground taken for seeking divorce was that the opposite party no. 2 had left the matrimonial home of the petitioner and was living in her first matrimonial home. Learned counsel submitted that the procedure required for the Court below before issuing process as stipulated in Section 202(1) of the Code has not been followed. For such proposition, learned counsel referred to the decision of the Hon'ble Supreme Court in Udai Shankar Awasthi v. State of U.P. reported as (2013) Supreme Court Cases 435. It was submitted that no cause of action having taken place in the jurisdiction of the Magistrate at Begusarai, the proceeding itself before the Court below was not maintainable as all allegations relate to Samastipur. For such proposition, learned counsel relied upon the decision of the Hon'ble Supreme Court in Y. Abraham Ajith v. Inspector of Police reported as (2004) Supreme Court Cases 100. He further referred to the decisions of co-ordinate Benches of this Court in Bhonu Idrisi vs. State of Bihar reported as 2019 (1) PLJR 517 and Padam Chand Garg vs. State of Bihar reported as 2016(3) PLJR 258. Learned counsel submitted Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 that the offence not being a continuing offence, for allegations relating to the district of Samastipur, the opposite party no. 2 could not have filed the complaint at Begusarai. Learned counsel submitted that on 16.02.2019, a decree of divorce has been passed in favour of the petitioner.

6. Learned A.P.P. submitted that the Court below had only issued summons to the petitioner on the basis of enquiry made under Section 202 of the Code and, thus, the compliance of the statutory requirement has been fully met. It was submitted that the Court below has rightly issued process on the basis of the materials brought before it during enquiry pursuant to transfer of the case by the learned Chief Judicial Magistrate to the Sub Divisional Judicial Magistrate who has passed the order.

7. Learned counsel for the opposite party no. 2 adopted the arguments of learned A.P.P. and added that the opposite party no. 2 is ready to go and live with the petitioner.

8. At this juncture, when the Court called upon learned counsel for the petitioner to know his view as to whether he was ready to keep the opposite party no. 2 with him, he took a categorical stand that he was not ready to keep the opposite party no. 2. On a further query of the Court as to why the

petitioner was not ready to keep the opposite party no. 2 with him as his wife Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 when according to learned counsel, the main ground in the divorce case was that the opposite party no. 2 was not willing to live in the matrimonial home when now she is ready to go and live with him, learned counsel for the petitioner could not give any reason.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds no merit in the present application. The main ground for assailing the order itself appears to be misconceived. Learned counsel has relied on the provision of Section 202 of the Code. The same reads as under:

"202. Postponement of issue of process. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 (2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant."

10. Perusal of the same leaves no doubt that in a case which has been made over to the Magistrate under Section 192 of the Code, if the accused is residing at the place beyond the area in which he exercises his jurisdiction, the issuance of process against the accused shall be postponed and either the Magistrate is required to inquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not

there is sufficient ground for proceeding. In the present case, the order dated 12.07.2012 itself begins with the history that the matter had been sent by the Chief Judicial Magistrate, Begusarai to the Sub Divisional Judicial Magistrate under Section 192(1) of the Code. Thus, it is clear that the cognizance of the offence had already been taken by the Chief Judicial Magistrate, Begusarai earlier and Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 then the matter was sent to the Court of the Sub Divisional Judicial Magistrate, Begusarai.

11. Section 192 of the Code reads as under:

"192. Making over of cases to Magistrates.

(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial."

12. From the above, it is clear that the transfer of the case by the Chief Judicial Magistrate is only after taking cognizance. Thus, rightly the Court has only issued process holding that against the petitioner a trial was required and, thus, process has been issued. The same is not an order taking cognizance. The only stipulation which Section 202 (1) of the Code lays down for the Magistrate before issuing process is that he has to either inquire the matter himself or send it to the police officer or any other person whom he thinks fit. In the present case, the order dated 12.07.2012 itself mentions that pursuant to the order being received from the Chief Judicial Magistrate, Begusarai, inquiry was conducted by way of examination of three Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 witnesses. Thus, the requirement of holding inquiry has been fulfilled in the present case. The objection on behalf of the petitioner on this legal issue is totally misconceived and even contrary to the factual position in this case.

13. Coming to the decision relied upon by the learned counsel for the petitioner in Udai Shankar Awasthi (supra), the facts were totally different. In the said case, a third complaint had been filed in which the Court after taking cognizance had straight away issued summons and later on non-bailable warrant was also issued. In the present case, cognizance was taken by the Chief Judicial Magistrate, Begusarai who had then made over the case for enquiry/trial to the Sub Divisional Judicial Magistrate, Begusarai under Section 192 (1) of the Code. Further, upon receipt of such case, the Sub Divisional Judicial Magistrate, Begusarai had proceeded under Section 202 (1) of the Code by holding inquiry himself, in which he had examined three witnesses. Thus, the ratio of the aforesaid case is not applicable to the facts of the present case.

14. Similarly, in Y. Abraham Ajith (supra), the matter related to the jurisdiction of the Court. In the said case, all the offences were committed at place 'N' and no part of cause of action arose at place 'C' where the proceedings were initiated and Patna High Court CR. MISC. No.49013 of 2014

dt.12-03-2019 in that context, the Court had held that the offence not being continuing, the Magistrate at place 'C' had no jurisdiction to deal with the matter and the proceedings were quashed. In the present case, there is no issue with regard to offences being continuing or not. When there is specific allegation in the complaint itself that at Begusarai also the accused had come and assaulted the complainant, which has been supported by a witness who was the neighbour of the complainant at Begusarai, obviously there is cause of action at Begusarai also and, thus, the discretion being with the complainant with regard to which forum she would approach and her filing the complaint at Begusarai where lastly the offence is alleged to have been committed by the accused, in the considered opinion of the Court, there is no infirmity with regard to maintainability of the complaint case at Begusarai.

15. Coming to the decision in Bhonu Idrisi (supra), again the facts were totally different. In the said case, as there was absence of any occurrence having taken place at Bhabhua as the alleged harassment pertained to matrimonial home at Mirzapur in the State of UP, the Court had held that the Court at Bhabhua had no jurisdiction to deal with the matter.

16. Likewise, in Padam Chand Garg (supra), the factual position was that the accused were residing beyond the Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 territorial jurisdiction of the Court and, thus, the Court was required to conduct an enquiry as envisaged under the Act. In the present case, at the cost of repetition, the Court finds that the requirement of holding enquiry under Section 202 (1) of the Code has been satisfied, inasmuch as, three witnesses have been examined by the Sub Divisional Judicial Magistrate, Begusarai in support of the complaint before processes have been issued to the accused. Thus, the ratio of the said case is also not of any help to the petitioner in the present case.

17. The Court would also observe that the plea taken of marriage not being maintainable between the parties is also a lame excuse for the reason that once the first husband of the opposite party no. 2 died, she had become a widow and, thus, to whom she was married prior to becoming a widow would not be of any consequence for contracting the second marriage, provided the same did not fall within the prohibited zone. Thus, there being no objection raised with regard to even otherwise opposite party no. 2 not being permitted to contract marriage with the petitioner, the Court finds that there is no basis for such stand. Further, such stand, as per the submissions of learned counsel for the petitioner himself, not being taken in the divorce petition cannot be allowed Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 to be raised before this Court, more so when no such stand has been taken even in the pleadings.

18. In this connection, the Court would observe that the petitioner, being a qualified Engineer, taking a conscious decision to marry the opposite party no. 2 and, that too, before the Special Marriage Officer is self indicative of the fact that a conscious and willing decision was taken by the petitioner to marry the opposite party no. 2.

19. At this juncture, learned counsel for the opposite party no. 2 informed that the petitioner was unemployed and when he got employment, demand of dowry and torture started. This fact, in the aforesaid background, clearly appears to be the reason why the divorce case was filed and the

opposite party no. 2 was ousted from the matrimonial home. Further, the submission of learned counsel for the petitioner that the main ground taken in the divorce case was the desertion by the opposite party no. 2 to live in the matrimonial home, is falsified, when today the opposite party no. 2 being ready to live with the petitioner, the stand on his behalf is that he is not ready to keep her. Thus, when the divorce case itself was on the ground that the opposite party no. 2 is not willingly to live in the matrimonial home and the stand taken before the Court on behalf of the opposite party no. 2 being that Patna High Court CR. MISC. No.49013 of 2014 dt.12-03-2019 she is ready to live in the matrimonial home and learned counsel for the petitioner, on instructions, flatly refusing such offer, the Court finds that the divorce case itself had been filed for oblique reasons.

20. Be that as it may, there being a decree of divorce, the matter has to be dealt with by the parties before the appropriate forum.

21. Coming to the merits of the present case, the Court finds that the materials before the Court below, both in the complaint and on the basis of statement of the witnesses, appears to be enough for the Court to proceed with issuing of process to the accused for facing trial.

22. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J) Anjani/-

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