

IN THE COURT OF ADDL. SESSIONS JUDGE 5TH, DANAPUR.
PATNA

Criminal Revision No.373/2015

Trial No.22016

(Arising out of the order of discharge dated 05-05-2015, passed by the S.D.J.M., Danapur in Complaint Case No.802©/2011, (Kumari Rani Sharma vrs. Nitesh Kumar & other

Nitesh Kumar S/o Shayam Babu Sharma & others, R/o Muhalla Sultanpur , P.S. Danapur, District- Patna Revisionists/Petitioners.

V r s.

The State of Bihar & other Opp. Parties.

Counsel for the Revisionist : Shri. Nageshwar Singh (Advocate)

Counsel for the Opp. party : Shri. Safdar Hayat (Addl.P.P)

O R D E R

1. The revisionists are absent. The L.C.R. has been received. After perusal of the case record, I find that the instant revision petition was admitted by the learned Dist. & Sess. Judge, Patna on 19-06-2015, and it has been transferred to this Court for trial and disposal, and the revisionists are absent since its transfer in this Court.

2. Perused and examined the L.C.R., as well as, the revision petition. Accordingly, I find that the instant Criminal Revision has been filed by the seven revisionists/accused persons; against whom the cognizance of the offences, U/Ss.323 and 498 of the I.P.C., as well as, U/S.3/4 of the D.P. Act. was taken by the learned S.D.J.M. Danapur, and thereafter, the revisionists/accused persons filed a petition for their discharge from the instant case on 05-02-2015; which was rejected by the impugned order dt. 05-05-2015 by the learned Court below and against the said order dt. 05-05-2015, the instant revision petition has been filed by the revisionists/accused persons.

3. After examining the annexures, filed along with the instant revision petition, I find that the matrimonial-tie between the revisionists no.1. Nitesh Kumar with opp.party no.2./ the complainant had already been dissolved by a decree of divorce, by the judgment dt.24-01-2011, passed by the Court of learned Principal Judge, Family Court, Patna in the Matrimonial Case No.339 of 2010; however, the opp.party no.2./complainant filed the Complaint Case No. 802©/2011 in the Court of learned S.D.J.M on 26-8-2011 and after inquiry of the said complaint petition, the learned Court below had taken cognizance U/Ss.323 and 498 of the I.P.C. as well as, U/S.3/4 of the D.P. Act. ,vide order dt.

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24-11-2011, and summons were issued against the accused persons/revisionists to appear before the Court, and when they appeared before the Court below, a petition U/S.245 Cr.P.C. was filed collectively for their discharge on 05-02-2015; which petition was rejected by the impugned order dt. 05-05-2015 by the learned S.D.J.M. Danapur.

4 After perusal of the discharge petition, filed by the revisionists/accused persons, U/S.245 Cr.P.C. before the learned Court below on 05-02-2015, I find that at Para 4 of the said petition, the revisionists/accused persons had mentioned the fact that relation-ship of marriage between the complainant/opp.party no.2 and Ritesh Kumar revisionist no.1/accused no.1. has already been dissolved by the judgment dt. 24-01-2011, passed by the Court of learned Principal Judge, Patna, and accordingly, the learned Court below ought to have considered that the Complaint Case No.802©/2011 filed by the complainant on 26-08-2011, that is, after more than seven months after dissolution the marriage of the complainant/opp.party no.2. and the revisionist/accused no.1.; which was filed by the complainant/ opp.party no.2, with a views to harass the revisionists/accused persons. Since, on the that date of filing of the Complaint Case No.802©/2011, there was no relation-ship of husband of wife between the revisionists/accused no.1. and the complainant /opp.party no.2. and, hence, there was no occasion for the complainant/opp.party no.2. to remain in the house of her ex-husband Nitesh Kumar revisionist no.1./accused no.1. and in that circumstance; the offences relating to torture, due to non-fulfillment of the demand of dowry by the revisionists/accused persons from the complainant/opp.party no.2., does not arise.

5. After the aforementioned findings, I hold that the impugned order dt. 05-05-2015 has wrongly been passed by the learned S.D.J.M. Danapur, and accordingly, it is, hereby, set aside and the instant revision petition is, hereby, allowed. All the revisionists/accused persons are hereby discharged from the Complaint Case No.802©/2011, pending in the Court of learned S.D.J.M. Danapur and they are set at liberty. The learned Court below is directed to pass an appropriate order, keeping in view the instant order of this Court.

The Office Clerk is directed to return back the L.C.R. to the learned lower Court concerned, at once.

(Dictated)

Addl. S.J. Vth, Danapur.
06-06-2016.