

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42425 of 2015

Arising Out of PS. Case No.-42 Year-2014 Thana- HAYAGHAT District- Darbhanga

Aamir Karim Son of Zeya Karim, resident of village- Chausiwan, P.O.-
Rapauli, P.S.- Musridharari, District- Samastipur

... .. Petitioner/s

Versus

1. State Of Bihar
2. Nazia Hasan Syed, daughter of Syed Anwarul Hasan, resident of village-
Tajpur, P.O.- Tajpur, P.S.- Tajpur, District- Samastipur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Syed Masleh-Uddin Ashraf, Adv.

For the Opposite Party/s : Mr.Sanjay Kr.Panday, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV ORDER

8 4-12-2024 Heard Mr. S.M. Ashraf, learned counsel for the
petitioner and Mr. Sanjay Kumar Pandey, learned APP for the
State.

2. This application has been filed for quashing the
order dated 26.03.2015 passed in Hayaghat P.S. case No. 42 of
2014 dated 12.07.2014 by learned Judicial Magistrate,
Darbhanga whereby which cognizance of an offence punishable
under section 498A of the Indian Penal Code (for short IPC) and
section 3/4 of Dowry Prohibition Act (for short D.P.Act) has been
taken against the accused persons, including the petitioner.

3. Heard both sides, perused the impugned order, the
F.I.R. and other relevant materials.

4. The main ground taken by the petitioner's counsel



to assail the order impugned is that the O.P. No.2 was wife of the petitioner and on 26.02.2014 the petitioner divorced the O.P. No.2 by sending an e-mail to the O.P. No.2 revealing three *talak* text and the same was also messaged through SMS on her mobile No. and the said divorce has been accepted by the O.P. No.2 in her F.I.R. and after divorce the O.P. No.2 filed written complaint on 28.04.2014 at the concerned P.S. and the same was lodged with *malafide* intention. In support of this ground the petitioner's counsel has placed reliance upon the judgement of the Hon'ble Apex Court passed in the case of **Achin Gupta v. the State of Haryana and others in Cr. Appeal No. 2379 of 2024** and placed reliance upon the paragraphs No. 18 and 19 of this judgement which are being reproduced herein below:-

18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant's family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the



filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

5. Reliance has also been placed by the petitioner's counsel upon the judgement of Karnataka High Court passed in CRL. P. No.201257/2019 and the relevant paragraph of this judgement is being reproduced herein below:-

“6 ----- On careful reading of the dictum of the Hon'ble Supreme Court, in the present case, the respondent No.2 lodged the written complaint, which carries four pages. The complaint contains several allegations against the petitioners. However, till 25.12.2018, she has not lodged any complaint against the in-laws. In the complaint there is specific allegation about assault made out against all the petitioners. However, it appears that the allegations are omnibus and absurd in nature and the said allegations are not sufficient to invoke the provisions as stated supra. Unless, there are no allegations made out against each petitioners independently, it cannot be construed that the petitioners have committed the offence. Regard being had to the submission of the learned counsel for the petitioners that the husband of the respondent No.2 had filed divorce petition on 17.12.2018 at Solapur Family Court. As atoken of retaliation, the respondent No.2 filed complaint against all the petitioners assumes greater significance. Therefore, the criminal case filed by the wife, in respect of cruelty, dowry harassment against the husband and in-laws loses its significance, in case the complaint is made, after receiving the divorce notice from her husband. Hence, it is a fit cases to exercise the inherent jurisdiction to quash the proceedings” -----.



6. This court finds no substance in the above mentioned ground taken by the petitioner as in the facts and circumstances of the present matter the principle laid down by Hon'ble Apex Court and Karnataka High Court is not applicable as facts of the present matter are completely different from the above cited cases. In the case of *Achin Gupta* (supra) the respondent No.2 (wife) lodged the F.I.R. on 09.04.2021 nearly two years after filing of the divorce petition by the appellant and six months after filing of the Domestic Violence Case by her mother-in-law and the allegations levelled by the respondent No.2 were deemed by the Hon'ble Apex Court as quite vague, general and sweeping specifying no instance of criminal conduct and it was also taken into consideration that the appellant was finding it difficult to take care of his child and these facts are completely different from the present matter. In the instant matter the informant (O.P. No.2) is said to be the daughter of a poor handicapped father and her marriage with the petitioner took place on 12.10.2013 and according to her at the time of marriage talk her husband was shown as an engineer while in actual her husband was not so working. As per the informant (O.P. No.2) at the time of marriage ten lakh rupees in cash, ornaments and clothes were given to the petitioner and his



family members to satisfy his family members' demand but after the marriage the conduct of the petitioner and his family members suddenly changed and she started feeling suffocation and her ornaments and cash amount were kept by her mother-in-law and when she enquired from her husband and mother-in-law about the employment of her husband then the petitioner and his mother threatened to kill her and also became enraged and on 03.11.2013 petitioner left her at her *Maika* in Delhi and thereafter on 26.02.2014 the petitioner sent her an e-mail revealing the factum of giving three Talak by this petitioner to her.

7. Here it is important to mention that by the enactment of The Muslim Women (Protection of Rights on Marriage) Act, 2019 any pronouncement of *talaq* by a Muslim husband upon his wife by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal and in this regard, the provision mentioned in section 3 of the Act is relevant. Though, the said enactment came into force on 19.09.2018 and in the present matter, as per petitioner's counsel the e-mail containing the petitioner's pronouncement of *talak* was sent on 26.02.2014 and in the complaint petition the complainant also accepted the factum of receiving the said e-



mail but merely due to this fact the petitioner cannot be exonerated from the alleged offence of cruelty and demand of dowry as according to the allegations, the complainant was being tortured mentally since the time of her marriage on account of giving less ornaments and cash amount at the time of marriage ceremony and further, the legality of the *talak* which is said to have been given by the petitioner is to be examined by the competent authority or the court and here, it is important to mention that the Hon'ble Apex Court in the case of **Shayra Bano vs. Union of India and others, (2017) 9 SCC 1** declared the "triple *talak*" null and void in the eye of law. Though the judgement was pronounced in the year 2017 but the Hon'ble Apex Court did not specifically make the judgement passed in the case of Shayra Bano (*supra*) to operate prospectively hence, the law declared by the Hon'ble Apex Court in the above case would equally apply to the triple *talak* pronounced prior to passing of the said judgement and the same view has been taken by the **High Court of Jammu & Kashmir** in the case of ***Showkat Hussain vs. Nazia Jeelani*** in CRM (M) No. 308 of 2019 and the relevant paragraph of the judgement is being reproduced herein below for ready reference:-

"3. The argument raised is not tenable for the reason that the judgement rendered in the case of Shayra Bano (supra), if not made to operate prospectively



specifically is to be treated as retrospective and applicable even to the pending cases. The Hon'ble Supreme Court, while declaring the 'triple talak' as null and void in the eye of law in the case of Shayra Bano (supra) did not make the judgement to operate prospectively and that being the position, the law declared by the Hon'ble Supreme Court in Shayra Bano's case (supra) would apply equally to the 'triple talak' pronounced prior to passing of the said judgement.

8. From these facts as well as in the light of the allegations one thing is quite clear that after marriage the complainant was mentally tortured by this petitioner and his family members and was also neglected and all these things happened within six months from the marriage and further, giving divorce to the O.P. No.2 by this petitioner by simply sending an e-mail in which he mentioned the factum of giving three talak by him to the O.P. No.2 also amounts to a form of mental torture as the correct law of *talak* is that the *talak* must be for reasonable cause and the same must be preceded by attempts for conciliation between the husband and the wife by two arbitrators, one from the wife's family and other from the husband and if such attempts fail then *talak* may be affected but the view that a Muslim husband enjoys an arbitrary and unilateral power of inflicting instant divorce is not acceptable. In this regard observation made by the Allahabad High Court in the case of **Hina & Anr vs. State of U.P. and 2 Ors** reported in



(2016) SCC Online All 994 is important and relevant portion of the paragraphs 5, 6 and 9 of the judgement is being reproduced herein below for ready reference:-

“5. ----- The question which disturbs the Court is should muslim wives suffer this tyranny for all times? Should their personal law remain so cruel towards these unfortunate wives? The view that the Muslim husband enjoys an arbitrary, unilateral power to inflict instant divorce does not accord with Islamic injunctions. It is a popular fallacy that a Muslim male enjoys, under the Quaranic Law, unbridled authority to liquidate the marriage. The whole Quoran expressly forbids a man to seek pretexts for divorcing his wife, so long as she remains faithful and obedient to him. The Islamic law gives to the man primarily the faculty of dissolving the marriage, if the wife, by her indocility or her bad character, renders the married life unhappy; but in the 3 absence of serious reasons, no man can justify a divorce, either in the eye of religion or the law -----.

6. ----- The correct law of talaq as ordained by the Holy Quran is that talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters-one from the wife's family and the other from the husband's; if the attempts fail, talaq may be effected. (Ref : Pathayi v. Moideen 1968 KLT 763; A. Yousuf Rawther v. Sowramma, AIR 1971 Kerala 261; referred to with approval by the Supreme Court in Shamim Ara v. State of U.P. : (2002) 7 SCC 518)-----.

9. ----- The instant divorce (Triple Talaq) though has been deprecated and not followed by all sects of muslim community in the country, however, is a cruel and the most demeaning form of divorce practised by the muslim community at large. Women cannot remain at the mercy of the patriarchal setup held under the clutches of sundry clerics having their own interpretation of the holy Quoran. Personal laws, of any community, cannot claim supremacy over the rights granted to the individuals by the Constitution”-----.

9. Accordingly, this court is of the view that in the



light of allegations levelled by the O.P. No.2 in her written report the alleged offences of which cognizance has been taken, *prima facie*, attract against the petitioner and there is no merit in this petition, so, it stands dismissed.

(Shailendra Singh, J)

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