

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39421 of 2012

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Maniya Devi, W/O Sri Jagadish Mahato @ Jagdish Prasad, Resident of Village Sankarur, P.S. Obara, District Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Bhagawania Devi, W/O Sri Satendra Prasad, Resident of Village Shankarpur, P.S. Obara, District Aurangabad, Daughter of Chalitar Mahato, Resident of Village Sindhpur, P.S. Kutumba, District Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arabind Nath Pandey

For the Opposite Party no.1: Mr. Umanath Mishra, APP

For the Opposite Party no.2: Mrs.Meena Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

5 30-04-2015

Heard the parties.

The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 invoking the inherent powers of this Court for quashing the order dated 09.08.2012 passed in Complaint Case No.259 of 2007/Trial No.524 of 2012 by the learned Sub-Divisional Judicial Magistrate, Aurangabad, whereby the prayer made on behalf of the petitioner for her discharge from the criminal prosecution has been rejected.

Learned counsel appearing on behalf of the petitioner submits that, though in the complaint petition vide Annexure-1 filed on behalf of the opposite party no.2 the petitioner has also been arrayed in the category of accused for commission of offence under Section 498A and some other allied offences under the Indian Penal Code, but, after holding the enquiry in terms of Section 202 Cr.P.C., the learned C.J.M., Aurangabad by the order dated 07.08.2007 (Annexure-2) took cognizance for the offence



under Section 498A of the Indian Penal Code only against the accused persons and summons were issued against them including the petitioner for facing trial before the transferee court. It is contended that the petitioner is not all related with co-accused Satendra Prasad, the husband of the complainant. The only allegation in the complaint petition is that the aforesaid Satendra Prasad was having illicit relationship with the present petitioner. According to the learned counsel, on the basis of the materials available on record, it cannot be said that the petitioner is relative of the husband of the complainant and, therefore, even if the entire prosecution case is accepted to be true, the case under Section 498A of the Indian Penal Code shall not be attracted against the petitioner. Hence, it is pleaded, the learned Magistrate ought to have accepted the prayer made on behalf of the petitioner and should have discharged the petitioner from the criminal trial.

Learned Addl.P.P. appearing on behalf of the State has fairly conceded that in absence of any material showing the relationship of the petitioner with the husband of the complainant, the offence under Section 498A of the Indian Penal Code shall not be applicable against the petitioner.

Learned counsel appearing on behalf of the opposite party no.2, though has opposed the prayer made in the present application, but she has not been able to show that the petitioner is relative of the husband of the complainant.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the order impugned cannot be sustained in law. Even if the petitioner was having illicit relationship with the husband of the complainant, but if she is not relative of the husband of the

complainant, then the criminal prosecution against her under Section 498A of the Indian Penal Code cannot proceed. The learned Magistrate has completely overlooked the ingredients required for constituting an offence under Section 498A of the Indian Penal Code and has rejected the prayer for discharge in a mechanical manner. In the given facts of the case, he ought to have acceded to the prayer made on behalf of the petitioner under Section 245 Cr.P.C. and ought to have discharged her from the criminal prosecution.

For the reasons recorded above, the impugned order dated 09.08.2012 passed in Complaint Case No.259 of 2007/Trial No.524 of 2012 by the learned Sub-Divisional Judicial Magistrate, Aurangabad is hereby quashed and set aside. The prayer for discharge of the petitioner is allowed. The petitioner is hereby discharged from the aforesaid criminal prosecution lodged by the opposite party no.2. However, it is clarified that the criminal prosecution against co-accused Satendra Prasad, the husband of the complainant, shall proceed in accordance with law.

The present application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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