

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44131 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

1. Md. Alamgir Ansari @ Alamgir Ansari S/O Late Haji Adul Kalam, Resident Of Village- Nath Nagar, Masuri Sah Lane, P.S.- Nath Nagar, Distt.- Bhagalpur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Faichma Khatoon W/O Md. Alamgir R/O Village- Abir Mishra Lane, Champa Nagar, P.S.- Nathnagar, Distt.- Bhagalpur.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Mohan, Advocate
Mr. Rajiv Ranjan Singh, Advocate
Mr. Praveen Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mr. Bal Krishna Mishra, Advocate
Mr. Bidhan Chandra Jha, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 03-08-2015

The Petitioner seeks quashing of the order of cognizance dated 17.11.2011 passed by the court of Sri Shashi Bhushan Kumar, Judicial Magistrate, 1st class, Bhagalpur in connection with Complaint case No.1462 of 2011.

The case of the Complainant is that she was living in a destitute condition with children, when the Petitioner approached her with a proposal for marriage and they got married and started living as husband and wife. Later when she became pregnant, she asked the Petitioner to prepare a document of marriage but he refused to do so and hence the present case under Section 376 I.P.C.

The submission of the Petitioner is that evidently when the Complainant herself was an adult and the act was consensual, there was no question of an offence under Section 376 I.P.C. being made out.

On the other hand, the Counsel for the Complainant submits that since the Petitioner exploited her on the pretext of marriage, the document of which he never prepared, he should be put on trial.

I am unable to convince myself as to what offence is made out in the facts of the case when the act between the two adults was consensual.

Hence, the application is allowed and the proceeding including the order of cognizance dated 17.11.2011 passed by the court of Sri Shashi Bhushan Kumar, Judicial Magistrate, 1st class, Bhagalpur in connection with Complaint case No.1462 of 2011 is hereby set aside.

However, this order shall not prejudice any party in any manner.

(Anjana Prakash, J)

Narendra/-

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