

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8887 of 2013

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Ahmad Hussain S/O Hadish Ansari, Resident of Village- Hatwa Baliram,
Police Station- Tariya, Sujan, District- Kushinagar (U.P.)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Jaibun Nesa D/O Ishak Ansari, Resident of Village- Pokhar Vinda,
Police Station- Kuchaikot, District- Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha

For the Opposite Party No.1 : Mr. Gauri Shankar Gupta, APP

For the Opposite Party No.2 : Mr. Lokesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

9 09-07-2015

Heard the parties.

The petitioner has filed the present application under Section 482 Cr. P.C. for quashing the order dated 22.12.2009 passed in Miscellaneous Case No. 211 of 2009 by the learned Principal Judge, Family Court, Gopalganj, whereby the petition filed on behalf of the opposite party no. 2 under Section 125 Cr. P.C. for grant of maintenance has been admitted for hearing.

Learned counsel appearing on behalf of the petitioner submits that the dispute between the petitioner and the opposite party no.2 was compromised. Therefore, the petition filed under Section 125 Cr. P.C. was not maintainable. Learned counsel further submits that the petitioner has divorced the opposite party no.2 and that being the position, the opposite party no.2 is not entitled to claim maintenance under Section 125 Cr. P.C.

The matter has been contested by the learned Additional Public Prosecutor appearing on behalf of the State as also learned counsel appearing on behalf of the opposite party no.2. Learned counsel appearing on behalf of the opposite party no.2 submits that the divorce has not taken place between the petitioner and the opposite party no.2 and still she is the legally wedded wife of the

petitioner.

In the aforesaid factual matrix, this Court is of the opinion that there is no illegality or irregularity in the impugned order dated 22.12.2009 passed in aforesaid Misc. Case No. 211 of 2009 admitting the maintenance case filed by the opposite party no.2 against the petitioner under Section 125 Cr. P. C. Furthermore, even if the divorce has taken place between the petitioner and the opposite party no.2, it is settled law that even then she can claim maintenance till she does not remarry. No material has been brought on record that the opposite party no.2 has re-married to any other person. These are the issues of facts, which are required to be gone into at the first instance by the learned Family Court on the basis of evidence produced by the parties. The present application seems to be completely misconceived and not maintainable at this stage.

The petitioner must file his show cause/ written statement in the aforesaid maintenance case before the learned Family Court, Gopalganj within a period of four weeks from today. Thereafter, the aforesaid maintenance case shall be decided in accordance with law.

For the reasons recorded above, the present application stands dismissed with the observations and directions made above.

The order of stay passed on 27.09.2013 by a Bench of this Court stands vacated.

(Birendra Prasad Verma, J)

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