

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36095 of 2012

Arising Out of PS.Case No. -2072 Year- 2004 Thana -null District- MUZAFFARPUR

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1. Nilmani Tiwari S/o Parmanand Tiwari
 2. Birendra Tiwary S/o Parmanand Tiwari
 3. Parma Nand Tiwary S/o late Gajadhar Tiwari
 4. Radhika Tiwary S/o Parmanand Tiwari, all are resident of village Rahimpur, Police Station Bidhupur, District Vaishali at Hajipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Malti Devi w/o Rajendra Ojha, resident of village Jasauli Pakari, Police Station Kaithi, District Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suresh Chandra Giri, Advocate

For the Opposite Party/s : Mr. Akbar Ali, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 21-04-2015

The Petitioners seek quashing of the order of non-discharge dated 1.5.2012 passed by the Sub Divisional Judicial Magistrate, West, Muzaffarpur in Complaint case No.2072C of 2004.

The case of the Complainant is that she was married to Nilmani Tiwari, Petitioner No.1 on 16.7.1997, after which she came to her in-laws house. Two children were born of the wedlock but everyone tortured her for non-fulfilment of demands of dowry. On 19.11.2004 she was given something in tea, on account of which she vomitted. Then this Complaint was filed.

It has been submitted on behalf of the Petitioners that it appears absurd that a person, who was married in the year 1997, would be tortured for ends of dowry even after birth of two children and hence the Complaint filed belatedly in the year 2004 appears

absurd. During the pendency of the present application, the Complainant died, so the Petitioners started seeking custody of the children of the deceased, who was with the mother of the Complainant. As soon as such a move was made, the Complainant's mother substituted herself instead of Complainant and she is presently prosecuting the case.

On the last occasion notices had been issued to the substituted Opposite Party No.2 but none appears on her behalf.

Having considered the facts of the case, I would be inclined to hold that the allegations appear unbelievable and now that the Complainant is dead, the exercise of trial would be one of the futility on account of no possibility of direct evidence.

Hence, the application is allowed and the proceeding including the order of non-discharge dated 1.5.2012 passed by the Sub Divisional Judicial Magistrate, West, Muzaffarpur in Complaint case No.2072C of 2004 is hereby set aside.

However, this order shall be prejudice any party in any manner.

(Anjana Prakash, J)

Narendra/-

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