

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50180 of 2012

Arising Out of PS.Case No. 391 Year- 2012 Thana -null District- -

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1. Hemant Kumar Prasad S/o Sri Bimal Kumar Prasad, Senior Overman at Nandira Colliery, Mahanadi Coal Field Limited, Talchar, Distt. Angul (Orissa)
 2. Bimal Kumar Prasad S/o late Lakhan Mahto
 3. Hemlata Devi w/o Bimal Kumar Prasad, both residents of House No.1-B/56, Dara Colliery (in front of Hanuman Mandir), Talchar, Distt. Angul (Orissa)
- Petitioner/s

Versus

1. The State of Bihar
 2. Smt. Nitu Prasad w/o Sri Hemant Kumar Prasad, D/o Sri Raj Kishore Prasad Singh, resident of House No.115B, M.E.S. Colony, Air Force Station, Bihta, Distt. Patna
- Opposite Party/s
- =====

Appearance :

For the Petitioner/s : Mr. S.S. Singh, Advocate

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 18-08-2015

Learned Counsel for the Petitioners seeks permission to withdraw the application so far as the Petitioner No.1 is concerned.

Application as against the Petitioner No.1 is dismissed as withdrawn.

The rest of the Petitioners are the in-laws, who seek quashing of the order of cognizance dated 8.6.2012 passed by the Sub Divisional Judicial Magistrate, Patna in Complaint case No.391C of 2012.

The case of the Complainant is that she was married to the Petitioner No.1 in the year 2004, whereafter she came to live in the matrimonial home. After her marriage she conceived twice but one month later she got aborted because in ultrasound it was found

out that it was a baby girl. Later on she was ousted from the matrimonial home and then she learnt that the husband is in Orissa.

The submission of the Petitioners is that there was some incompatibility issue between the spouses, on account of which the Petitioner No.1 had filed Matrimonial Divorce case No.755 of 2011 on 13.10.2011. Thereafter the Opposite Party No.2 on 11.11.2011 filed an application under Section 125 Cr.P.C. bearing Maintenance case No.203M of 2011 and on 17.8.2012 an application under Section 24 of the Hindu Marriage Act. It is thereafter that the Complaint was filed on 10.2.2012 evidently in order to create a defence and more in the nature of a backlash.

Be that as it may, considering the vague nature of allegations against the Petitioners, the application is allowed and the proceeding including the order of cognizance dated 8.6.2012 passed by the Sub Divisional Judicial Magistrate, Patna in Complaint case No.391C of 2012 so far as the Petitioners No.2 and 3 are concerned is hereby set aside.

(Anjana Prakash, J)

Narendra/-

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