

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34354 of 2012

Arising Out of PS.Case No. -1696 Year- 2008 Thana -null District- MUZAFFARPUR

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1. Surya Bhushan Sharma S/O Dineshwar Prasad Sharma
 2. Dineshwar Prasad Sharma S/O Late Jugal Rai Sharma
 3. Mira Sharma @ Mira Devi W/O Dineshwar Prasad Sharma
 4. Dev Prabhakar @ Sanjay Kumar S/O Dineshwar Prasad Sharma
 5. Mani Bhushan Sharma S/O Dineshwar Prasad Sharma, all R/O Village + P.O. Mirapur, P.S. Sakara, Distt. Muzaffarur.

.... Petitioner/s

Versus

1. State Of Bihar
2. Nibha Kumar W/O Surya Bhushan Sharma R/O Village + P.O. Mirapur, P.S. Sakra, District - Muzaffarpur At Present D/O Pramod Prasad Singh, Resident Of Village Peerapur, Tola Ratanmaniya, Via - Piar, P.S. Piar, District - Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kr. Pathak, Advocate

For the Opposite Party/s : Mr. M. Haque, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 23-06-2015

The Petitioners, who are the husband and the in-laws of the Opposite Party No.2, seek quashing of the entire proceeding including the order of cognizance dated 4.9.2008 passed by the Sub Divisional Judicial Magistrate, East, Muzaffarpur in Complaint case No.1696 of 2008/2692 of 2008.

The case of the Complainant is that she was married to the Petitioner No.1 on 9.3.2008, on which occasion gifts were given to the in-laws. However, she was tortured for ends of dowry and finally ousted from the matrimonial home.

It has been submitted on behalf of the Petitioners that fact of the matter is that the Complainant stayed only for three days in their house, in which period she refused cohabitation to the husband.

She then deserted him, on account of which the Petitioner No.1 filed an application under Section 9 of the Hindu Marriage Act before the Principal Judge, Family Court, Muzaffarpur, where the Opposite Party No.2 has been noticed. It is as a counter blast to create a defence that the present Complaint has been filed.

A Supplementary Affidavit has been filed stating therein that the Opposite Party No.2 has remarried and also has a child from the second marriage. On account of this information the Petitioner No.1 has also filed an amendment petition in the suit for restitution of conjugal rights to obtain a decree of divorce.

Several attempts were made to notice the Opposite Party No.2 but she did not appear before this Court or the Mediation Centre.

Accepting the submissions of the Petitioners, I would be inclined to hold that the present prosecution is a gross abuse of the process of the court. Hence, the application is allowed and the entire proceeding including the order of cognizance dated 4.9.2008 passed by the Sub Divisional Judicial Magistrate, East, Muzaffarpur in Complaint case No.1696 of 2008/2692 of 2008 is hereby set aside.

(Anjana Prakash, J)

Narendra/-

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