

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51327 of 2013

Arising Out of PS.Case No. -235 Year- 2005 Thana -COMPLAINT CASE District- LAKHISARAI

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1. Anjani Devi D/O Chando Mahto
2. Chando Mahto S/O Late Jitan Mahto
3. Yashoda Devi W/O Chando Mahto
All Residents of Village - Abhaipur, P.O. Dumarkola, P.S. and
District - Jamui

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Vidya Devi D/O Sri Sant Kumar Sinha, Resident of Village - Billo,
P.O. Barhera, P.S. Halsi, District - Lakhisarai

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Amrendra Nath Vishawas

For the Opposite Party/s : Mr. A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4 22-08-2016 Heard Sri Raj Kishore Prasad, learned counsel, who

was assisted by Sri Bal Bhushan Choudhary, learned counsel for
the petitioners, learned Addl. Public Prosecutor as well as Sri
Amrendra Kumar, learned counsel for Opp.Party no.2.

Three petitioners, who are not relative of the
husband of Opp.Party no.2, have approached this Court, invoking
its inherent jurisdiction under Section 482 of the Code of Criminal
Procedure with a prayer to quash an order dated 14.03.2008
passed by learned Sub Divisional Judicial Magistrate, Lakhisarai
in Complaint Case No.235(c)/2005. By the said order, the learned
Sub Divisional Judicial Magistrate, Lakhisarai has rejected the

petition filed on behalf of the petitioners under Section 245 of the Indian Penal Code for their discharge.

Short fact of the case is that Opp.Party no.2 filed a complaint petition in the court of learned Addl. Chief Judicial Magistrate, Lakhisarai , which was registered as Complaint Case No.235(c)/2005 arraying eight persons as accused. It was disclosed in the complaint petition that the complainant had solemnized marriage with accused no.1, namely, Ram Pravesh Sinha on 28.06.2004 in Ashok Dham temple. Thereafter, as per complaint petition, accused nos. 2 to 5, who were close relative of accused no.1 started torturing the complainant and demanding dowry. The complainant has asserted that she was assaulted on several occasions due to non-fulfilment of dowry. So far as these petitioners are concerned, they were arrayed as accused nos. 6 to 8. It has been alleged that accused no.1 i.e. husband of the complainant subsequently solemnized marriage with petitioner no.1, who was arrayed as accused no.6 in the complaint petition. After conducting enquiry, order of cognizance was passed. In the case, after examination of witnesses before charge, petitioners filed petition for their discharge, which has been rejected by the impugned order i.e. order dated 14.03.2008.

Learned counsel for the petitioners submits that the

petitioners being no relative of the husband of the complainant may not be prosecuted for the offence under Section 498A of the Indian Penal Code. By way of referring to Section 498A of the Indian Penal Code, it was submitted by learned counsel for the petitioners that it is only relative of the husband, who are liable to be punished under Section 498A of the Indian Penal Code. So far as offence under Section 494 of the Indian Penal Code is concerned, he submits that the husband of the complainant can only be proceeded for offence under Section 494 of the Indian Penal Code. It was alleged that during life time of the complainant he has solemnized second marriage. However, learned counsel for the petitioners categorically stated that the allegation of the complainant that husband of the complainant had solemnized second marriage with petitioner no.1 is absolutely incorrect. He submits that even in the said situation, three petitioners may not be proceeded for the offence under Section 494 of the Indian Penal Code. So far as allegation of demand of dowry i.e. Sections 3 and 4 of the Dowry of prohibition Act is concerned, he has referred to the complaint petition as well as evidence of witnesses recorded before charge and submits that there is no iota of evidence to suggest that the petitioners had ever participated in demand of dowry . He submits that taking all the pleas, petitioners had filed

petition at the time of discharge. However, learned Sub Divisional Judicial Magistrate without taking note of this fact has rejected the discharge petition in a mechanical manner.

Learned Addl. Public Prosecutor and learned counsel for the complainant/Opp.Party no.2 have opposed the prayer of the petitioners. It was submitted that petitioner no.1 after knowing all the facts that the husband of the complainant was already married, has solemnized marriage with the husband of the complainant. It has been argued that there is specific accusation of torturing against all the accused persons.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly the complaint petition. On going through the complaint petition, it is evident that three petitioners , who were arrayed as accused nos. 6 to 8, are not relative of the husband of the complainant and, as such, they may not be proceeded for the offence under Section 498A of the Indian Penal Code. Similarly, the husband of the complainant can be liable to be proceeded for offence under Section 494 of the Indian Penal Code. At this juncture, it would be appropriate to quote Section 494 of the Indian Penal Code, as follow:

“494. Marrying again during lifetime of husband or wife. -- Whoever, having a husband or wife living,

marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

In view of aforesaid provision, it is evident that married person, if solemnises second marriage during life time of his/her spouse, can be held guilty for the offence under Section 494 of the Indian Penal Code. So far as allegation of Sections 3 and 4 of the Dowry Prohibition Act is concerned, on going through the complaint petition as well as deposition of witnesses recorded before charge, the Court is satisfied that no material is available for proceeding against the petitioners even under Sections 3 and 4 of the Dowry Prohibition Act.

In view of facts and circumstances, the learned court below has erred in rejecting the discharge petition filed on

behalf of the petitioners. Accordingly, the impugned order dated 14.03.2008 passed in Complaint Case No.235(c)/2005 so far petitioners are concerned, is hereby set aside. The proceeding in Complaint Case No.235(c)/2005 against the petitioners only is quashed.

The petition stands allowed.

(Rakesh Kumar, J)

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