

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33878 of 2012

Arising Out of PS.Case No. -128 Year- 2007 Thana Kankarbagh District- PATNA

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Rajiv Kumar Jha, S/O Sri Sachchidanand Jha, resident of Mohalla- Ashok Nagar (Bhojpur Colony), Road No.-8, Ram Lakhan Path, P.S.- Kankarbagh, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Bibha Jha, w/o Rajiv Kumar Jha, Resident of Mohalla Ashok Nagar Road No. 8, Bhojpur Colony, P.S. Kankarbagh, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bam Bahadur, Adv.

Mr. Sushil Kr. Jha, Adv.

For the State : Mr. Shantanu Kumar, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 18-01-2016

Heard learned counsel for the Petitioner and the State.

The Petitioner who is the husband of the Opposite Party

No. 2 seeks quashing of the order of cognizance dated 12.4.2010 passed by the Chief Judicial Magistrate, Patna, in Kankarbagh P.S. Case No. 128 of 2007.

In the nature of allegation, notices had been issued to the Opposite Party No. 2 but despite service of notice upon the close family members, she has chosen not to appear before this Court.

From the petition filed herein, I find that a Matrimonial Suit was filed on 19.4.2007 which was admitted by order dated

7.5.2007 in which notices were issued to the Opposite party No. 2 who appeared on 12.7.2007 for conciliation. She then denied living with her husband which was noted in the order sheet by the Principal Judge, Family Court, Patna, the order sheet of which is annexed as Annexure-2. It is only thereafter that the present case was filed on 12.7.2007 with trumped up charges in order to create a defence in the Matrimonial Suit.

Having gone through the facts of the case, I would be inclined to hold that the present case has been instituted in retaliation and, hence, deserves to be set aside.

Thus, the application is allowed and the Proceeding including the order of cognizance dated 12.4.2010 passed by the Chief Judicial Magistrate, Patna, in Kankarbagh P.S. Case No. 128 of 2007, is hereby, set aside.

(Anjana Prakash, J)

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